

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the Matter of a Remedial Program for

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**

DEC Site Name: North Sea Landfill

DEC Site No.: 152052

Site Address: Majors Path, Southampton

Index No. 152052-24-02

Hereinafter referred to as "Site"

by: Town of Southampton
116 Hampton Road, New York

and

Kearsarge Energy
1380 Soldiers Field
Boston MA 02135

Hereinafter referred to as "Respondents"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL, and Resource management under Article 27, Title 6 of the ECL Part 360 of 6 NYCRR.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondents' liability to the State as provided at 6 NYCRR 375-1.5(b)(5).
2. "Site" shall mean the entire landfill which totals approximately 131.792 acres as per Suffolk County Tax Map. DER Site 152052 consists of the original, northern "Cell 1", and the former septage lagoons at the south end; the total acreage is

apparently 48.875 acres (see the EPA Environmental Restriction). DMM retains oversight over Cells 2 and 3.

3. Based upon the results of a Remedial Investigations/Feasibility Studies ("RI/FS") of the Site, the Department selected a remedy for the Site that was described in an EPA ROD for OU1 (on-site Cell 1, consisting of 13 acres) and OU2 (off-site groundwater), and an Environmental Restriction between EPA and the Town, dated June 6, 2003. The remedy consisted of providing municipal water to certain properties. Additionally, the remedy included, for OU1—a cap and official closure of Cell 1 in accordance with Part 360, sampling of former sludge lagoons to confirm no hazardous waste remained, a deed restriction, air and water quality monitoring, and maintenance; for OU2—no further action (based upon the work for OU1 and an impact assessment of Fish Cove to the NW). A Site Management Plan ("SMP") in the form of an Operation and Maintenance Manual was finalized on September 12, 1995.
4. Respondents and the Department agree that the primary goals of this Order are to (1) continue any ongoing obligations of any and all Respondents related to the Site; and (2) to maintain existing engineering and institutional controls, including the environmental restriction dated June 11, 2003 between Southampton Town and the EPA for Cell 1 and former sludge lagoons, consisting of 48.875 acres. EPA has provided an opinion that the proposed solar infrastructure is in conformance with the environmental restriction.
5. Respondents consent to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment, except as governed by any other agreement, consent order, consent decree, settlement, or other document.
6. Respondent, Town of Southampton, also is a Respondent to a Consent Order for Site 152052, dated May 20, 1993. Respondent, Town of Southampton, also is a Defendant in case 2:06-cv-06650-ERK-ARL related to the Site, and party to the Consent Decree filed as documents 2 and 7, on 12/28/2006 and 02/02/2007, together with any modifications such as that dated February 23, 1989.
7. Solely regarding the matters set forth below, Respondents hereby waive any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondents pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Real Property

The Site subject to this Order consists of one portion that has been assigned number 152052 and Cells 2 and 3, which are governed by NYSDEC Division of Materials Management, consists of approximately 130 acres, and is further described as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")
Section, Block, and Lot: 078 2 74.1

II. Respondents' Obligations

- a. Respondents shall continue any respective obligations under any and all agreements, orders, decrees, plans, governing documents, regulations, and statutes.
- b. All engineering controls ("ECs"), now on site or placed on the site in the future, must be operated and maintained, and inspected at a frequency and in a manner as specified in the Site's SMP.
- c. All environmental or public health monitoring must be performed as defined in the Site's SMP. All data and information must be reported at the frequency and in the manner as defined in the Site's SMP. All activities that may affect the remedy in any fashion must be conducted in a manner not to diminish the effectiveness of the remedy in any way.
- d. Respondent shall ensure that no actions by any entity accessing, working, or otherwise at the Site diminish the effectiveness of, damage, interfere with, or in any way negatively affect the remedy.
- e. All activities that may affect any part of the remedy must be conducted in accordance with the Site's SMP.
- f. Respondent shall ensure that the Department is made aware of any activities at the Site thirty (30) days prior to said activities.
- g. Access to the Site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner.
 - i. The Department, its employees, other representatives shall have access to and be able to observe any and all activities at the Site, including but not limited to those related to renewable energy infrastructure, generation, development, transmission, and other related activities.
 - ii. Access to the Department, its employees, or other representatives shall be provided for the implementation of response actions at and near the

Site under applicable federal and state law, including but not limited to all activities authorized under ECL §§ 27-1309(3) – (4) and ECL § 27-1313(8). The Department retains all its authorities and rights, including enforcement authorities thereto, under CERCLA, Article 27, Title 13 of the ECL or pursuant to any other provision of state or federal statutory or common law with respect to such access.

- iii. The Department shall coordinate with Respondent related to access to the Site, except in the instance of a response to an imminent or actual threat to public health or the environment at or emanating from the Site, in which case the Department will make reasonable efforts to coordinate with Respondent, and will provide notification of access within 24 hours, or within 72 hours if such 24 hours is not possible.
- h. Respondent shall provide a form of financial assurance for potential damage to the landfill cover system during installation and any impact after the installation along with documents required in accordance with NYSDEC Division of Materials Management Policy 4 for Solar Arrays on Closed Landfills.
- i. In addition to and separate from any costs to the state related to damage to or interference with remediation at the Site, Respondents shall pay to the Department all oversight costs related to the development, installation, generation, use or other activities related to renewable energy at the Site
 - i. Invoices shall be sent to one Respondent at the following address:

Town of Southampton
Director, Department of Municipal Works
116 Hampton Road
Southampton, NY 11968
engineering@southamptontownny.gov
631-702-1750

- ii. Respondent acknowledges that additional charges may be billed at a later date for State Costs incurred.
- iii. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.
- iv. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.
- v. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:
 - Director, Bureau of Program Management
 - Division of Environmental Remediation
 - New York State Department of Environmental Conservation

625 Broadway
Albany, New York 12233-7012

- vi. The Department shall provide written notification to the Respondent of any change in the foregoing address. The Respondent shall provide written notification to the Department (at the foregoing address) of any changes to the invoice contact and address provided under Paragraphs III or IV of the Consent Order.
 - vii. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.
 - viii. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL '27-1423 and ECL 71-4003.
- j. In no way diminishing or contravening Respondents' obligations under law, Respondents are responsible for and agree to remedy and/or pay for any and all responses to conduct that will or may tend to prevent or significantly interfere with a proposed, ongoing, or completed remedial program at the Site, including but not limited to damage to engineering controls. Respondents shall cooperate with the Department and, at Respondents' sole cost and expense, correct any impacts and establish any controls reasonably required in connection with such modifications. Respondent shall develop for Department approval a contingency plan in accordance with DMM-4.
- k. Respondents agree to immediately stop work upon verbal or written notice from the Department if the Department suspects there are violations of this Order, prevention or significant interference with a proposed, ongoing, or completed remedial program the Site, and/or threats to public health or the environment. If verbal notice is provided, written notice shall follow within 24 hours. This work stoppage will be in place until the Department determines that violations or threats have been cured.
- l.** Respondent shall provide plans as required in the sub-sections below.
- i. Respondents must provide design plans, as well as sufficient information as required under the Draft DMM-4 for review and approval 30 days before the start of any work at the Site. The array structure design should keep a 10-foot radial buffer from any monitoring wells, vents and ports at the site in order to provide access for landfill maintenance and repair. This plan should include techniques and strategies for protecting the remedy, including any cover system, which will not interfere with the function of the existing landfill cover system and maintenance as well as not result in increased potential for erosion or unauthorized release of landfill gas at the Site and landfill area during solar installation and other on-site activities by the Respondents.

- ii. Respondents must provide final as-built plans.
- iii. Develop for Department approval a Health & Safety Plan to be in place during and following construction. Respondent shall coordinate with the Department to develop emergency contact information, reporting procedures, and a notification list.
- iv. Develop for Department approval a monitoring and maintenance plan for the solar energy gathering, generating, distribution, and other related infrastructure. A landfill monitoring and maintenance plan should be submitted for both during and after construction. Any plan must be submitted at least 30 days prior to the expected completion date of the solar installation. Alternatively, any existing Operation and Maintenance Plan shall be updated to include this requirement.
- m. Ensure all design documents, other reports, or plans at the Site are stamped by a New York State licensed Professional Engineer.
- n. The Town and/or their consultant or agent shall provide engineering oversight by a New York State licensed Professional Engineer during the construction of the solar energy generating infrastructure, including on-site oversight. Such oversight shall include, but not be limited to, adherence to design, conformance to construction plans, on-site monitoring of construction, and confirmation there is no damage to engineering controls or any other component of the remedy.
- o. If Respondents propose to convey the whole or any part of Respondents' ownership interest in the Site or becomes aware of such conveyance, Respondents shall, not fewer than forty-five (45) days before the date of conveyance or within forty-five (45) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Consent Order. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security order, lease or any other right accruing to a party not affiliated with Respondents to secure repayment of money or the performance of a duty or obligation.

Respondents shall require that assignees, successors in interest, lessees and sublessees of the Site shall provide the same access and cooperation with the Department. Respondents shall not be responsible for any such parties' failure to comply. The Respondents shall ensure that a copy of this Order is provided to any current lessee or sublessee on the Site as of the effective date of this Order and shall ensure that any subsequent leases, assignments or transfers of the Site or an interest in the Site are consistent with this Paragraph of this Order.

- p. Respondents shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site. If Respondents or their successors and assigns propose to change the use of the Site, as defined in ECL 27-1317 and 6 NYCRR Part 375-2.2(a), Respondents must comply with the notice requirements of 6 NYCRR Part 375-1.11(d).
- q. Upon sale or other conveyance of the Site or any part thereof, Respondents shall notify, in writing, any grantee, transferee or other holder of an interest in the Site or any part thereof of the requirement that they must and shall provide access and cooperation to the Department, its authorized officers, employees, representatives, and all other persons implementing the remedial program for the Site under the Department's oversight. Respondents shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall comply with any land use restrictions and institutional controls on the Respondents' portions of the Site in connection with the remedial program for the Site.

III. Communications

- a. Coordinate with DEC regarding the installation of solar infrastructure, including, but not limited to, phone calls, conference calls, and site visits.
- b. Communicate to the Department if the Respondents and/or any of their contractors encounter anything unexpected, unusual, or questionable at the Site, and provide said notices as soon as encountered, but no later than 24 hours after discovery, to the Department.
- c. All written communications required by this Consent Order shall be transmitted by electronic means, whenever possible. Paper copies should be provided upon request.
- d. Communication from Respondents shall be sent to:

David Raymond, Project Manager
Girish Desai, RHWRE
50 Circle Rd, Stony Brook, NY 11790

Jie Zhao
Division of Materials Management
50 Circle Rd, Stony Brook, NY 11790
Jie.zhao@dec.ny.gov

Renata Ockerby, New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower
Albany, NY, 12237
Renata.ockekrby@health.ny.gov

Leia Schmidt, Esq. (correspondence only), Project Attorney
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY, 12233-1500
Leia.schmidt@dec.ny.gov

- e. Communication from the Department to Respondents shall be sent to:

Thomas Houghton Jr, P.E.
Town Engineer
Town of Southampton
116 Hampton Road
Southampton, NY 11968
thoughton@southamptontownny.gov

Andrew Bernstein
Kearsarge Energy
1380 Soldiers Field
Boston, MA 02135
abernstein@kearsargeenergy.com

- f. Communication from either party to the Environmental Protection Agency shall be sent to:
Ashley Similo, Remedial Project Manager, New York Remediation Branch
US Environmental Protection Agency
similo.ashley@epa.gov
212-637-4263.
- g. The Department and Respondents reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondents provide more than one paper copy of any work plan or report.
- h. Each party shall notify the other within ninety (90) days after any change in the addresses listed in Paragraphs III or IV. See Appendix A Paragraph VI.D for instruction on notification of invoice contact and address changes.

IV. Miscellaneous

a. Penalties

- i. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.
- ii. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.
 2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.
 3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.
 4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 375-1.5(4).
 5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.
- b. Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i) and for any and all work related to solar energy, including its infrastructure, generation, and transmission.
 - c. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

- d. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.
- e. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed herein.
- f. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.
- g. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.
- h. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.
- i. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.
- j. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.
- k. This order shall terminate upon written agreement by all parties that no solar energy infrastructure remains at the Site, and that no obligations of the parties remain.
- l. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee.

DATED: April 25, 2024

SEAN MAHAR
INTERIM COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: *Andrew Guglielmi*

Andrew Guglielmi, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

152052-24-02

Respondent, **Town of Southampton**, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

Town of Southampton

By [Signature]:

Name [Print]:

Title:

Date:

Email:

Francis Zappone

FRANCIS ZAPPONE

DEPUTY SUPERVISOR

3/1/24

FZAPPONE@SOUTHAMPTONTOWN.NY.GOV

Acknowledgment

STATE OF New York)

) ss:

COUNTY OF Suffolk)

On the 1st day of March, in the year 2024, before me, the undersigned, personally appeared Francis Zappone, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Nicole Gentzel

Notary Public

NICOLE GENTZEL

Notary Public, State of New York

No. 4877106

Qualified in Suffolk County

Commission Expires Nov. 24, 2026

CONSENT BY RESPONDENT

152052-24-02

Respondent, **Kearsarge Southamton LLC**, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

Kearsarge Southamton LLC

By [Signature]:

Name [Print]:

Title:

Date:

Andrew J. Bernstein
Andrew J. Bernstein
Manager
3/1/2024

Email: _____

Acknowledgment

STATE OF Massachusetts

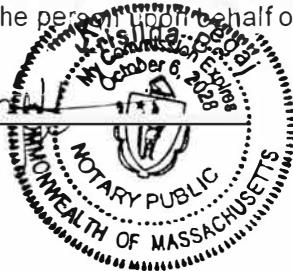
) ss:

COUNTY OF Suffolk)

On the 15th day of March, in the year 2024, before me, the undersigned, personally appeared Andrew Bernstein, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Kristina Bernini

Notary Public



Map

