

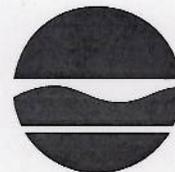
**New York State Department of Environmental Conservation
Office of General Counsel, Region 3**

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Joe Martens
Commissioner

CMRRR # 7011 0470 0003 4398 8812

**NOTICE OF NON-COMPLIANCE
NOTICE OF VIOLATION
NOTICE OF DAMAGES TO THE
NATURAL RESOURCES OF THE STATE OF NEW YORK**

April 13, 2012

Peter M. Dolan, Supervisor
Town of Tuxedo
One Temple Drive
Tuxedo, NY 10987

Re: Town of Tuxedo DPW facility
Order on Consent R3-20100630-69

Dear Supervisor Dolan:

I am writing to you regarding the Town of Tuxedo's mulch facility on Longmeadow Road, Tuxedo. On October 1, 2011, the Town and the Department executed an Order on Consent to address numerous environmental violations at this facility. The effort to reach the 2011 settlement with the Town to address the environmental concerns was a considerable one, but necessary to address conditions that Department staff concluded were unacceptable and in violation of the Environmental Conservation Law. Despite lengthy negotiation efforts in 2011, and the legal commitment to correct the site deficiencies, the Town has not made sufficient progress. On March 29, 2012, the Department met with representatives of the Town to discuss the violations and problems identified as a result of the operation of the facility.

The Department has taken extraordinary efforts to work with the Town but has not received information addressing the environmental issues as the Town committed to do in the March meeting. Based upon field observations, the Town is violating Clean Water Act water quality standards, and has caused damages to the Natural Resources of the State of New York. Department staff has determined that the Town is in violation of the Consent Order – specifically, the schedule of compliance items that the Town agreed to adhere to and is legally obligated to meet. For the following reasons, the Town of Tuxedo is in violation of the above referenced Order, and the Department provides to you this Notice of Noncompliance, pursuant to paragraph III, "Notice of Noncompliance," of the Order. These Notices are the Department's next step in advancing an enforcement case to address the violations. The Department has not made a final determination regarding the next steps in enforcement efforts for this site, but directs the Town to

immediately address the environmental issues related to this site and to come into compliance with the Consent Order and state and federal law.

CLEAN WATER ACT / NEW YORK STATE WATER QUALITY STANDARD VIOLATIONS

Department staff conducted water testing in and around the Town's site. The test results clearly documented poor water quality conditions in numerous sites adjacent to and downstream of the Town's site. Department staff also conducted water sampling tests from the surrounding area – these testing samples represent water that had not come in contact with the Town site or its mulch piles, or were not directly downstream from the site. The results of the Department's testing of the surrounding areas indicate that water quality from each of these sample locations was acceptable. The test results adjacent to and downstream of the site, however, document numerous violations of the Environmental Conservation Law and regulations, specifically the New York State Water Quality Standards (6NYCRR, Chap. X, Part 703), NYS ECL Article 17-0501 (General prohibition against pollution), and NYS ECL Article 17-0803 (Discharge of pollutants without a SPDES Permit).

DAMAGES TO THE NATURAL RESOURCES OF THE STATE OF NEW YORK

Department staff field investigations noted that there has been a kill of a large number of fish in areas downstream of the Town site, including but not limited to Four Corners Pond. Department Staff inspection of the Town site, the local water bodies, the mine shaft/pool of water on the site, and the analysis of collected water samples from these areas has enabled the Department to conclude that the evidence in the case clearly demonstrates that operations at the facility has resulted in numerous water quality impairments that has caused the fish kill. The Clean Water Act and other federal statutes appoints the Commissioner of the Department as the trustee of the Natural Resources of the State, and further authorizes the State of New York to seek appropriate compensation to be paid to the State for damages to Natural Resources -- for fish kills and other types of damages -- caused by violation of environmental law. The protection of and proper compensation for damages to natural resources of the State is a priority of Region 3, and is a priority of the Commissioner of the Department. Appropriate remedies for such damages shall be pursued, if appropriate, for the natural resource damages caused in this case.

FAILURE TO COMPLY WITH THE TERMS OF THE SCHEDULE OF COMPLIANCE

Please find, set forth below, the specific sections of the Schedule of Compliance that Department staff has determined that the Town has violated:

3f. Within 30 days from the effective date of this Order, Respondent shall submit for Department approval a plan indicating the location, size and separation distance of soil and mulch piles to be maintained by Respondent and any operator. Respondent shall maintain all mulch piles not to exceed 50' in height. A minimum separation distance of 25' shall be maintained between adjacent

piles, pursuant to 6 NYCRR 360-16(4)(f)(3) requirements.

The plan shall also indicate the areal limit/boundary of what will be the registered facility, the types of material that will be accepted, the volume of materials (in tons or cubic yards), and how long the material will remain on site; these details can be shown/written on the second site plan or submitted in a separate process flow diagram.

Department staff inspection has determined that the mulch pile at the facility exceeded 50' in height.

Department staff has not received a plan for approval with the requirements listed in item (f) above, and therefore approval is not possible.

3j. Within 7 days of the effective date of this Order, Respondent shall submit a Final Water Quality Stormwater Management Plan certified by a licensed NY PE.

Department staff has not received a Final Water Quality Stormwater Management Plan certified by a licensed New York Professional Engineer.

3k. Within 14 days of the effective date of this Order, Respondent shall eliminate all surface water discharges of leachate and Respondent shall submit a licensed NY PE Certification and final as-built plans certifying that all work contained in the approved engineering report and plans to collect mulching runoff has been completed as required by the terms and conditions of this order and shall certify that all discharges to the environment have permanently ceased.

Department staff has determined that all surface water discharges of leachate have not been eliminated, and Department staff has not received final as-built plans certified by a licensed New York Professional Engineer

The Town of Tuxedo is therefore in violation of the terms of the Order on Consent. Until the required Stormwater Management Plan, and the required certification by a Professional Engineer are received, and as-built plans are submitted and proof that the pile(s) are below 50' in height, the Town of Tuxedo is in Violation of the Order on Consent. Pursuant to terms of the Order on Consent, at a minimum, all or a portion of the suspended penalty of \$41,000.00 shall be payable to the Department within 30 days of receiving written notice from the Department that penalties are due. **PLEASE BE ADVISED** that this **NOTICE** constitutes written notice of such Violation.

TOWN OF TUXEDO IMMEDIATE ACTION NECESSARY

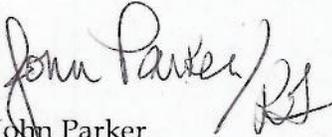
Notices of Non-Compliance or Violation do not always direct specific and immediate actions be taken to address environmental violations. The primary purpose is to inform of violations of the Environmental Conservation Law and Consent Orders. In this case, the environmental violations and damages being caused by the current operation of this facility must be immediately addressed. The Town is directed to immediately undertake the following minimal actions:

1. Eliminate all discharges of mulch pile leachate to surface waters;
2. Submit the required Stormwater Management Plan, PE Certification, and the facility management plan pursuant to items f, j, and k of the schedule of compliance in the Consent Order R3-20100630-69;
3. Reduce the size of the mulch pile(s) and properly separate the mulch pile(s) on site in accordance with the terms and conditions of the Consent Order – these actions should immediately result in the reduction of the amount of water that the Town deems necessary and required to be sprayed on the piles for fire prevention purposes;
4. Fully comply with the terms, requirements, conditions and schedule set forth in Order on Consent R3-20100630-69.

In 2011 the Town made a commitment to the Department to bring the Town site into compliance. The efforts to address environmental violations have not produced the results that the Town agreed to perform. Not only has the Order been violated, but there are now documented damages to the environment of the State. The Town must act immediately, consistent with these NOTICES and with the terms of the Order it agreed to, to correct the site conditions. The actions that the Town now takes will be considered as the Department makes final determination on how to pursue enforcement at this site.

The Town's immediate compliance with law, regulation and the Order is expected. Thank you in advance for addressing the serious environmental issues at the Town mulch facility.

Regards,


John Parker
Regional Attorney

cc: Donald G. Nichol, Esq.
Jacobowitz & Gubits, LLP
158 Orange Avenue
Walden, NY 12586