

New York State Department of Environmental Conservation
Office of General Counsel, Region 8
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Joe Martens
Commissioner

February 19, 2015

Danielle E. Mettler-LeFeir, Esq.
Hiscock & Barclay
2000 HSBC Plaza
100 Chestnut Street
Rochester, NY 14604

Re: Lockwood Hills, LLC
Consent Order
Case No. R8-20140710-47

Dear Ms. Mettler-LaFeir:

Enclosed is a fully executed Consent Order for the captioned matter. The effective date of the Consent Order is February 18, 2015. Please note that compliance requirements contained in the Consent Order begin within 60 days of the effective date. Let me know if you have any questions.

Sincerely,

Dennis P. Harkawik
Regional Attorney

Enclosure

bcc (w/attachment):

**Frank Ricotta
Scott Rodabaugh
Scott Foti
Mark Domagala
John Swanson**

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Articles 17 and 27 of the New York
State Environmental Conservation Law by

Lockwood Hills LLC,

**CONSENT
ORDER**

CASE NO.
R8-20140710-47

Respondent.

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WHEREAS:

FIRST. The New York State Department of Environmental Conservation (the "Department" or "DEC") is and at all times mentioned herein has been a Department of the State of New York (the "State") with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law ("ECL"), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR" or the "regulations").

SECOND. The Department is charged with the responsibility and authority to promote and coordinate the management of the water, land, fish, wildlife and air resources of the State to assure their protection, enhancement, provisions, allocation and balanced utilization, pursuant to ECL § 3-0301.

THIRD. The Department is charged with jurisdiction over the maintenance of the quality of the waters of the State, and over the discharge to such waters, including groundwater, pursuant to Article 17 of the ECL and regulations

promulgated pursuant thereto.

FOURTH. Pursuant to ECL Article 27 and the regulations promulgated pursuant thereto, the Department regulates solid waste management facilities in the State as defined at 6 NYCRR § 360-1.2(b)(158).

FIFTH. The Department is authorized to seek penalties and other appropriate sanctions for any violations of Articles 17 and 27 of the ECL, the regulations promulgated and permits issued pursuant thereto.

SIXTH. Lockwood Hills LLC ("Lockwood Hills") is a limited liability company authorized to do business in the State.

SEVENTH. Lockwood Hills is the owner and operator of a solid waste management facility, a wastewater treatment system, and related improvements at a location in the Town of Torrey, Yates County, New York, commonly known as the Lockwood Ash Landfill (the "Landfill"). The Landfill is permitted to accept for disposal water treatment plant sludge and coal combustion byproducts. Among the improvements at the Landfill is an unlined leachate and stormwater collection pond (the "Leachate Pond").

EIGHTH. AES Greenidge, LLC previously owned and operated the Landfill between May 1999 and December 28, 2012. AES Greenidge, LLC filed for bankruptcy on December 30, 2011, and on December 28, 2012, GMMM Lockwood LLC purchased the Landfill from AES Greenidge, LLC.

NINTH. The Landfill is subject to a State Pollution Discharge Elimination System permit (NY – 010 7069) (the "SPDES Permit") and a solid waste

management facility permit (8-5736-00005/00003-0) (the "Part 360 Permit") that govern certain operations at the Landfill. These permits, *inter alia*, allow and regulate the collection, management and discharge of treated, mixed leachate and stormwater at the site from the Leachate Pond.

TENTH. On February 28, 2014, the membership interest in GMMM Lockwood LLC was transferred to Lockwood Hills, and notification of the transfer was provided to the Department; applications for transfer of the SPDES and Part 360 Permits to Lockwood Hills from GMMM Lockwood LLC were filed with the Department on April 22, 2014 and approved on December 22, 2014.

ELEVENTH. The SPDES and Part 360 Permits as well as an Environmental Monitoring Plan and Site Analytical Plan dated February 2007, required groundwater, surface water and leachate monitoring and reporting

TWELFTH. . Based upon a review of information provided pursuant to the above Permits and Plan, the Department has determined that groundwater at the site contains substances in excess of the duly promulgated water quality standards for, *inter alia*, total dissolved solids, boron, manganese, magnesium, iron, sodium and sulfate.

THIRTEENTH. The Department believes that the Leachate Pond is a source of the substances and has contributed and continues to contribute to a contravention of duly promulgated water quality standards in violation of ECL § 17-0501 and 6 NYCRR § 360-1.14(b)(2).

FOURTEENTH. The discharge of leachate to groundwater from the Leachate Pond is not permitted or otherwise authorized by the Department.

FIFTEENTH. Each violation heretofore stated, is subject to the sanctions authorized by ECL Article 71, Titles 19 and 27.

SIXTEENTH. Representatives of Lockwood Hills and the Department have conferred and have agreed to execute this Consent Order (the "Consent Order") in settlement of the violations related to the groundwater discharges described and identified herein.

SEVENTEENTH. Lockwood Hills affirmatively waives the right to a hearing in this matter, consents to the issuance of this Consent 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. OBJECTIVE. It is the objective of this Consent Order for Lockwood Hills to eliminate the discharge of leachate to groundwater from the Leachate Pond and to provide for a satisfactory monitoring regime for groundwater impacted by the discharge. Towards those ends, Lockwood Hills shall perform the compliance requirements stated in this Consent Order and take such other and further steps necessary to attain the objectives of this Consent Order or as otherwise directed by the Department pursuant to its lawful authority.

II. COMPLIANCE REQUIREMENTS: WATER QUALITY MONITORING.

All groundwater, surface water and leachate monitoring already required under the SPDES Permit, Part 360 Permit, Environmental Monitoring Plan and Site Analytical Plan dated February 2007 shall continue as required by those respective documents.

III. COMPLIANCE REQUIREMENTS: SEGREGATING AND MANAGING LEACHATE AND STORMWATER; REMOVING CONTAMINATED SEDIMENTS FROM LEACHATE POND; MODIFYING PERMITS.

A. Within 6 months of the effective date of the Consent Order, Lockwood Hills shall submit an Engineering Report (the "Report") to the Department for its review and approval, which details a plan that will, to the extent technically practicable: (1) segregate stormwater from leachate at the site; (2) re-route leachate to an on-site holding tank or other suitable holding facility approved by the Department; (3) treat and dispose of leachate at the site or at an appropriate offsite facility; and (4) remove and dispose of contaminated sediment in the Leachate Pond.

B. The Report shall include a proposed schedule for implementation of the items contained in the Report, which schedule shall require implementation be completed no later than October 1, 2016.

C. Within 6 months of the Department's approval of the Report, Lockwood Hills shall submit to the Department for review and approval, engineering plans and

specifications for the implementation of the approved Report.

D. Following approval by the Department of the engineering plans and specifications, Lockwood Hills shall commence work according to the terms, conditions and schedule approved by the Department.

E. Within 60 days of completion of the work required by the approved Report, Lockwood Hills shall submit the following to the Department for its review and approval: (1) record drawings or other appropriate documentation which demonstrates that all work has been completed; and, (2) an engineering certification that construction and implementation of the approved Report has been completed in accordance with the approved Report. The Department will make its best effort to either approve the submission or provide reasons why it is inadequate within 60 days of its submission by Lockwood Hills.

F. Within 30 days after the Department approves the submission required in § III.E, Lockwood Hills shall apply for and diligently pursue a modification of its SPDES permit and Part 360 permit to reflect, as necessary and appropriate, implementation of this Consent Order.

IV. FINANCIAL ASSURANCE FOR IMPLEMENTATION OF THIS CONSENT ORDER. Within 60 days of the effective date of the Consent Order, Lockwood Hills shall provide the Department for its review and approval a detailed written estimate of the cost of performing all of the compliance activities described in paragraph III, above. Once the estimate is approved by the Department, Lockwood Hills shall establish a financial assurance mechanism, in a form consistent with 6 NYCRR

§360 – 2.19(e), in an amount no less than the written estimate approved by the Department. Any financial assurance mechanism established under this provision of the Consent Order must be approved by the Department and may be terminated once the Department approves the submission required in paragraph III.E, above. Should Lockwood Hills be unable or unwilling to timely perform the compliance activities required by the Consent Order, the Department shall have the option of using the financial assurance mechanism to fund such activities.

V. GENERAL CONDITIONS APPLICABLE TO SUBMISSIONS REQUIRED UNDER THIS ORDER. The following conditions apply to the submissions required under the Consent Order:

- A. Should Lockwood Hills fail to make any submission in a timely fashion, or should the submission otherwise fail to comply with the requirements of the Consent Order, the Department may declare Lockwood Hills to be in violation of the Consent Order and pursue any other remedy against Lockwood Hills provided by law;
- B. All submissions must be prepared by a professional engineer licensed in the state unless the Department specifies otherwise;
- C. All submissions required under the Consent Order shall be made to the Regional Material Management Engineer in the Department's Region 8 office in Avon, NY;
- D. Lockwood Hills shall diligently reply to all questions, comments and issues raised by the Department in its review of any submission; and

E. The terms and conditions of the Department's approval of any submission, including any schedule established thereby, constitute and become material parts of the Consent Order and are enforceable as such without further modification of the Consent Order.

VI. EFFECT OF PAYMENT OF PENALTY. Assessment and payment of any civil penalty imposed for failure to comply with this Consent Order shall not in any way alter Respondent's obligation to satisfactorily perform any action required by the Consent Order or affect any approvals issued by the Department in response to submissions required under this Consent Order.

VIII. RELEASE. Full compliance with this Consent Order shall release Respondent from all civil and administrative claims and liabilities arising out of the violations referenced in this Consent Order, up to the effective date of this Consent Order; provided, however, that this Consent Order shall not be construed as being in settlement of events for which the Department lacked knowledge on the effective date of this Consent Order, or for any future violations of Respondent's permits or the Environmental Conservation Law.

IX. STANDARD PROVISIONS. Respondent shall further comply with the standard provisions recited on the attached blue cover, which constitute material and integral terms and conditions of the Consent Order and are hereby incorporated into the Consent Order by reference.

DATED: February 18, 2015
Avon, New York

JOE MARTENS, Commissioner
New York State Department of
Environmental Conservation

By 
PAUL J. D'AMATO
Regional Director

