STATE OF VERMONT

SUPERIOR COURT
WASHINGTON UNIT

CIVIL DIVISION
Docket No. 663-11-14 Wncv

State of Vermont,)
)
Plaintiff,)
)
v.)
)
Moretown Landfill, Inc.,)
)
Defendant.)

CONSENT ORDER AND FINAL JUDGMENT ORDER

Based upon the Stipulation for the Entry of Consent Order and Final Judgment Order filed by the parties, Plaintiff, the State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., on behalf of the Agency of Natural Resources and Natural Resources Board ("State"), and Defendant, Moretown Landfill, Inc ("MLI"), and pursuant to 10 V.S.A. § 8221 and the Court's inherent equitable powers, in order to resolve the allegations of the State's Complaint, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

PENALTIES

1. MLI shall pay a civil penalty of one hundred eighty thousand dollars ($180,000.00) and shall also pay twenty thousand dollars ($20,000.00) to fund a Supplemental Environmental Project ("SEP").

2. Payment of the $180,000 civil penalty shall be by certified check payable to "Treasurer, State of Vermont," and shall be received at the following

address no later than thirty (30) calendar days after the date that this Consent Order is entered by signature of the Court:

Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05602

3. Payment of the $20,000 to fund a SEP shall be by certified check payable to the "Vermont Solid Waste District Managers Association," and shall be received at the following address no later than thirty (30) calendar days after the date that this Consent Order is entered by signature of the Court:

Vermont Solid Waste District Manager's Association
Paul Tomasi,
NEKWMD
P.O. Box 1075
Lyndonville, VT 05851

4. The Vermont Solid Waste District Managers Association has agreed to administer the SEP, and has certified that the SEP funds shall be used to purchase residential compost bins, food scrap collection buckets, and kitchen counter-top compost containers, which will be sold to Vermonters at a discount as set forth in the Supplemental Environmental Project Certification attached hereto as Attachment A.

5. MLI agrees that in the event it publishes by any means, directly or indirectly, the identity or result of the SEP it has funded, it shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Attorney General.

6. MLI agrees that the funds directed to a SEP are not tax deductible and consequently shall not deduct, nor attempt to deduct any SEP expenditures from its tax obligations.

7. Failure to make any payment required by Paragraphs 1 - 3, above shall constitute a breach of this Consent Order, and interest shall accrue on the unpaid balance at 12% per year.

DISMISSAL OF COUNT TEN

8. Count Ten of the Complaint filed November 6, 2014 is hereby dismissed with prejudice.

MISCELLANEOUS

9. While pursuant to Paragraph 126 of the Stipulation for Entry of Consent Order and Final Judgment Order, the parties stipulate that MLI does not admit or deny liability for each of the violations alleged in Paragraphs 12-123 of the Stipulation for Entry of Consent Order and Final Judgment Order, the parties stipulate that the violations alleged therein are each deemed proved and established as prior violations for purposes of use in any future State proceeding that permits or requires consideration of MLI's past record of compliance, such as administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010 and permit proceedings.

10. MLI hereby waives: 1) all rights to contest or appeal this Consent Order and Final Judgment Order ("Consent Order"); and 2) all rights to contest the

obligations imposed upon MLI under this Consent Order in this or any other administrative or judicial proceeding involving the State of Vermont.

11. This Consent Order is binding upon MLI and its successors and assigns.

12. Nothing in this Consent Order shall be construed to create or deny any rights in, or grant or deny any cause of action to, any person not a party to this Consent Order.

13. This Consent Order shall become effective only after it is signed by all parties and entered as an order of the Court. When so entered by the Court, this Consent Order shall become a Final Judgment Order.

14. Any violation of this Consent Order shall be deemed to be a violation of a judicial order, and may result in the imposition of injunctive relief and/or penalties, including penalties for contempt, as set forth in 10 V.S.A. Chapters 201 & 211, and 12 V.S.A. § 122.

15. Nothing in this Consent Order shall be construed as having relieved, modified, or in any manner affected MLI's obligations to comply with all other federal, state, or local statutes, regulations, permits or directives applicable to MLI.

16. This Consent Order and the Stipulation for Entry of Consent Order and Final Judgment Order set forth the complete agreement of the parties, and they may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and, as to the Consent Order and Final Judgment Order, incorporated into an order issued by the

Superior Court, Washington Unit, Civil Division. Alleged representations not set forth in this Consent Order, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall be of no legal force or effect.

17. The Court hereby finds that the State and MLI have negotiated this Consent Order in good faith, that implementation of this Consent Order will avoid prolonged and complicated litigation between the parties, and that this Consent Order is fair, reasonable and in the State's interest. The Court hereby enters this Consent Order as an order of the Court and final judgment.

SO ORDERED, and **ENTERED** as **FINAL JUDGMENT**

Dated: May 21, 2018

Mary Miles Teachout

The Honorable Mary Miles Teachout
Superior Court Judge

ATTACHMENT A

SUPPLEMENTAL ENVIRONMENTAL PROJECT CERTIFICATION

The Vermont Solid Waste District Managers Association ("VSWDMA"), submits this certification regarding its anticipated receipt of $20,000 from Moretown Landfill, Inc. ("MLI") for a Supplemental Environmental Project ("SEP Funds") pursuant to a Consent Order and Final Judgment Order in *State of Vermont v. Moretown Landfill, Inc.*, Superior Court, Washington Unit, Docket No. 663-11-14-Wncv. The SEP is described in the writeup entitled 2017 Composting Supplies SEP attached hereto as Exhibit 1.

The VSWDMA is an unincorporated association. Its members are Solid Waste Management Districts created under 24 V.S.A. App. Part IV, and Waste Alliances created by inter-local agreement among member towns pursuant to 24 V.S.A. Chapter 121, each of which has authority to provide for management of solid waste generated in their respective member municipalities. The VSWDMA's members are the Addison County Solid Waste Management District, Central Vermont Solid Waste Management District, Chittenden Solid Waste District, Great Upper Valley Solid Waste Management District, Lamoille Regional Solid Waste Management District, Northeast Kingdom Waste Management District, Northwest Vermont Solid Waste Management District, Windham Solid Waste Management District, Bennington County Solid Waste Alliance, Mad River Resource Management Alliance, Londonderry Group, and the Solid Waste Alliance Communities.

The VSWDMA agrees to administer the SEP, and certifies that the SEP Funds shall be used by its member Solid Waste Management Districts and Waste Alliances solely for purchase of residential compost bins, food scrap collection buckets, and kitchen counter-top compost containers (collectively "Compost Containers"), which shall be sold to Vermonters at a discount from retail price. Funds received from sale of Compost Containers shall be used to purchase additional Compost Containers until the funds are exhausted, Alternatively, anticipated revenue from sale of the Compost containers shall be applied to offset amounts from other sources spent on Compost Containers.

The VSWDMA shall provide ANR a written report no later than one year following its receipt of the SEP Funds, which shall include details as to: (1) the distribution of SEP Funds to its member Solid Waste Management Districts and Waste Alliances; (2) each expenditure of SEP Funds by the Solid Waste Management Districts and Waste Alliances, including the number of residential compost bins, food scrap collection buckets, and kitchen counter-top compost containers purchased in each transaction; (3) the number of residential compost bins, food scrap collection buckets and kitchen-counter-top compost containers sold to Vermonters; and (4) the prices charged for the Compost Containers; (5) if anticipated revenue is applied to offset amounts from other sources spent on Compost Containers, documentation of the amounts spent from other sources.

If the SEP has not been completed at the end of the one year period, the VSWDMA association shall provide ANR a follow-up written report annually, until such time as the SEP has been completed.

John Leddy, President Vermont Solid Waste District Managers Association

STATE OF VERMONT

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STIPULATION FOR THE ENTRY OF CONSENT ORDER AND FINAL JUDGMENT ORDER

In order to resolve the allegations of the Complaint filed in the above-captioned matter, the parties, Plaintiff, the State of Vermont, by and through Attorney General Thomas J. Donovan, Jr., on behalf of the Agency of Natural Resources and the Natural Resources Board ("State"), and Defendant, Moretown Landfill, Inc. ("MLI"), hereby stipulate and agree as set forth below.

STATE'S ALLEGATIONS

The State alleges:

Background

The parties

1. The State of Vermont Agency of Natural Resources (ANR) is a state agency created through 3 V.S.A. § 2802. Its responsibilities include enforcement of laws, regulations and permits pertaining to solid waste, air and water quality.

2. The Vermont Natural Resources Board (NRB) is a state board created through 10 V.S.A., Chapter 151. It is responsible for enforcement of land use permits issued under Act 250, Vermont's comprehensive land use law.

3. MLI is a Delaware corporation registered to do business in Vermont. MLI owns and operates a solid waste management facility located at 187 Palisades Park in Moretown known as the Moretown Landfill (the Site).

4. The Site includes four areas into which solid waste has been disposed: an unlined landfill; two lined landfill cells known as Cells 1 and 2, which have been closed; and a third lined cell, Cell 3.

5. MLI ceased disposing of waste in Cell 3 on or before July 15, 2013, and is now closing the Site pursuant to a Consent Order and Judgment Order entered September 16, 2013 in State of Vermont, Superior Court, Environmental Division, Docket No. 37-3-13 Vtec, as amended by a First Amendment to Consent Order and Judgment Order entered December 3, 2015.

Permits issued to MLI

6. MLI was the permittee under Solid Waste Facility Management Certification #WA-470 (the "Certification"), originally issued by ANR on April 28, 2005, and subsequently amended a number of times, including on or about July 25, 2005 ("Certification Amendment 1"), August 22, 2005 ("Certification Amendment 2"), and November 8, 2007 ("Certification Amendment 5"). The Certification incorporates by reference a number of documents submitted by MLI to ANR,

including a Facility Operation Manual dated February 2005 ("FOM"), and a Surface Emission Monitoring Plan ("SEM Plan").

7. MLI was the permittee under Discharge Permit #4015-INDC, issued by ANR on or about July 22, 2011 (the "Stormwater Construction Permit"). The Stormwater Construction Permit incorporates by reference an Erosion Prevention and Sediment Control Plan ("EPSC Plan").

8. MLI is the permittee under Land Use Permit #5W0164 and amendments thereto, including amendments #5W0164-30, #5W0164-32, and #5W0164-34, issued by the District 5 Environmental Commission on or about September 21, 2005, March 13, 2008, and December 19, 2011, respectively (collectively the "Land Use Permit"). The Land Use Permit incorporates certain documents filed with the District 5 Environmental Commission, including Certification Amendments 1, 2, and 5, the FOM, and the Stormwater Construction Permit.

Statutory framework

9. Under 10 V.S.A. § 8221, the Attorney General is authorized to enforce the provisions of law specified in 10 V.S.A. § 8003(a), including the Vermont Solid Waste Act, the Vermont Water Pollution Control statute, the Vermont Air Pollution Control statute, and Act 250.

10. A "violation" that may be enforced under 10 V.S.A. § 8221 is "noncompliance with one or more of the statutes specified in [§ 8003] or any related rules, permits, assurances, or orders." 10 V.S.A. § 8002(9).

11. Each violation is subject to civil penalties of up to $85,000 for each initial violation and up to $42,500 for each day a violation continued. 10 V.S.A. § 8221(b)(6).

Violations

Count One – Failure to Operate and Maintain a Landfill Gas Collection and Control System that Effectively Captures Landfill Gas

12. Landfill gas is created as solid waste decomposes in a landfill.

13. Landfill gas includes methane, carbon dioxide, water vapor, and non-methane organic compounds.

14. Some of the compounds in landfill gas can have strong odors. Such odorous compounds include sulfides (hydrogen sulfide, dimethyl sulfide, and mercaptans) and ammonia.

15. MLI operates a landfill gas collection and control system which collects gas generated by the decomposition of waste disposed of at the Site, specifically in the unlined landfill and Cells 1, 2, and 3 (the "LFG Collection System").

16. The LFG Collection System includes gas collection wells with perforated sections of pipe, piping that carries the gas from the collection wells toward control devices where collected gas is burned, and a blower system that creates a vacuum (negative pressure) to draw the gas toward the control devices.

17. Commencing in January 2009, collected gas has been piped to a "gas to energy" plant ("energy plant") owned and operated by PPL Renewable Energy, where it is burned in two internal combustion engines generating electricity, and a

flare has been used as a back up to the energy plant and to burn excess landfill gas not used by the engines.

18. The Certification and Land Use Permit required MLI to:

> [I]nstall, operate and maintain a landfill gas collection and control system that effectively captures the gas generated within landfill and routes the gas to a control device that effectively destroys the NMOCs within the gas. (Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶56); and
>
> [E]nsure the active gas collection system maintains a negative pressure at each gas collection wellhead . . . . (Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶ 59).

19. A landfill gas collection and control system requires regular and continued monitoring, maintenance, and upgrading in order to operate properly and effectively capture landfill gas and route it to a control device.

20. Water and/or leachate can collect in landfill gas collection wells and piping and interfere with the collection of gas and its transmission to the control device, resulting in fugitive emissions of landfill gas to the atmosphere that would otherwise be collected and burned at the control device.

21. Data collected at the Site by MLI indicated numerous instances in which water had collected in gas collection wells.

22. An ANR inspection of the Site on September 20, 2012 determined that gas wells were watered out.

23. A Notice of Alleged Violation issued by ANR to MLI on or about November 20, 2012 stated that "Gas wells and horizontals have routinely been "watered out," preventing the effective collection of landfill gas and control of

landfill gas odors," and directed MLI to submit a plan to address all watered out gas wells.

24. In a December 7, 2012 letter, ANR requested that MLI conduct a "comprehensive site-wide evaluation of the entire gas well system . . . to determine the actual effectiveness of current wells . . . ."

25. An MLI contractor conducted an evaluation of the gas well system at the Site in response to ANR's request. The contractor's report on the evaluation found "significant liquid in gas wells," and concluded that "liquid in gas wells is likely negatively impacting the ability of the gas collection system to operate effectively." The report noted that liquid levels found in wells ranged up to 63% of total well depth.

26. Negative pressure must be maintained in landfill gas collection wells to effectively collect gas and route it to a control device.

27. MLI documentation of pressure readings at gas collection wells indicate that MLI repeatedly failed to maintain negative pressure at gas collection wells from August 2009 through August 2014.

28. By allowing water to accumulate in gas collection wells and failing to maintain negative pressure at gas collection wells, MLI failed to operate and maintain a gas collection system that effectively captures the gas generated at the Site and routes it to a control device in violation of Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶56, and the Land Use Permit.

29. By failing to maintain negative pressure at gas collection wells, MLI also violated Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶ 59, and the Land Use Permit.

Count Two – Failure to Maintain Intermediate Cover

30. Covering waste serves a number of purposes, including controlling odor and disease vectors, discouraging scavenging by animals, preventing blowing litter, reducing the potential for infiltration of rainwater and snowmelt and the generation of leachate, reducing fugitive emissions of landfill gas, and reducing the potential for waste materials to be transported from the Site by stormwater flow.

31. The Vermont Solid Waste Management Rules ("SWMR"), Certification, and Land Use Permit require: "In all areas other than the working face which have not received waste material in any given operating day, the owner or operator shall take all steps necessary to ensure that the cover material remains functional and stable until such time as the final cover system is installed." SWMR § 6-702(d)(5) (effective 3/15/12 & 6/12/06); FOM § 3.5.

32. Additionally, the Certification and Land Use Permit require that "Intermediate Cover shall consist of a 12-inch cover layer. In order to minimize leachate production, the Intermediate Cover shall be placed over all areas that have obtained final grades as soon as possible. Intermediate Cover shall be placed over all areas that are to remain unused for six months or more. . . . The 12-inch soil layer shall be seeded and mulched to prevent erosion." FOM § 3.5.5

33. ANR personnel observed intermediate cover inadequacies on July 8, 2011 (areas lacking required 12 inches of cover, areas lacking seeding and mulch, erosion); November 22, 2011 (areas lacking seeding and mulch); November 30, 2011 (areas lacking required 12 inches of cover, areas lacking seeding and mulch); May 10, 2012 (areas lacking required 12 inches of cover and mulch); September 20, 2012 (erosion); October 19, 2012 (erosion); October 26, 2012 (erosion); and November 7, 2012 (areas lacking seeding and mulch, erosion).

34. MLI's actions or failures to take action which resulted in each of the conditions described in Paragraph 33, violated SWMR § 6-702(d)(5), the Certification and the Land Use Permit.

Count Three – Failure to Prevent Nuisance Odors

35. Section 6-701(6) of the SWMR (effective March 15, 2012) requires, and, prior to March 15, 2012, § 6-701(f) of the SWMR (effective June 12, 2006) (collectively "SWMR § 6-701(6)") required the owner and operator of a solid waste management facility to take all steps necessary to prevent and/or control nuisance odors.

36. Vermont's environmental laws, 10 V.S.A. § 552, and the Vermont Air Pollution Control Regulations ("VAPCR") define "air contaminant" as "dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof."

37. Section 5-241(1) of the VAPCR provides that a person shall not discharge, cause, suffer, allow or permit air contaminants which will cause injury,

detriment, nuisance or annoyance to any considerable number of people or which endangers the comfort, repose, health or safety of any such persons.

38. Biosolids are nutrient-rich organic materials produced from wastewater treatment facilities.

39. Biosolids can exacerbate the odors generated by a landfill in a number of ways, including, directly, by being particularly odiferous, and, indirectly, by accelerating the creation of landfill gas and by increasing leachate generation due to their relatively high water content, which can lead to problems with collection and control of landfill gas.

40. On or about May 18, 2011, MLI submitted to ANR a Biosolids Management Plan setting forth a preferred method for disposal of biosolids which involved directing arriving trucks carrying biosolids directly to the Site's working face, unloading the biosolids directly on to the working face and promptly covering the biosolids with municipal solid waste. The plan also set forth two alternative methods for disposal of biosolids when weather and/or available municipal solid waste did not permit use of the preferred method.

41. On March 22, 2012, ANR personnel observed that sludge in rolloff bins had been unloaded from one or more trucks and placed adjacent to the Site's access road, rather than being delivered directly to the working face, covered with municipal solid waste, or otherwise handled in accordance with any of the three preferred disposal methods specified in the Biosolids Management Plan.

42. On April 12, 2012, ANR personnel observed a pile of sludge that had been dumped and left unattended on pavement near the top of the old Cell 2 access road.

43. Documents incorporated into both MLI's Solid Waste Certification and Land Use Permit provided that the management methods that MLI would use to control odors included prohibiting or restricting the disposal of odiferous waste. FOM §§ 2.6, 6.5 & Addendum #1; Exhibit 1 to applications for Land Use Permit Amendments #5W0164-30 and #5W0164-32 (discussion related to Criterion 1, Air Pollution).

44. An MLI contractor confirmed moderate to strong off-site odors attributable to biosolids on 15 separate occasions in response to complaints from members of the public called in to an odor hotline, and ANR personnel confirmed off-site odors attributable to biosolids on 9 separate occasions.

45. Following confirmation of off-site odors from biosolids, ANR repeatedly advised MLI that it may need to cease accepting biosolids at the Site in order to control odors.

46. During a meeting on July 26, 2012, an MLI representative advised ANR personnel that the Holyoke and Northampton Massachusetts wastewater treatment plants did not anaerobically digest biosolids before trucking them to MLI, and that the biosolids were odorous.

47. Despite its admission that the biosolids from these sources were odorous, MLI continued to accept such biosolids for disposal for several months during which time additional off-site odors attributable to biosolids were confirmed.

48. In a December 7, 2012 letter to ANR, MLI's parent corporation, Advanced Disposal, "acknowledge[d] a large number of off-site odors this summer and fall were caused by a particularly odorous sludge account and we recently removed it from [the Site]."

49. An MLI contractor confirmed moderate to strong off-site odors attributable to landfill gas on 86 separate occasions in response to complaints by members of the public called into an odor hotline between August 5, 2011 and March 24, 2014.

50. Independent of the complaints confirmed by MLI's contractor, ANR personnel confirmed off-site odors attributable to landfill gas on 31 separate occasions from November 5, 2008 through February 13, 2013.

51. By allowing water to accumulate and failing to maintain negative pressure in gas collection wells, by failing to take adequate measures to prevent odors from biosolids, and by failing to maintain adequate intermediate cover, MLI failed to take all steps necessary to control nuisance odors in violation of Section 6-701(6) of the SWMR (effective March 15, 2012).

52. MLI discharged, caused, allowed or permitted air contaminants from the Site in the form of odorous landfill gas and odors from biosolids, which caused

injury, detriment, nuisance or annoyance to a considerable number of people and endangered their comfort and repose in violation of VAPCR 5-241(1).

Count Four – Excessive Landfill Gas Temperature and Oxygen Levels

53. Controlling the temperature and oxygen level of landfill gas serves to prevent explosions and fires.

54. Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶ 60 states:

> The Permittee shall ensure the gas collection system maintains at each gas collection wellhead, a landfill gas collection temperature below 131°F (55°C) with either a nitrogen level of less than twenty (20) percent by volume or an oxygen level less than five (5) percent by volume. The Permittee shall monitor and record the temperature and either the nitrogen or oxygen level at each wellhead monthly.

55. MLI undertook to monitor and record temperature and oxygen levels at the Site in order to comply with this requirement.

56. MLI records provided to ANR show that gas temperatures at the Site reached or exceeded 131°F at two wellheads in June 2009, at two wellheads in July 2009, at two wellheads in June 2012, at three wellheads in July 2012, at three wellheads in August 2012, at one wellhead in September 2012, at two wellheads in October 2013, and at two wellheads in November 2013.

57. MLI records provided to ANR show that gas oxygen levels at the Site exceeded five per cent by volume at multiple wellheads each month beginning in June 2011 and continuing through April 2014, except for August 2011 and August 2012 when there were exceedances at one wellhead.

58. MLI violated Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶ 60 and the Land Use Permit by failing to ensure that the gas collection system maintains at each gas collection wellhead, a landfill gas collection temperature below 131°F with an oxygen level of less than 5% by volume.

Count Five – Failure to Monitor Leachate

59. Leachate is water that has percolated through waste in a landfill cell, picking up contaminants and odors as it does so.

60. Leachate may increase the production of landfill gas, and may be a source of odors. Leachate released to the environment may contaminate soil, groundwater and surface water.

61. Double liner systems installed at Cells 1, 2, and 3 of the Site are designed to collect leachate.

62. At all relevant times, the Site has operated leachate collection systems for Cells 1, 2, and 3. In each landfill cell, leachate is collected in perforated pipes located above the primary and secondary liners and flows by gravity to sumps at the low point of the primary and secondary liner systems. From the sumps, the leachate is pumped to storage tanks, from which it is removed from time to time and disposed of off-site.

63. Certification Amendment 1, Condition 39 states, in pertinent part:

> The Permittee shall record leachate flow from the primary and secondary leachate collection systems to the leachate storage tanks during each working day.

64. An MLI contractor's inspection reports indicate that the Cell 1 flow meters were either being repaired or were not installed from May 20, 2009 through August 23, 2012.

65. In a November 20, 2012 Notice of Alleged Violation, ANR requested MLI to install flow meters from the Cell 1 primary and secondary liners to the leachate collection tank within 30 days.

66. An MLI consultant advised ANR that installation of flow meters for Cell 1 was completed on December 19, 2012.

67. An MLI contractor's inspection reports indicate that the Cell 2 flow meters were being repaired or were not operable from May 20, 2009 through May 21, 2012.

68. A September 27, 2012 email from MLI to ANR states that new Cell 2 flow meters were installed on June 27, 2012, and that at least one meter began working on September 20, 2012.

69. An MLI contractor's inspection reports indicate that the Cell 3 flow meters were being repaired from August 14, 2008 through November 23, 2010.

70. MLI violated Condition 39 of Certification Amendment 1 and the Land Use Permit by failing to measure and record leachate flow from the primary and secondary leachate collection systems for Cells One, Two and Three to the leachate storage tanks.

Count Six – Excessive Leachate Depth on Liner

71. As the depth of leachate (leachate head) on a landfill cell liner increases, the potential impacts to soil and groundwater increase.

72. Certification Amendment 1, Condition 26, states: "The depth of leachate shall not exceed twelve (12) inches at any location on the primary liner, except following a 25 year/24 hour or greater storm event."

73. According to records obtained from MLI, the depth of leachate on the Cell 2 primary liner exceeded twelve (12) inches on August 15, 16, and 17, 2012, and the depth of leachate on the Cell 3 primary liner exceeded twelve (12) inches on July 16, 2013. These depths were not recorded following a 25 year/24 hour or greater storm event.

74. MLI violated Certification Amendment 1, Condition 26, and the Land Use Permit by allowing the depth of leachate on the Cell 2 and Cell 3 primary liners to exceed 12 inches.

Count Seven – Failure to Collect and Treat Water Contacting Waste or Leachate as Leachate

75. Stormwater that comes into contact with waste or leachate and runs off a landfill cell can contaminate soil, groundwater, and surface water.

76. Certification Amendment 1, Condition 28 read in conjunction with ANR's Procedure Addressing Requirements for Run-On/Run-Off Control Systems for Municipal Solid Waste Landfills (May 27, 1994), requires that "[d]uring the active life of a facility, stormwater (including rain water or snow melt) that comes in contact with solid waste or leachate in the active portion of the [municipal solid

waste landfill] is considered contaminated and must be collected and treated as leachate."

77. On July 8, 2011, ANR personnel observed water that had been in contact with waste running freely over the top of plastic temporary cover toward a stormwater ditch at the toe of the slope on the north side of the Site.

78. On November 22, 2011, ANR personnel observed areas of Cell 3's side slope located immediately above a stormwater conveyance that were unstable and exhibited gully erosion, allowing stormwater runoff to come in contact with the underlying waste.

79. On November 30, 2011, ANR personnel observed water that had been in contact with waste running freely over the top of plastic temporary cover toward a stormwater conveyance at the base of Cell 3; and a stone lined trench leading from a portion of Cell 3 to a stormwater channel, which allowed runoff to come in contact with waste.

80. On September 20, 2012 ANR personnel observed areas of gully erosion of intermediate cover on Cell 3 side slopes leading to a stormwater conveyance, and sediment that had accumulated beyond the limits of the Cell 3 liner, including in stormwater structures.

81. On October 26, 2012, ANR personnel observed gully erosion of intermediate cover on Cell 3 side slopes leading to a stormwater conveyance, and areas of erosion at the base of a Cell 3 sideslope in contact with a stormwater conveyance along the side of the access road, which was also observed to be eroded.

82. With respect to each of the conditions described in Paragraphs 77- 81, above, MLI did not collect and treat water that came into contact with waste or leachate as leachate.

83. MLI violated Certification Amendment 1, Condition 28 and the Land Use Permit by permitting water that had come into contact with waste and leachate to run off Cell 3 rather than collecting and treating it as leachate.

Count Eight – Failure to Prevent and Control Windblown Debris

84. Section 6-701(6) of the SWMR (effective March 15, 2012) requires, and, prior to March 15, 2012, § 6-701(f) of the SWMR (effective June 12, 2006) (collectively SWMR 6-701(6)) required the owner and operator to take all steps necessary to prevent windblown debris.

85. ANR personnel observed excessive litter or debris at the Site in areas outside of the working face at which waste was actively being disposed on April 26, 2011, November 30, 2011, January 20, 2012, February 9, 2012, April 9, 2012, April 12, 2012, May 10, 2012, May 23, 2012, July 13, 2012, September 20, 2012, December 5, 2012, and February 19, 2012.

86. MLI violated SWMR 7-701(6) by failing to take all steps necessary to prevent and control windblown debris at the Site.

Count Nine – Failure to Maintain Limit of Waste Containment Markers

87. Certification Amendment 2, Condition 3 states:

> Prior to the operation of Cell 3, the Permittee shall install non-liner-penetrating markers indicating the limit of waste containment in Cell 3 as shown on Page 5 of the Engineering Plans. The limit of waste markers shall remain until the landfill slopes have reached final slope elevation.

88. The markers indicate the extent of the underlying liner system at the surface. This enables equipment that may puncture the liner to be kept away from the liner, which is shallow near its edges. It also prevents disposal of waste beyond the limits of the underlying liner. Waste disposed of beyond the limits of the liner generates leachate that is not captured by the liner and may contaminate soil, groundwater, and surface water. Further, such improperly disposed-of waste must be excavated and moved, which may result in odors.

89. On September 20, 2012, ANR personnel observed that the required markers were not in place at the Site.

90. The markers remained absent until November 27, 2012.

91. MLI violated Certification Amendment 2, Condition 3, and the Land Use Permit by failing to maintain limit-of-waste-containment markers at the Site until the landfill slopes reached final slope elevation.

Count Eleven – Failure to Report

92. Section 6-703(b) of the SWMR (effective 3/15/12 and 6/12/2006) states:

> The operator shall submit a report to the Secretary within five working days of the receipt of any information indicating non-compliance with any term or condition of certification or other operating authority.

93. Certification Amendment 1, Condition 46, states:

> In accordance with Section 6-703 of the VTSWMR, the operator shall submit a report to the Solid Waste Program within five working days of the receipt of any information indicating non-compliance with any term or condition of certification.

94. MLI did not submit to ANR the required reports for the violations at the Site described in Counts Five (Failure to Monitor Leachate Flow), and Six (Excessive Leachate Depth on Liner).

95. MLI's failure to submit to ANR the required reports for the violations at the Site described in Counts Five (Failure to Monitor Leachate Flow), and Six (Excessive Leachate Depth on Liner) violated SWMR 6-703(b), Certification Amendment 1, Condition 46, and the Land Use Permit.

Count Twelve – Failure to Sequence Work as Required by Stormwater Construction Permit

96. The purposes of the EPSC Plan incorporated into the Stormwater Construction Permit include limiting the potential for erosion through soil stabilization techniques, thereby reducing the quantity of sediment in stormwater runoff, and controlling sediment if erosion cannot be prevented.

97. The EPSC Plan incorporated into the Stormwater Construction Permit required MLI to install silt fence along downgradient limits of work and to delineate limits of disturbance with wood stakes and flagging tape prior to commencing earthwork activities. EPSC Plan §§ 4.0, 5.1, 5.3 & Plan Drawings Sheet No. 1.

98. Construction at the Site during the 2012 construction season began on or about July 2, 2012.

99. During a July 16, 2012 site visit, ANR personnel observed that earthwork had begun and heavy equipment was being used to remove topsoil/overburden in the Proposed Phase II Borrow Area depicted in EPSC Plan

Drawing 4. Further, the removed material was being stockpiled in Northern Soil Stockpile Area depicted in that drawing.

100. During the July 16, 2012 site visit, ANR personnel observed that no silt fence had been installed downgradient of the then ongoing earthwork in the Proposed Phase II Borrow Area and downgradient of the Proposed Northern Soil Stockpile Area, and that limits of disturbance at the Site had not been delineated.

101. The EPSC Plan and Land Use Permit Amendment #5W0164-34 required MLI to construct and stabilize a clean water diversion channel referred to in the ESPC Plan as the Southeastern Clean Water Diversion Channel (SW-4) before beginning excavation from the Phase II Borrow Area.

102. The purpose of SW-4 was to divert stormwater runoff from areas upgradient of the construction site to prevent it from commingling with potentially sediment-laden stormwater from the construction site.

103. Observations of ANR personnel and reports filed by MLI with ANR indicate that blasting and excavation in the Phase II Borrow Area began in July 2012. Reports filed by MLI with ANR also indicated that work on SW-4 did not begin until Between August 13 and August 26, 2012.

104. ANR personnel observed on September 26, 2012, October 10, 2012 and October 24, 2012 that SW-4 had not been stabilized through the establishment of grass.

105. MLI's failure to timely install silt fence and delineate limits of disturbance, and failure to timely construct and stabilize SW-4 violated the Stormwater Construction Permit and the Land Use Permit.

Count Thirteen – Failure to Construct and Maintain Erosion Prevention and Sediment Control Measures in Accordance With Specifications of Stormwater Construction Permit

106. The Stormwater Construction Permit and EPSC Plan required MLI to construct erosion prevention and sediment control measures in accordance with drawings and specification set forth in the EPSC Plan and the Vermont Standards & Specifications for Erosion Prevention & Sediment Control (2006) Handbook (Amended February 2008), and to maintain them in effective operating condition.

107. During an October 26, 2012 site visit, ANR personnel observed the following:

a. Unstabilized slopes in the Phase II Borrow Area of greater than 3:1 on which erosion control matting had not been installed as required by the EPSC plan;

b. A roadside swale in which check dams were not functioning properly in that sediment laden water was flowing down the swale without any appreciable slowing from check dams;

c. A construction entrance that was not properly sized and lacked required stone and geotextile;

d. Inlet protection had not been installed in accordance with EPSC plan specifications; and

e. A culvert had not been maintained in that rocks were allowed to collect immediately upstream of the culvert, preventing water from flowing freely through it.

108. MLI's actions or failures to take action at the Site that resulted in the conditions observed in Paragraph 107, subparagraphs a - e, violated the Stormwater Construction Permit, EPSC Plan and the Land Use Permit

Count Fourteen – Failure to Conduct Dewatering in Accordance With the EPSC Plan and a Dewatering Plan

109. The Stormwater Construction Permit required that a site-specific dewatering plan be employed for any dewatering activities.

110. The EPSC Plan required that all effluent from dewatering be filtered or passed through an approved sediment-trapping device.

111. During an October 26, 2012 site visit ANR personnel observed that water was being pumped out of the excavated Phase II Borrow area into a swale and was not directed through a filter or approved sediment-trapping device.

112. MLI did not have a site-specific dewatering plan for the dewatering activity described in Paragraph 111.

113. Because the water was not directed through a filter of approved sediment-trapping device and was not conducted pursuant to a site-specific dewatering plan, the dewatering observed at the Site by ANR personnel on October 26, 2012 violated the Stormwater Construction Permit and the Land Use Permit.

Count Fifteen – Unpermitted Discharges to Waters of the State

114. Section 1259(a) of Title 10 prohibits the unpermitted discharge of any waste, substance, or material into waters of the state.

115. A stream is located in close proximity to and to the west of the area in which construction was undertaken pursuant to the Stormwater Construction Permit.

116. On October 19-20, October 29, and November 5, 2012 sediment was discharged to the stream through a 60-inch diameter culvert located to the west of an above-ground storage tank at the Site.

117. The discharges at the Site on October 19-20, October 29, and November 5, 2012 were not permitted by any permit issued to MLI.

118. The discharges at the Site on October 19-20, October 29, and November 5, 2012 violated 10 V.S.A. § 1259(a).

Count Sixteen – Failure to Timely File Biweekly Reports Required by Stormwater Construction Permit

119. The Stormwater Construction Permit required MLI to file with ANR's Department of Environmental Conservation a report biweekly during earth disturbance activities. The report was to outline, *inter alia,* construction status, erosion prevention and sediment control practices installed and removed since the last report, erosion problems encountered and how they were resolved, location and amount of land disturbed, description of areas stabilized, and turbidity monitoring reports collected since the last report. Permit, Part IV, § A.3. The Stormwater

Construction Permit required MLI to file the reports by the Wednesday following the end of the biweekly period. *Id.*, § A.4.

120. Although MLI commenced construction on July 2, 2012, MLI did not begin submitting the required biweekly reports until August 29, 2012, more than two weeks after ANR had inquired about the status and the lack of reporting on August 13, 2012.

121. MLI did not submit the biweekly reports for July 2-15, 2012, July 16-29, 2012, and July 30-August 12, 2012 until August 29, 2012. violated the Stormwater Construction Permit and the Land Use Permit by not submitting the reports for.

122. Subsequently, MLI failed to timely submit the biweekly reports for August 27 - September 9, 2012, September 10 - 23, 2012, and September 24 - October 7, 2012.

123. MLI's failure to timely submit the biweekly reports referenced in Paragraphs 121-122 violated the Stormwater Construction Permit and the Land Use Permit.

MLI's ADMISSIONS AND AGREEMENTS

124. MLI admits the background allegations of Paragraphs 1-11, above.

125. MLI admits the factual allegations of Paragraphs 12-27, 30-33. 35-50, 53-57, 59-69, 71-73, 75-82, 84-85, 87-90, 92-94, 96-104, 106-107, 109-112, 114-117, and 119-122 solely for purposes of resolving this case.

126. Without formally admitting or denying liability, MLI agrees to this settlement of the violations alleged in Paragraphs 12-123, above, in order to resolve this case.

127. MLI agrees that each of the violations alleged in Paragraphs 12-123, above, is deemed proved and established as a prior violation in any future State proceeding that permits or requires consideration of MLI's past record of compliance, such as administrative or judicial enforcement actions for civil penalties calculated pursuant to 10 V.S.A. § 8010 and permit proceedings.

ADDITIONAL STIPULATIONS BY THE STATE AND MLI

The State and MLI further stipulate and agree:

128. Count Ten (failure to conduct random load inspections) should be dismissed with prejudice.

129. Pursuant to 3 V.S.A. Chapter 7 and 10 V.S.A. § 8221, the Attorney General is authorized to represent the State in this action and may settle actions as the interests of the State require.

130. Under 10 V.S.A. § 8221, MLI is potentially liable for civil penalties of up to $85,000.00 for each violation and $42,500 per violation for each day a violation continued.

131. The State has considered the criteria in 10 V.S.A. § 8010(b) and (c) in arriving at the proposed penalty amount, including the degree of actual or potential impact on public health, safety, welfare and the environment resulting from the

violations, the length of time the violations existed and that Defendants knew or had reason to know the violations existed.

132. The Attorney General believes that this settlement is in the State's interests as it upholds the statutory regime of Title 10 of the Vermont Statutes Annotated in which the violations occurred.

133. This Stipulation for Entry of Consent Order and Final Judgment Order ("Stipulation") has been negotiated by and between the State and MLI in good faith.

134. The State and MLI hereby waive all rights to contest or appeal the accompanying Consent Order and Final Judgment Order ("Consent Order") and they shall not challenge, in this or any other proceeding, the validity of any of the terms of the Consent Order or this Court's jurisdiction to enter the Consent Order.

135. This Stipulation and the accompanying Consent Order set forth the complete agreement of the parties, and they may be altered, amended or otherwise modified only by subsequent written agreements signed by the parties' legal representatives, and as to the Consent Order, when incorporated into an order issued by the Court.

136. The Court should hold this Stipulation and the Consent Order for twenty-one (21) calendar days following their submission to the Court for the State to post them on its website to facilitate possible public participation in consideration of this settlement.

137. Following expiration of the twenty-one (21) day period, the attached Consent Order may be entered as a final judgment in this matter by the Court.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

Dated: 5/11/18 By: Nicholas F. Persampieri

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MORETOWN LANDFILL, INC.

Dated: 5/8/18 By:

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