

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Office of General Counsel, Region 4  
1130 North Westcott Road, Schenectady, NY 12306-2014  
P: (518) 357-2048 | F: (518) 357-2087  
www.dec.ny.gov

**CERTIFIED - RETURN RECEIPT REQUESTED**  
7017 1070 0001 0188 9875

February 11, 2019

Matthew J. McGarry, P.E.  
Public Works Engineer  
Town of Colonie Department of Public Works  
Bureau of Engineering  
347 Old Niskayuna Road  
Latham, NY 12110

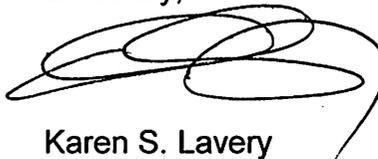
Re: Order on Consent  
R4-2018-1002-185

Dear Mr. McGarry:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$19,125.00 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery  
Assistant Regional Attorney  
Region 4

Enclosure

ec: Kevin Bernstein, Esq.  
Paula Mahan, Supervisor  
V. Schmitt  
J. Whitcomb

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Violations of  
Environmental Conservation Law  
Articles and 27, and applicable regulations:

ORDER ON CONSENT

-by-

File No. R4-2018-1002-185

Town of Colonie  
347 Old Niskayuna Road  
Latham, New York 12110

Respondent

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WHEREAS:

Jurisdiction

1. The Department of Environmental Conservation (Department) is empowered to regulate the disposal of solid waste and permit the operation of landfills pursuant to Article 27, Title 7 of the Environmental Conservation Law (ECL).

Respondent

2. Respondent, Town of Colonie, owns the Town of Colonie Landfill Facility ("landfill") located at 1319 Loudon Road, Colonie, New York, that is subject to Solid Waste Management Permit No. 4-0216-00033-00001 that was last modified on April 5, 2018 with an expiration date of April 4, 2028 (permit modification).

Facts

3. On July 20, 2018, construction activity commenced at the landfill for the purpose of expansion.

Violations of Solid Waste Permit and 6 NYCRR Part 360

4. Respondent's Solid Waste Permit Condition No. 2.b provides that the facility must operate in strict conformance with the Operations and Maintenance Manual dated February 2015, revised June 2016.

5. Pursuant to 6 NYCRR 360.19(b)(2), the owner or operator of a facility must operate the facility in a manner that minimizes the generation of leachate and that does not allow any leachate to enter surface waters or groundwater except under authority of a State Pollutant Discharge Elimination System permit.

6. On August 3, 2018, Department staff observed a turbid discharge at Outfall 2 to the Mohawk River from construction activity related to the landfill expansion which is in violation of Respondent's Solid Waste Permit Condition No. 2.b.

7. On August 10, 2018, Department staff observed a catch basin within or adjacent to the municipal recycling facility and disturbed areas and tributary to Outfall 2, which did not have inlet protection installed, which is in violation of Respondent's Solid Waste Permit Condition No. 2.b.

8. On September 13, 2018, Department staff observed an unprotected catch basin along the driveway to the gas plant facility. The silt sack in place was full resulting in turbid water being discharged into the wetland at Outfall 3-C which is in violation of Respondent's Solid Waste Permit Condition No. 2.b.

9. On September 18, 2018, during the course of a high intensity rainfall event, turbidity was detected leaving the site at multiple outfalls around the site due to the inadequacy of the various stormwater controls that were in place. The turbid water leaving the site is in violation of Respondent's Solid Waste Permit Condition No. 2.b.

10. On November 2, 2018 stormwater was observed coming in contact with exposed solid waste. The resulting leachate was discharging into Cell 1 of the Area 7 construction, an area that does not contain a leachate collection and removal system. At the time of inspection, the leachate was being pumped to stormwater retention basins. This is a violation of 6 NYCRR 360.19(b)(2).

#### Civil Penalty

11. ECL Section 71-2703 provides that: "any person who violates any of the provisions of, or who fails to perform any duty imposed by title 3 or 7 of article 27 of this chapter or any rule or regulation promulgated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this title shall be liable for a civil penalty not to exceed seven thousand five hundred dollars for each such violation and an additional penalty of not more than one thousand five hundred dollars for each day during which such violation continues.

#### Waiver of Hearing

12. Respondent affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order on Consent and agrees to be bound by the terms, provisions and conditions contained herein.

**NOW**, having considered this matter and being duly advised, it is **ORDERED** that:

## I. Civil Penalty

With respect to the aforesaid alleged violations, a civil penalty in the amount of NINETEEN THOUSAND DOLLARS ONE HUNDRED TWENTY-FIVE DOLLARS (\$19,125) is assessed against the Respondent.

## II. Communications

All communications required herein shall be made to: Department -- DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attention- Regional Engineer, [victoria.schmitt@dec.ny.gov](mailto:victoria.schmitt@dec.ny.gov). All communications shall include a reference to the Order on Consent Case Number R4-2018-1002-185.

## III. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

## IV. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

## V. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

## VI. Review of Submittals

1. All documents which Respondent must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondent shall implement them in accordance with their respective schedules and terms, as approved.

3. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondent accepts such modifications as may be specified by Department to make it approvable. If Respondent does not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

#### VII. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

#### VIII. Modification

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

#### IX. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein.

#### X. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

#### XI. Reservation of Rights

Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;

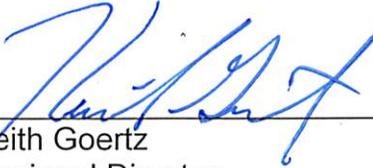
C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

XII. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

DATED: February // , 2019  
Rotterdam, New York

Basil Seggos  
Commissioner  
New York State Department of  
Environmental Conservation

BY:

  
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Keith Goertz  
Regional Director  
Region 4

CONSENT BY RESPONDENT

Town of Colonie

Respondent, Town of Colonie, hereby consents to the issuing and entering of this Order on Consent and waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: Paula A. Mahan  
Supervisor, Town of Colonie

DATE: 1-23-19

STATE OF NEW YORK )

COUNTY OF Albany )

) ss.:

On the 23<sup>rd</sup> day of January in the year 2019 before me, the undersigned, a Notary Public in and for the State, personally appeared Paula A. Mahan personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual executed the instrument.

*[Handwritten Signature]*

Notary Public  
Qualified in the County of:  
My Commission Expires:

