



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

December 11, 2020

Mr. Dan O'Brien, Business Manager
Keystone Sanitary Landfill, Inc.
249 Dunham Drive
Dunmore, Pennsylvania 18512

Re: Consent Order and Agreement
Community Environmental Project
Keystone Sanitary Landfill, Inc.
PADEP Permit No. 101247
Dunmore and Throop Boroughs, Lackawanna County

Dear Mr. O'Brien:

Enclosed is an executed copy of the Consent Order and Agreement between the Pennsylvania Department of Environmental Protection and Keystone Sanitary Landfill, Inc.

If you have any questions, please contact me at (570) 826-2511.

Sincerely,

A handwritten signature in black ink, appearing to read "Roger Bellas".

Roger Bellas
Program Manager
Waste Management Program

Enclosure

cc: Dunmore Borough w/enc.
Throop Borough w/enc.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In The Matter Of:

| | | |
|----------------------------------|---|---------------------------------|
| Keystone Sanitary Landfill, Inc. | : | Community Environmental Project |
| 249 Dunham Drive | : | Violations of the Solid Waste |
| Dunmore, PA 18512 | : | Management Act- |
| | : | Municipal Waste Violations |

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement is entered into this 10th day of December 2020, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") and Keystone Sanitary Landfill, Inc. ("KSL").

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§ 6018.101-6018.1003 ("Solid Waste Management Act"), Section 1917-A of The Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. § 510-17 ("Administrative Code"); and the Rules and Regulations promulgated thereunder.

B. KSL is a Pennsylvania business corporation which maintains an address of 249 Dunham Drive, Dunmore, Pennsylvania 18512.

C. On or about March 31, 1982, the Department issued Solid Waste Management Permit No. 101247, as amended, (hereinafter "Permit") to KSL for the operation of a solid waste disposal facility, to wit, a municipal waste landfill located in Dunmore and Throop Boroughs, Lackawanna County, Pennsylvania ("Facility").

D. 25 Pa. Code § 273.201(c) provides that a person or municipality that operates a municipal waste landfill shall comply with the following:

- (1) The act, this article and other applicable regulations promulgated under the act.
- (2) The plans and specifications in the permit, the terms and conditions of the permit, the environmental protection acts, this title and orders issued by the Department.

E. 25 Pa. Code § 273.275(b) provides in relevant part that no more than 25% of the total leachate storage capacity may be used for flow equalization on a regular basis.

F. 25 Pa. Code § 285.123(5) provides that a person or municipality storing municipal waste in a surface impoundment shall design and maintain sufficient structural integrity to prevent failure.

G. 25 Pa. Code § 285.116(c) provides that waste may not be stored in a manner that causes groundwater degradation.

H. As a result of the Department's review of files, including, but not limited to the March 2016 Geophysical Survey and KSL's May 17, 2016 response to the Department's environmental assessment review letter dated October 13, 2015, the Department determined that leachate lagoon liner leakage and/or pipe boot penetration leakage and/or pipe leakage had been occurring at KSL's west lagoon. Therefore, KSL failed to maintain sufficient structural integrity to prevent failure of the lagoon(s), in violation of 25 Pa. Code §§ 285.123(5) and 273.201(c).

I. As a result of the Department's review of groundwater analysis data in the area of the leachate lagoons, the Department determined that groundwater degradation had occurred. Therefore, KSL failed to store waste in a manner that does not cause groundwater degradation, in violation of 25 Pa. Code §§ 285.116(c) and 273.201(c).

J. On November 9, 2016, the Department issued a Notice of Violation to KSL that documented the violations in Paragraph H and I, above, and requested that KSL submit a response identifying how the violations would be prevented from occurring in the future. The response was to include an explanation and status of the impacts to the groundwater in the area of the lagoons and/or effluent pump station, a plan for proposed abatement and a plan and schedule to monitor specific wells.

K. On December 5, 2016, the Department received a written response from KSL to the November 9, 2016 Notice of Violation. In its response, KSL noted the work already completed and planned for reconstruction of the leachate lagoons (the construction certification for the west leachate storage lagoon improvements had already been approved on November 3, 2016), the geophysical surveys completed and planned in the area of and downgradient from the leachate lagoons, the pumping and treating of groundwater from monitoring well MW-15A, the plans to install additional monitoring wells, and proposed additional sampling and analysis of specific wells, including the new wells.

L. On November 1, 2017, the Department approved KSL's construction certification for the east leachate storage lagoon improvements.

M. As a result of a review of records of KSL's leachate storage amounts from October 2016 to August 2018, the Department determined that for the majority of that time period, leachate storage amounts ranged from 27.72% to 85.77% of the total leachate storage capacity. Therefore, KSL used more than 25% of the total leachate storage capacity for flow equalization on a regular basis, in violation of 25 Pa. Code §§ 273.275(b) and 273.201(c).

N. On September 20, 2018, the Department issued a Notice of Violation to KSL that documented the violation in Paragraph M above and requested that KSL submit a plan and schedule to address the correction and prevention of the violation.

O. On October 9, 2018, the Department received a written response from KSL to the September 20, 2018 Notice of Violation. The response included measures already instituted by KSL to address the issue, including mitigating stormwater inflow, off-site hauling of leachate to a permitted treatment facility and onsite storage in temporary storage units.

P. On March 6, 2019, the Department determined through a review of records that leachate storage was reduced to below 25% of the total storage capacity on February 18, 2019.

Q. Subsequent groundwater monitoring and geophysical surveys performed at the Facility showed that the cause of the groundwater degradation was successfully abated, and on May 21, 2019, the Department concurred with KSL's consultant's conclusion in a May 10, 2019 letter that additional off-site wells were not needed at the time.

R. The violations described in Paragraphs H, I and M, above, constitute unlawful conduct under Section 610 of the Solid Waste Management Act, 35 P.S. § 6018.610, and a statutory nuisance under Section 601 of the Solid Waste Management Act, 35 P.S. § 6018.601, and subject KSL to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. § 6018.605.

S. The Department has calculated a proposed civil penalty in the amount of one hundred twelve nine hundred five dollars (\$112,905.00) for the violations described in Paragraphs H, I and M.

T. Pursuant to the Department's "Policy for the Acceptance of Community Environmental Projects in Conjunction with Assessment of Civil Penalty," KSL has submitted a written proposal to perform a construction and demolition waste illegal dumpsite clean-up project (the "Project") in Taylor Borough, Lackawanna County located on the A-Plus Powerwash Property at 15 South Keyser Avenue. KSL has stated that the Project will cost \$112,905.00. The proposal is attached as Exhibit 1.

U. The Department has determined that the Project will provide a substantial environmental benefit and that the Project is not something that KSL is otherwise legally required to do. The Department has agreed that the value of the Project is \$112,905.00.

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by KSL as follows:

1. **Authority.** This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Section 602 of the Solid Waste Management Act, 35 P.S. § 6018.602; and Section 1917-A of the Administrative Code, 71 P.S. § 510-17.

2. **Findings.**

a. KSL agrees that the findings in Paragraphs A through U are true and correct and, in any matter or proceeding involving KSL and the Department, KSL shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Consent Order and Agreement in any matter or proceeding.

3. **Community Environmental Project.** KSL shall perform the Project, as described and valued in Paragraph T, within one (1) year of execution of this Consent Order and Agreement.

4. **Fee Waiver.** The Recycling Fee (\$2.00 per ton), the Environmental Stewardship Fee (\$0.25 per ton), and the Disposal Fee (\$4.00 per ton) are hereby waived solely for the waste disposed of at KSL as a result of the Project.

5. **Tax Deductibility.** KSL shall not deduct any costs incurred in connection with or in any way associated with the Community Environmental Project described in Paragraph 3 for any tax purpose or otherwise obtain favorable tax treatment for those costs. If requested to do so by the Department, KSL shall submit an affidavit of the corporate officer responsible for the financial affairs of KSL certifying that KSL has not deducted or otherwise obtained favorable tax treatment of any of the costs of the Community Environmental Project.

6. **Publicity About the Project.** KSL agrees that if it publicizes, in any way, the Project, it will state that the Project was undertaken as part of the settlement of an enforcement action with the Department.

7. **Completion of Project.** Within thirty (30) days of the completion of the Project, KSL shall submit to the Department an affidavit of the corporate official responsible for overseeing the Project. The affidavit shall contain a certification that the Project is complete and a statement setting forth all costs incurred in completing the Project, including all documentation of waste disposed (copies of manifests/bills of lading and weigh tickets), as well as the Municipal Waste Landfill and Resource Recovery Facility Quarterly Fee Waiver Report Forms (Forms BWM0168D and BWM0168WD).

8. **Remedies.** In the event that KSL fails to complete the Community Environmental Project required by Paragraph 3, KSL shall pay a stipulated penalty in the amount of the remaining balance of the \$112,905.00 civil penalty. The Department may pursue any remedy available for failure to pay a civil penalty, including the filing of this Agreement as a lien in any county in this Commonwealth. The payment shall be made by corporate check or the like made payable to the “**Commonwealth of Pennsylvania – Solid Waste Abatement Fund**” and sent to Pennsylvania Department of Environmental Protection, 2 Public Square, Wilkes-Barre, PA 18701-1915, Attention: Roger Bellas, Waste Management Program Manager.

9. **Liability of Operator.** KSL shall be liable for any violations of the Consent Order and Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. KSL also shall be liable for any violation of this Consent Order and Agreement caused by, contributed to, or allowed by its successors and assigns.

10. **Correspondence with Department.** All correspondence with the Department concerning this Consent Order and Agreement shall be addressed to:

Mr. Roger Bellas
Waste Management Program Manager
2 Public Square
Wilkes-Barre, PA 18701-1915
Phone 570-826-2511
Fax 570-826-2357

11. **Correspondence with KSL.** All correspondence with KSL concerning this Consent Order and Agreement shall be addressed to:

Mr. Dan O'Brien
Business Manager
249 Dunham Drive
Dunmore, PA 18512
Phone 570-343-5782
Fax 570-348-3135

KSL shall notify the Department whenever there is a change in the contact person's name, title, or address. Service of any notice or any legal process for any purpose under this Consent Order and Agreement, including its enforcement, may be made by mailing a copy by first class mail to the above address.

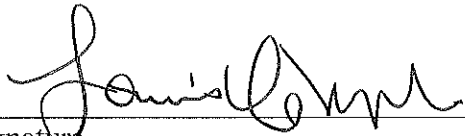
12. **Entire Agreement.** This Consent Order and Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

13. **Attorney Fees.** The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this Consent Order and Agreement.

14. **Modifications.** No changes, additions, modifications, or amendments of this Consent Order and Agreement shall be effective unless they are set out in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of KSL certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of KSL; that KSL consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that KSL hereby knowingly waives its rights to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law. Signature by KSL's attorney certifies only that the agreement has been signed after consulting with counsel.

FOR KEYSTONE SANITARY
LANDFILL, INC.:

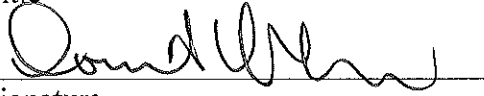


Signature

Louis DeNaples

Name (Legibly Typed or Printed)
President

Title



Signature

Dominick DeNaples

Name (Legibly Typed or Printed)

Secretary

Title

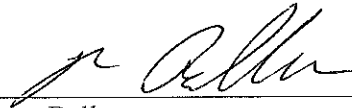


Signature

Atty. Jeffrey Belardi

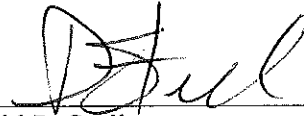
Name (Legibly Typed or Printed)
Attorney for Keystone Sanitary Landfill, Inc.

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:



Signature

Roger Bellas
Waste Management Program Manager



Signature

David R. Stull
Assistant Counsel

Exhibit 1



March 13, 2020

Mr. Roger Bellas
Program Manager
Pennsylvania department of
Environmental Protection
Waste Management Program
2 Public Square
Wilkes Barre, PA 18711-0790

Re: Community Environmental Project

Dear Mr. Bellas:

The Department has informed Keystone Sanitary Landfill (KSL) that KSL is subject to civil penalty liabilities for violations of the Solid Waste Management Act as described in Notice of Violation letters dated November 5, 2016 and September 20, 2018 related to leachate lagoon failure, groundwater degradation and leachate storage. KSL is also aware that the Department believes that the violations listed in the NOV's have been mitigated and to resolve these violations, a civil penalty of \$112,905.00 was calculated by the Department. KSL is also aware of a DEP policy that enables KSL to propose Community Environmental Projects (CEP) in lieu of the proposed monetary penalty. KSL would like to propose the following CEP in lieu of penalty:

KSL is aware of an illegal dumpsite in Taylor Borough, Lackawanna County. KSL is also aware that DEP has pursued the responsible parties involved in this illegal dumping and to date has been unsuccessful in getting the site cleaned up. It is KSL's understanding that the waste on this site is predominantly construction and demolition waste. In an attempt to help facilitate the clean-up of this site, KSL is proposing, in lieu of a civil penalty, to provide the disposal of this waste at KSL equaling the amount DEP's calculated penalty. KSL will provide disposal at a rate of \$45 per ton. To maximize the amount of waste that could be disposed at KSL, KSL is requesting that the Department waive the state tipping fee totaling \$6.25 per ton. Based on the \$45/ton, this would equate to approximately 2,509 tons of illegally disposed C&D waste, to be properly disposed at KSL. KSL reserves the right to return to the generator any waste that is deemed unacceptable. Additionally, should any of the waste be radioactive, KSL will follow the acceptable protocol at no cost to KSL.

Phone
(570) 343-5782

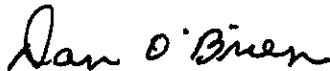
FAX
(570) 348-3135

Re: Community Environmental Project
Page 2

KSL would propose the following record keeping as well:

1. Each truckload shall be accompanied by a fully completed Uniform Bill of Lading or a fully completed Non-Hazardous Waste Manifest that shall be signed by an authorized representative of the owner present at the site during the time the C&D waste is loaded. The generator shall be responsible for the preparation of the manifest.
2. The Bill of Lading or Non-hazardous Waste Manifest shall also be signed by the driver for the transporter and include all required identifying information for the driver and transporting company including the Commercial Driver's License number, the vehicle state of registration and license plate number of the vehicle. The Bill of Lading or Non-Hazardous Manifest shall identify the load as "Municipal Solid Waste Construction/Demolition A-Plus Powerwash Property - Taylor Borough, Lackawanna County.

Sincerely,



Dan O'Brien
Business Manager