

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of Violation of Environmental  
Conservation Law Article 27, Title 13, and  
Part 375 of Title 6 of the Official  
Compilation of Codes, Rules, and  
Regulations of the State of New York

**ORDER ON CONSENT**

Index No. R8-2019-0612-71  
Site No. 828038

By

Village of Brockport,

Respondent.

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WHEREAS:

**JURISDICTION**

1. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste site and brownfield site remedial programs pursuant to Article 27, Titles 13 and 14 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.
2. 6 NYCRR subpart 375-1 sets forth general requirements that are common to the implementation of various types of remedial programs overseen by the Department, including brownfield site remedial programs.

**RESPONDENT**

3. Respondent Village of Brockport ("Village") currently owns, and formerly owned and operated, an inactive hazardous waste disposal site on Canal Road, Town of Sweden, Monroe County, New York, known as the "Brockport Landfill" (the "Site").

**ORDER ON CONSENT**

4. The Village, with other parties, entered into a Brownfield Cleanup Agreement (the "Agreement") regarding the Site, effective May 3, 1995 and revised on October 21, 1998 (Index No. B8-0375-91-06) (Site Code 8-28-038) ("Order").
5. The Order required the Village to submit and implement a post-remedial operation and maintenance plan ("O&M Plan"). The O&M Plan contains Appendix D -



Brockport Landfill Monitoring Plan ("Monitoring Plan") setting forth sampling requirements and procedures and required submittals of annual and semi-annual monitoring and maintenance reports.

6. The O&M Plan and Monitoring Plan approved on May 29, 2001 require that the Village:

- a. conduct site inspections a minimum of two times per year and after major rainfall events throughout the entire post-closure period which inspection results shall be submitted to the Department within 90 days following the first day of each year;
- b. conduct post-closure environmental monitoring;
- c. groundwater level monitoring will be conducted semi-annually during the months of April and October;
- d. a letter report summarizing the groundwater and surface water monitoring data is to be submitted to the Department, among others, on a semi-annual basis no later than 60 days after completion of the sampling activities; and
- e. an Annual Monitoring and Maintenance Summary Report will be prepared and submitted to the Department.

7. In May of 2006, the Village submitted a Request for Reduction in Monitoring at the Brockport Landfill seeking a reduction in the post-closure monitoring requirements set forth in O&M Plan, including the Monitoring Plan. The Department agreed to change the frequency of sampling to every 15 months, occurring after the Fall 2006 sampling event.

#### VIOLATIONS

8. Respondent failed to complete: the January 2018 groundwater sampling event, January 2018 general inspection, and submission of the January 2018 sampling event report.

9. Respondent's failure to complete the January 2018 groundwater sampling event, January 2018 general inspection, and submission of the January 2018 sampling event report are violations of ECL Article 27, 6 NYCRR Part 375, and the Order.

10. ECL §71-2705 states "Any person who violates any of the provisions of, or who fails to perform any duty imposed by titles 9, 11 and 13 of article 27 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 in the case of a first violation, for a civil penalty



not to exceed thirty-seven thousand five hundred dollars and an additional penalty of not more than thirty-seven thousand five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after an opportunity to be heard pursuant to the provisions of section 71-1709 of this article, or by the court in any action or proceeding pursuant to section 71-2727 of this title, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied. In the case of a second and any further violation, the liability shall be for a civil penalty not to exceed seventy-five thousand dollars for each such violation and an additional penalty not to exceed seventy-five thousand dollars for each day during which such violation continues.

11. The Village affirmatively waives its right to a hearing in this matter, consents to the issuance of this Order, and agrees to be bound by its provisions, terms, and conditions.

**Now**, being duly advised and having considered the matter, **it is ordered that:**

**I. Civil Penalty.**

- a. Relative to and in settlement of the violations described above, the Respondent is hereby assessed a civil penalty in the amount of TWENTY THOUSAND DOLLARS (\$20,000) of which TEN THOUSAND DOLLARS (\$10,000) shall be payable to the New York State Department of Environmental Conservation at the time this Order is signed, notarized and returned to the Department. TEN THOUSAND DOLLARS (\$10,000) of the civil penalty is suspended conditioned on Respondent's compliance with the Schedule of Compliance.

Payment of the above penalty shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

- b. **Address to send signed and notarized order on consent.** The Order on Consent, along with any applicable submissions, and a copy of the payment check or proof of the electronic payment, shall be sent to:

Dusty Renee Tinsley, Esq.  
New York State  
Department of Environmental Conservation  
Office of General Counsel – Region 8  
6274 East Avon-Lima Road  
Avon, New York 14414

- c. **Civil Penalty Payment Methods.** The civil penalty shall be paid by one of the two methods stated below at the time this Order on Consent is placed

in the mail or delivered to the New York State Department of Environmental Conservation's Office of General Counsel – Region 8:

- i. by check sent to the following address, made payable to the "New York State Department of Environmental Conservation," with the enclosed invoice and the Case Number of this Order on Consent written in the memo section of the check:

New York State Department of Environmental Conservation  
Division of Management and Budget Services  
625 Broadway, 10<sup>th</sup> Floor  
Albany, NY 12233-4900

- ii. by electronic payment at <http://www.dec.ny.gov/about/61016.html>. Please have your customer and invoice number available. If you have any questions regarding paying your invoice electronically, please contact the Revenue Fee Unit at 518-402-9343 or [revenue@dec.ny.gov](mailto:revenue@dec.ny.gov).

II. **Effect of Payment of Penalty.** Assessment and payment of any civil penalty imposed under this Order shall not in any way alter Respondent's obligation to satisfactorily perform any action required by this Order or by any approval issued by the Department under this Order.

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

IV. **Scope.** 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 or Department may have against Respondent for any violations not cited in this Order on Consent.

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

C. The Department's right to enforce this Order against Respondent, its officers, directors, servants, and employees in the event that Respondent shall fail to fulfill any of the terms or provisions hereof;

D. 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

E. 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.

**V. Communications.**

A. This paragraph does not apply to payment of the penalty or submission of the Order on Consent, which are instead addressed at Paragraph I, "Civil Penalty", above.

B. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

C. Communications shall be sent to:

For the Department:

Dusty Renee Tinsley  
New York State Department of Environmental Conservation – Region 8  
6274 East Avon – Lima Road  
Avon, NY 14414

For Respondent:

Harry Donahue  
Superintendent of Public Works  
Village of Brockport  
28 East Avenue  
Brockport, NY

**VI. Effective Period of This Order.** The effective date of this Order is the date the Order is signed by a representative of the Commissioner of the Department. The Order will remain in effect until the Respondent has fulfilled all of the remedial requirements stated in this Order and paid all penalties assessed hereby.

VII. **Standard Provisions.** Respondent must further comply with the Standard Provisions attached to this Order, which constitute material and integral terms and conditions of this Order and are hereby incorporated into this Order by reference.

Dated: March 16, 2020

**Basil B. Seggos**, Commissioner  
New York State Department of  
Environmental Conservation

By: 

**Paul J. D'Amato**  
Regional Director  
NYSDEC – Region 8



Consent by Respondent

The Respondent Village of Brockport hereby consents to the issuance of the foregoing order, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained here.

**Village of Brockport**

By [Signature]:

Margaret Blackman

Print Name:

Margaret Blackman

Title:

Mayor

Date:

2/24/20

Acknowledgment

STATE OF New York )

) ss: Village of Brockport

COUNTY OF Monroe )

On this 24 day of Feb, 2020, before me personally came Margaret Blackman to me known, who being by me duly sworn did depose and say that he resides in the village of Brockport, that he is the Mayor of the municipality described in and which executed the foregoing instrument, and that he signed his name as authorized by said municipality.

Erica Linden  
Notary Public, State of New York

ERICA L. LINDEN  
Notary Public, State of New York  
Monroe County, #01LI6314529  
Term Exp. 11-10-2022

\_\_\_\_\_  
Notary Public

## SCHEDULE OF COMPLIANCE

1. The Village shall submit, within 60 days of the effective date of this Order, a Corrective Measures Plan to the Department for its review and approval, including the following:
  - a. documentation of inspections completed from June 15, 2015 to June 15, 2018;
  - b. a summary of each of the following violations, including how the violation occurred, why the violation occurred, and who was responsible for the violation having occurred:
    - i. January 2018 groundwater sampling event, general inspection, and submission of the January 2018 sampling event report; and
    - ii. June 2015 to June 2018 Periodic Review Report and Certification due July 15, 2018.
  - c. a plan to prevent the violations from occurring in the future; and
  - d. a schedule for the development of an updated Site Management Plan consistent with the Department's current SMP template which will replace the O & M Plan, including the Monitoring Plan.
2. The Village shall submit to the Department, for its review and approval, the updated Site Management Plan consistent with the schedule contained in the approved updated Site Management Plan.
3. Within seven business days of receipt of the Department's written approval of the updated Site Management Plan, the Village shall implement the updated Site Management Plan as is set forth therein.

## **STANDARD PROVISIONS**

**Payment.** Any penalty assessed pursuant to the terms and conditions of this order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation, to the Regional Director of the Region 8 Office located at 6274 East Avon-Lima Road, Avon, New York 14414. Unpaid penalties imposed by this order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

**Communications.** Except as otherwise specified in this order, any reports, submissions, and notices herein required shall be made to the Regional Director of the Region 8 office of the Department, located at 6274 East Avon-Lima Road, Avon, New York 14414.

**Access.** For the purpose of monitoring or determining compliance with this order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

**Force Majeure.** Respondent shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if Respondent cannot comply with any requirements of the provisions hereof because of an act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondent was not foreseen or a proximate cause, provided, however, that the Respondent shall immediately notify the Department in writing, when it obtains knowledge of any such condition and shall request an appropriate extension or modification of the provisions hereof; Respondent will adopt all reasonable measures to prevent or minimize any delay.

**Indemnity.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives, employees, agents and contractors harmless for all claims, suits, actions, damages and costs of every nature and description arising out of resulting from the fulfillment or attempted fulfillment of this order by the Respondent, its employees, servants, agents, successors (including successors in title) and assigns.

**Modifications.** No change in this order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this

Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

**Other Rights.** Nothing contained in this order shall be construed as barring, diminishing, adjudicating or in any way affecting any right of the Department to directly perform, to engage others to perform on its behalf, or to direct others including Respondent to perform, any additional measures that are authorized by law to protect human health, safety or the environment, including the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

**Entire Agreement:** This order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect.** The provisions, terms, and conditions of this order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Service.** If Respondent is represented by an attorney with respect to the execution of this order, service of a duly executed copy of this order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

**Multiple Respondents.** If more than one Respondent is a signatory to this order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the order.

THIS DOCUMENT IS PRINTED ON CHEMICAL REACTIVE PAPER WHICH CONTAINS A WATERMARK, ULTRAVIOLET FIBERS AND MICROPRINTING.

**VILLAGE OF BROCKPORT**  
**ACCOUNTS PAYABLE CLEARING**  
127 MAIN STREET  
BROCKPORT, NEW YORK 14420  
(585) 637-5300

JPMorgan Chase Bank, NA.  
Rochester, NY  
50-17223

013692

CHECK NO. CHECK DATE VENDOR NO.

013692 02/28/2020 000001489

PAY

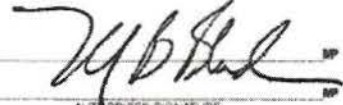
\*\*TEN THOUSAND AND XX / 100 DOLLARS \*\*\*\*\*

CHECK AMOUNT

\$10,000.00

TO THE  
ORDER  
OF

New York State Dept. of Environmental Conservation  
Division of Management & Budget  
625 Broadway 10th Floor  
Albany, NY 12233-4900

  
AUTHORIZED SIGNATURE

RECEIVED

MAR 06 2020

DIRECTOR'S OFFICE  
NYSDEC, Region 8, Avon

