

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

RECEIVED OCT 22 1991

STATE OF NEW YORK and THOMAS C. JORLING,
Commissioner of the New York State
Department of Environmental Conservation,

NOTICE OF ENTRY

Plaintiffs,

Index No. 3Q35

- against -

TOWN OF MOREAU, Michael Sullivan,
Supervisor,

Defendant.

PLEASE TAKE NOTICE that an Order on Consent, a certified copy of which is attached, was entered in the office of the office of the clerk of Saratoga County on October 11, 1991.

Dated: October 18, 1991
Albany, New York

ROBERT ABRAMS
Attorney General of the State
of New York
Attorney for Plaintiffs
JOHN J. PRIVITERA
Assistant Attorney General
of Counsel
New York State Department
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The Capitol
Albany, New York 12224
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TO: MICHAEL SULLIVAN, Supervisor
Town of Moreau
Town Hall
South Glens Falls, NY 12803

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SARATOGA

STATE OF NEW YORK and THOMAS C. JORLING,
Commissioner of the New York State
Department of Environmental Conservation,

Plaintiffs,

- against -

TOWN OF MOREAU, Michael Sullivan,
Supervisor,

Defendant.

ORDER ON CONSENT

Index No. 3035

SARATOGA COUNTY
CLERK'S OFFICE
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WHEREAS, plaintiffs, Commissioner of the New York State Department of Environmental Conservation and State of New York filed a complaint against defendant Town of Moreau alleging that defendant had violated the New York State Environmental Conservation Law ("ECL") by operating a solid waste management facility known as the Town of Moreau landfill ("facility") located in the Town of Moreau, County of Saratoga, State of New York, in contravention of ECL Article 27, Title 7 and 6 NYCRR Part 360 and the defendant has denied all the allegations in the complaint; and

WHEREAS, defendant agrees to cease the daily operation of the landfill on a date certain and further agrees to close the landfill pursuant to the requirements of ECL Article 27, Title 7 and 6 NYCRR Part 360; and

WHEREAS, pursuant to administrative Order on Consent Modifications entered into in 1991 between the New York State Department of Environmental Conservation ("Department") and other owners and operators of unpermitted landfills which accept municipal solid waste in Saratoga County, the Department, in order to provide interim solid waste disposal capacity to said landfill owners and operators, has approved a Saratoga County Solid Waste Landfill Consolidation Plan, prepared by Saratoga County on behalf of said municipal landfill owners and operators, based on a demonstration that the Towns of Halfmoon and Moreau landfills and the Austro Brothers Construction Company landfill are the most environmentally sound landfills in Saratoga County that have the capacity to accept all of the solid waste generated within that County for an interim period until October 1, 1992; and

WHEREAS, defendant represents that it holds title to the real property upon which the facility is located; and

WHEREAS, plaintiffs and defendant have agreed to settle this litigation upon the terms set forth below; and

WHEREAS, defendant has agreed to withdraw its application for a permit to operate the facility.

WHEREAS, the undersigned representatives of each signatory certify that they are fully authorized to enter into the terms and conditions of this order and to legally bind each respective party to this document; and

WHEREAS, this Court has jurisdiction over the subject matter of this action and has personal jurisdiction over the parties to this judgment and the Court having duly considered the matter and having been duly advised:

NOW THEREFORE, upon the application of Robert Abrams, Attorney General of the State of New York, and the consent of all parties to this action as evidenced by the signature of their attorneys below, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant is hereby assessed a penalty in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) for violations of the Environmental Conservation Law and the administrative Order on Consent, In the Matter of the Alleged Violations of the ECL by the Town of Moreau, R5-0337-85-6 (November 25, 1985). This penalty is due and payable within thirty days (30) of the date of this order.

2. By September 15, 1991, defendant shall identify to the Department, in writing, the source of revenue which defendant will use for the purpose of financing final closure of its landfill.

3. Defendant shall reserve all of the facility's remaining capacity for waste generated in New York State.

4. Operation of the facility after the date of this Order on Consent without a valid operating permit shall constitute a continuing violation of 6 NYCRR 360-1.7(a)(1)(ii); provided, however, that the plaintiffs shall not institute any action for

penalties for violation of 6 NYCRR 360-1.7(a)(1)(ii) so long as defendant complies with the deadlines, provisions, terms and conditions set forth in this Order on Consent, and operates the facility in conformance with the landfill operation requirements set forth in 6 NYCRR Part 360 to the fullest extent practicable and the approved operations plan (See Appendix "A").

5. Defendant shall not increase the total surficial area of waste mass ("footprint") beyond that which already exists at the facility.

6. Unless otherwise ordered by the Court, site investigation and closure shall proceed in accordance with Appendix "A" attached hereto and incorporated by this reference.

7. The Department may require defendant to perform additional investigation if the Department determines that further investigation is necessary, due to the analysis and conclusions in the Closure Investigation Report ("CIR").

8. Defendant shall, in addition to complying with the requirements set forth in paragraph 4 above, operate its facility in accordance with the approved Saratoga County Solid Waste Landfill Consolidation Plan ("Saratoga County Consolidation Plan"), approved by the Department on April 26, 1991, for an interim period not to extend beyond October 1, 1992. On October 1, 1992, defendant shall permanently cease acceptance of solid waste at the facility, provided, however, that if the defendant or its agent is making progress acceptable to the department in the development of a Saratoga County Solid Waste Management

Facility, the Department may, in its discretion, consent to a modification of this order to permit the defendant's consolidated facility to operate until a date after October 1, 1992 but no later than April 1, 1994.

a. If the Department determines, at any time prior to the date on which the landfill is to be closed to the acceptance of refuse, that the continued operation of the landfill is exposing the environment or the public health to a significantly increased threat of harm, defendant shall immediately close its facility to the acceptance of any refuse whatsoever. The Department shall provide written notice to the defendant of the determination and shall allow the defendant 30 days from the date of its receipt of such notice to either take corrective action to eliminate such interference or increased threat of harm or to close its landfill to the acceptance of refuse.

b. If the Department determines, at any time prior to the date on which the landfill is to be closed to the acceptance of refuse, that the defendant has failed to maintain its landfill in compliance with the operational requirements contained in 6 NYCRR Part 360 or any other interim operating guidelines specified or approved by the Department, defendant shall immediately close its landfill to the acceptance of any refuse whatsoever. The Department shall provide written notice to the defendant of its determination and shall allow the defendant 30 days from the date of its receipt of such notice to either correct its failure or to close its landfill to the acceptance of refuse.

9. The defendant, or its agent, shall fully implement the Saratoga County Consolidation Plan, as approved by the Department on April 26, 1991, on or before October 25, 1991, as it relates to respondents landfill. The Saratoga County Consolidation Plan and the Department's letter of approval are attached to this Order as Appendix "B" and thereby made an enforceable part hereof.

10. The defendant shall by October 25, 1991 establish an interest-bearing account in a financial institution authorized to do business in New York, in which account shall be deposited any tipping fees collected as a result of disposal activity conducted pursuant to the Saratoga County Consolidation Plan, to be used solely for the purpose of operating the consolidated facility and assisting in the financing of the implementation of the approved closure plan at said facility.

11. At least twenty-five (25) days before the date upon which the defendant must cease operation of the facility pursuant to the provisions of paragraph 8, the defendant shall provide written notification to the current users of the facility that each user must seek alternative solid waste disposal options.

12. Split Samples.

The Department may, at its option, obtain for the purpose of comparative analysis "split samples" or "duplicate samples" of all substances and materials sampled by defendant pursuant to this Order. As used herein, "split samples" shall mean whole samples divided into aliquots, and "duplicate samples" shall mean multiple samples, collected at the same time from exactly the

same location, using the same sampling apparatus, collected into identical containers prepared identically, 'filled to the same volume, and thereafter identically handled and preserved.

13. Inspections.

Defendant shall at all times allow any duly designated employee, consultant, contractor or agent of the Department or of any other State agency to immediately enter the Facility or areas in the vicinity of the Facility which may be under the control of defendant for purposes of sampling and testing and to ensure defendant's compliance with this Order and with applicable laws and regulations.

14. Defendant shall on or before June 1, 1992 ensure that the facility is operated on a daily basis by a landfill operator certified by the Department pursuant to 6 NYCRR Part 360.

15. Recycling

Defendant shall implement measures to ensure that waste disposed of at the facility comes only from jurisdictions implementing a comprehensive municipal source separation/recycling program.

16. Public Notice.

(a) Within 30 calendar days after the effective date of this Order, defendant shall file a signed copy of this Order in the real property records of the Saratoga County Clerk's Office, in a manner that ensures notice of this Order to all potential, future purchases of any portion of the facility or the property upon which the facility is located. This notice shall further

notify any potential successor in title that they may be responsible for implementing provisions of this Order.

(b) If defendant proposes to convey the whole or any part of its ownership interest in the facility or in the site upon which the facility is located, defendant shall notify the Department in writing immediately, but in no case less than 30 calendar days before the consummation of such proposed conveyance, of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, defendant shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order and shall accompany such notification with a copy of this Order.

17. In the event the defendant fails to meet any of the milestone dates set forth in this order or relevant attached schedules, defendant shall pay a stipulated penalty in the amount set forth below for each day of violation.

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
1st Day thru 30th Day	\$100
31st Day thru 60th Day	\$150
61st Day thru 90th Day	\$300
Each Day Beyond 90th Day	\$500

Any stipulated penalties shall become due and payable by the 15th day of the month for the violations of the preceding calendar month.

18. Defendant shall submit such payment as required by this Order to the Regional Director, New York State Department of Environmental Conservation, Region 5, P.O. Box 296, Ray Brook, New York 12977.

19. The Commissioner retains the right to make Department initiated changes to any of the provisions, terms or conditions of this Order pursuant to the summary abatement provisions of the ECL, or after the defendant has been given the opportunity to be heard.

20. Other Remedies.

(a) Nothing contained in this Order shall be construed as barring or diminishing the following:

(1) Any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than defendant or defendant's directors, officers, employees, servants, agents, successors and assigns;

(2) The Department's right to enforce, administratively or at law or in equity, the terms, provisions and conditions of this Order against defendant or defendant's directors, officers, employees, servants, agents, successors and assigns in the event that defendant shall fail to satisfy any provision hereof;

(3) The Department's right to bring any action, administratively or at law or in equity, against defendant or defendant's directors, officers, employees, servants, agents, successors and assigns, which the Department could otherwise maintain with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of wastes, leachate, or constituents at or from the site or from areas in the vicinity of the site;

(4) The Department's right to commence any action or proceeding relating to or arising out of any disposal of hazardous or industrial wastes at the site, as those wastes are defined by applicable regulation; or

(5) The Department's right to require defendant to take any actions in addition to those required by this Consent Order, deemed necessary by the Department to protect human health or the environment.

(b) This Order shall not be construed to prohibit or otherwise limit the Commissioner or the Commissioner's authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

(c) The Commissioner may, at any time, make a determination pursuant to Title 13 of Article 27 of the ECL that the site constitutes a significant threat to the environment and that defendant must undertake an inactive hazardous waste disposal site remedial program. Any such determination shall be provided

to defendant by the Department in writing. If such determination is made, the Department shall have the right to take such enforcement or other action as may be authorized by law, and to require appropriate modifications to any closure requirement pertaining to the Facility.

21. Indemnification.

Defendant shall indemnify and hold the Department, the State of New York and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description, arising out of or resulting from the fulfillment or attempted fulfillment of this order by defendant or defendant's directors, officers, employees, servants, agents, successors or assigns; provided, however, that defendant shall not be required to provide indemnification for any negligence or intentional wrongdoing of the State, the Department or the employees of either.

22. If any delay in performing the provisions of this Order is occasioned by acts of God, war, or other circumstances beyond the control of the defendant, the time for performance hereunder shall be extended to the extent of such delay. In no event shall the time for performance be extended beyond the period of such delay. Increased costs of performance, or failure by the defendant to allocate funds, to locate alternative sites for disposal of its solid waste, to provide for recycling, to otherwise implement the terms of this Order, or to implement interim or long term solid waste disposal solutions or an interim

or long term solid waste management plan, shall not be considered a force majeure.

If a delay is occasioned by circumstances beyond the control of defendant, the defendant shall immediately notify in writing the Commissioner and Regional Director, Region 5, of any such delay and shall apply to the Commissioner for relief from the provisions of this Order within five (5) days of the act or event causing such delay. The defendant shall show good cause for each day of delay and shall present to the Commissioner and the parties a plan outlining the reasonable steps to be taken by the defendant to comply with this Order. The defendant shall bear the burden of establishing by clear and convincing evidence that such cause for delay lies outside the reasonable control of the defendant, its agents, representatives or employees, and shall not include delays occasioned by bankruptcy or other financial inability of the defendant to perform, or by any negligence or willful conduct by the defendant which is the cause of the delay. Any delay in the performance of one requirement under this Order shall not result in the delay of any subsequent requirement of this Order.

23. Appendices.

All Appendices to this order, including all associated submissions of documents and other information, constitute parts of this Order. Failure to comply with the requirements set forth in any Appendix constitutes a violation of this Order.

24. All reports and submissions required herein, other than penalty payments or as otherwise provided herein, shall be made to the Regional Solid Waste Engineer, New York State Department of Environmental Conservation, P. O. Box 296, Ray Brook, New York 12977.

25. The provisions, terms and conditions of this Order shall be deemed to bind defendant, and its agents, servants, employees, successors and assigns and all persons, firms and corporations acting under, or for it, including but not limited to those who may carry on any or all of the operations now being conducted by defendant, whether at the present location or at any other location in the State of New York. No officer, director, shareholder, agent or employee of the defendant shall be personally liable for any financial obligation which may be imposed or incurred under this Order.

26. The terms hereof shall constitute the complete and entire order between defendant and the Department concerning the facility. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other submittals shall be construed as relieving defendant of its obligation under this Order.

27. Each of the obligations and conditions required under this Order are severable and independently enforceable.

Dated:

9/18/91



JOHN J. PRIVITERA
Assistant Attorney General
Attorney for Plaintiffs
New York State Department of
Law
The Capitol
Albany, New York 12224
(518) 473-6486



MICHAEL SULLIVAN, Supervisor
Town of Moreau


SUPREME COURT JUSTICE

1 October 1991



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ENTERED

STATE of NEW YORK

Saratoga County Clerk's Office

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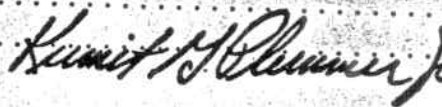
I, KERMIT G. PLUMMER, JR., Clerk of the said County, and also Clerk of the Supreme Courts of said State for said County, do hereby CERTIFY that I have compared the preceding copy with the original

Order on Consent filed & entered
in my office, and that the same is a correct transcript therefrom and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name, and affixed the Seal of said County, at Ballston Spa, this *11th* day of *October* in the year 19 *91*.

KERMIT G. PLUMMER, JR., Clerk

By



DEPUTY CLERK

APPENDIX A

TOWN OF MOREAU LANDFILL CLOSURE SCHEDULE

<u>Date</u>	<u>Description</u>
September 15, 1991	Submit approvable operations plan to the Department for waste handling at Defendant's landfill from October 1, 1991 through the date when Defendant permanently ceases acceptance of solid waste.
April 1, 1992	Submit final, approvable closure plan to Department.
December 31, 1993	Submit written certification to the Department, attested to by a professional engineer currently licensed to practice in New York State, that closure of the existing landfill has been completed in accordance with the approved closure plan by December 31, 1993.