

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT

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CIVIL DIVISION

Docket No. 163-11-14 Wncv

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

COMPLAINT

The State of Vermont, by and through Attorney General William H. Sorrell, on behalf of the Agency of Natural Resources and the Natural Resources Board (collectively “the State”), files this complaint pursuant to 10 V.S.A. § 8221 and 3 V.S.A. § 157. The State seeks civil penalties from Moretown Landfill, Inc., for alleged violations of the Vermont Solid Waste Management Rules (“SWMR”), the Vermont Air Pollution Control Regulations (“VAPCR”), a solid waste management facility certification, land use and stormwater construction permits, and the Vermont Water Pollution Control statute in connection with operation of the Moretown Landfill in Moretown, Vermont.

State Entities and Defendant

1. The State of Vermont, Agency of Natural Resources (“ANR”), is a state agency with offices in Montpelier.

Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

2. The State of Vermont, Natural Resources Board is a board of five members appointed by the Governor, with offices in Montpelier, created by 10 V.S.A. § 6021(a).

3. Defendant Moretown Landfill, Inc. (“MLI”) is a Delaware corporation registered to do business in the State of Vermont. Prior to a name change effective March 16, 2005, the name of the corporation was WSI Moretown Landfill, Inc.

### **Factual and Regulatory Background**

4. MLI is and at all relevant times has been the owner of the land located at 187 Palisades Park, Moretown.

5. MLI is and at all relevant times has been an operator of a solid waste facility (Solid Waste Facility #WA470) and other facilities and appurtenances located at 187 Palisades Park in Moretown (collectively the “Moretown Landfill”).

6. The Moretown Landfill 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. MLI ceased disposing of waste in Cell 3 on or before July 15, 2013, and is in the process of implementing a phased closure of Cell 3 pursuant to a Consent Order and Judgment Order entered September 16, 2013 in Docket No. 37-3-13 Vtec.

7. MLI is and at all relevant times has been 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”).

8. MLI is and at all relevant times has been 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”).

9. MLI is and at all relevant times has been 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 findings of fact and conclusions of law of the District 5 Environmental Commission and documents filed with the District 5 Environmental Commission, including Certification Amendments 1, 2, and 5, the FOM, and the Stormwater Construction Permit.

10. 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.

11. 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).

12. 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).

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

13. The State restates and incorporates by reference herein Paragraphs 1-12, above.

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

15. Landfill gas consists of nearly 50 percent methane and 50 percent carbon dioxide and water vapor, as well as less than 1% non-methane organic compounds (“NMOCs”), small amounts of nitrogen, oxygen and hydrogen, and trace amounts of inorganic compounds.

16. NMOCs in landfill gas include compounds recognized by the federal Environmental Protection Agency and ANR as hazardous air pollutants, exposure to which may result in adverse health effects.

17. NMOCs in landfill gas include volatile organic compounds which can react with sunlight to form ground level ozone (smog).

18. The release of methane and carbon dioxide in landfill gas contributes to global warming.

19. Some of the compounds in landfill gas have strong odors even at very low concentrations. These odorous compounds include sulfides (hydrogen sulfide, dimethyl sulfide, and mercaptans) and ammonia.

20. MLI operates, and, at all relevant times, has operated a landfill gas collection and control system or systems which collect gas generated by the decomposition of waste disposed of in the unlined landfill and Cells 1, 2, and 3 (the "LFG Collection System").

21. The LFG Collection System includes gas collection wells with perforated sections of pipe, piping from the collection wells to 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.

22. Initially, flares were used as control devices.

23. 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.

24. Burning landfill gas in an energy plant or by flare destroys NMOCs that would otherwise be released to the atmosphere, thereby reducing risks of adverse health effects and ozone formation.

25. Burning landfill gas in an energy plant or by flare reduces the greenhouse gas effect of the gas emissions by, *inter alia*, converting methane in the gas to carbon dioxide and water vapor. Methane released to the atmosphere has the potential to trap 86 times more heat than carbon dioxide over a 20 year period and 34 times more heat than carbon dioxide over a 100 year period, making it a much more potent greenhouse gas.

26. 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.

27. 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.

28. In order to operate properly and effectively during the life-cycle of a landfill, a landfill gas collection system must be reviewed, and, when warranted, expanded by modifying existing components and building additional collection wells and piping in order to account for, *inter alia*, waste disposal in new areas.

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

30. The Solid Waste Certification and Land Use Permit set forth a number of requirements related to installation, operation, and maintenance of a landfill gas collection and control system at the Moretown Landfill, including,

*inter alia:*

a. The Permittee shall install, operate and maintain a landfill gas collection and control system that effectively captures the gas generated within the 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);

b. The Permittee shall ensure that landfill gas equipment is operating properly and effectively and that all required monitoring and routine maintenance is carried out, including monthly monitoring at individual gas collection wells, which monthly monitoring shall include measurement and recording of wellhead flow, percentage of methane and oxygen, gas and ambient temperature, and static pressure; inspection for odors and immediate repairs if leaks are identified; evaluation of landfill gas flow rates to determine if there may be any blockages that are impeding landfill gas extraction; and observation and documentation of wellhead system integrity. (FOM §§ 2.1, 3.11, 6.5 & 8.3);

c. The permittee shall monitor surface emissions of methane periodically, and if a threshold concentration is exceeded take corrective action, including repair of cover material if required and adjustment of the vacuum in the collection wells adjacent to the exceedance location and re-monitor; and if the re-monitoring shows an exceedance, conduct additional corrective action and re-monitor; and if the second re-monitoring shows an exceedance, install a new well or other collection device or obtain ANR's approval of an alternative method to remedy the exceedance. (SEM Plan);

d. The permittee shall conduct odor patrols and accept complaints about odors, and, where a problematic odor is identified, determine if the odor is attributable to landfill gas or another source. If the odors are identified as being characteristic of landfill gas, the Permittee must

conduct an inspection of the landfill to identify localized sources of landfill gas. (FOM § 6.5); and

e. The Permittee shall ensure the active gas collection system maintains a negative pressure at each gas collection wellhead except in cases where it is documented that well temperatures, carbon monoxide, and/or oxygen concentrations have increased and must be reduced to avoid the risk of a fire. The Permittee shall monitor and record the gauge pressure at each active gas collection system wellhead monthly. (Certification Amendment 2, Conditions and Requirements for Construction and Operation ¶ 10 (Gas Control Conditions), ¶ 59).

31. Water and/or leachate regularly and repeatedly accumulated in gas collection wells at the Moretown Landfill commencing no later than January 2007, and continuing until at least January 2013.

32. The monitoring that MLI was required to perform by the Certification and Land Use Permit alerted or should have alerted MLI to instances of the accumulation of water and/or leachate in collection wells, and the need to take corrective action.

33. Although MLI undertook some efforts to address the accumulation of water and leachate, its efforts were insufficient to ensure that the LFG Collection System operated properly and effectively.

34. Despite providing prior assurances to ANR that it was adequately addressing the water/leachate accumulation issue, a review of gas collection wells performed by an MLI contractor in January 2013 found liquid accumulated in numerous collection wells ranging up to 65% of total well depth, and concluded that “liquid in gas wells is likely negatively impacting the ability of the gas collection system to operate effectively.” The contractor recommended

the installation of numerous water pumps and the replacement of certain wells.

35. Pursuant to the contractor's recommendations, between January and April 2013, MLI evaluated the gas wellfield, installed 17 dewatering pumps, replaced/installed at least 14 gas wells, connected the new wells to the landfill gas collection system, and decommissioned ineffective gas wells. MLI reported that the new dewatering pumps removed 1500 – 4000 gallons per day from the watered out wells, making the landfill gas system more effective.

36. The January 2013 review of gas collection wells also indicated that MLI wrongly installed solid pipe, instead of perforated pipe, in the gas collection wells when it increased the vertical height of existing collection wells to account for disposal of waste at higher landfill elevations. Perforated pipe is appropriate because it allows for the drawing of landfill gas into the collection well.

37. MLI's documentation of pressure readings taken at individual gas collection wells shows that, from August 2009 through August 2014, MLI repeatedly failed to maintain negative pressure at gas collection wellheads.

38. Pursuant to MLI's Odor Complaint Response Plan dated July 29, 2011, a telephone hotline administered by a contractor to MLI was established to receive complaints from the public about landfill odors; and the contractor was required to investigate individual complaints, document any off-site odors, including their location and strength, and determine whether the odors were attributable to landfill gas or some other source.

39. Between August 5, 2011 and March 24, 2014, MLI's contractor, through investigating individual complaints, confirmed 86 incidents of moderate to very strong off-site odors attributable to landfill gas.

40. Independent of the complaints confirmed by MLI's contractor, between June 4, 2008 and February 13, 2013, ANR employees confirmed off-site odors attributable to landfill gas on 26 separate occasions.

41. SEM monitoring reports submitted by MLI to ANR between November 14, 2007 and July 2, 2014 showed on a continuing basis methane emissions from the landfill above the 50 ppm threshold for triggering investigation and corrective action. From January 2012 to August 2014, 374 separate exceedances of the 50 ppm methane threshold were measured during the initial round of monitoring. The level of surface emissions varied, but was as high as 4300 ppm methane in August 2012.

42. As described above, MLI violated the Certification and the Land Use Permit by:

a. Failing to install, operate, and maintain a landfill gas collection and control system that effectively captures the gas generated within the landfill and routes the gas to a control device that effectively destroys the NMOCs within the gas;

b. Failing to properly maintain and upgrade the system through, *inter alia*, preventing accumulation of water and leachate in gas collection wells

and installing solid sections of pipe, instead of perforated pipe, which would have facilitated gas collection and control; and

- c. failing to maintain negative pressure at gas collection wellheads.

#### **Count Two – Failure to Maintain Intermediate Cover**

43. The State restates and incorporates by reference herein Paragraphs 1-42, above.

44. The SWMR, Certification and Land Use Permit required that all wastes disposed of in the landfill be covered by the end of the operating day (daily cover). 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 landfill cell by stormwater flow.

45. In addition to the daily cover requirement, the SWMR, the Certification, and the Land Use Permit set forth a number of requirements related to intermediate cover, which was to be maintained until the installation of final cover, including:

- a. “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);
- b. “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. Any sharp or protruding objects shall be removed from the 12-inch layer. The 12 inch soil layer shall be seeded and mulched to prevent erosion. The performance of the Intermediate Cover will be continuously monitored through the leachate production records. The operator shall also regularly inspect the Intermediate Cover for evidence of erosion, damage or leachate seeps.” (FOM § 3.5.5);

c. “[In addition to performing the surface emissions monitoring . . . , Moretown Landfill shall inspect the disposal areas final and intermediate cover for failures (slumps, seeps, distressed vegetation, etc.). Necessary repairs shall be undertaken as soon as practical, and recorded in the monitoring logs. . . . The location of the failure shall be reinspected within 10 and 30 calendar days of detecting the failure.” (SEM Plan); and

d. “[In maintaining the site], [s]pecial attention will be paid for areas of erosion so that they may be corrected immediately.” (FOM § 3.12).

46. ANR personnel observed inadequacies with intermediate cover on Cell 3, including unstable slopes, areas of erosion, unauthorized use of crushed rock, and lack of vegetation on numerous occasions, including on April 26, 2011; July 8, 2011; November 22, 2011; November 30, 2011; April 12, 2012; May 10, 2012; May 23, 2012; September 20, 2012; October 26, 2012; November 7, 2012; December 5, 2012; February 6, 2013; April 26, 2013; and July 26, 2013. MLI’s contractor, Weston & Sampson, also noted intermediate cover inadequacies in a number of inspection reports.

47. Some of the inadequacies appeared in areas where MLI used material obtained from the OMYA site without ANR’s consent beyond a half-acre trial use that had been approved by ANR. The OMYA material proved to be unsuitable for use as intermediate cover.

48. Intermediate cover inadequacies persisted despite numerous attempts by ANR to get MLI to adequately address the issue, including communications dated September 14, 2011; October 20, 2011; and March 22, 2012; and an NOAV dated April 18, 2012.

49. MLI violated SWMR § 6-702(d)(5), the Certification, and the Land Use Permit, by failing to undertake timely repairs and maintenance of intermediate cover and failing to ensure that the cover remained functional and stable.

### **Count Three – Failure to Prevent Nuisance Odors**

50. The State restates and incorporates by reference herein Paragraphs 1-49, above.

51. The potential for odors becoming a nuisance at a landfill is generally present unless active steps are taken to prevent, minimize, and control odors to the maximum extent possible.

52. 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.

53. Section 552, 10 V.S.A., and the VAPCR define “air contaminant” as “dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.”

54. Section 5-241(1) of the VAPCR provides:

A *person* shall not discharge, cause, suffer, allow, or permit from any source whatsoever such quantities of *air contaminants* or other material which will cause injury, detriment, nuisance or annoyance to any considerable number of people or to the public or which endangers the comfort, repose, health or safety of any such *persons* or the public or which causes or has a natural tendency to cause injury or damage to business or property.

55. At all material times, MLI has emitted from the Moretown Landfill air contaminants in the form of gas and odorous substances, including odors from landfill gas generated by the decomposition of waste and odors from biosolids.

56. Beginning no later than August 2011 and continuing until at least January 2013, MLI failed to take all steps necessary to prevent and/or control nuisance odors, including steps related to the collection and control of landfill gas as alleged in Count One, above, maintenance of intermediate cover as alleged in Count Two, above, prevention and control of odors from biosolids, monitoring and management of leachate as alleged in Counts Five, Six, and Seven, below, and maintenance of limit-of-waste-containment markers as alleged in Count Nine, below.

57. Biosolids, also known as sludge, are nutrient rich organic matter produced at wastewater treatment facilities.

58. 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.

59. The tonnage of biosolids or sludge accepted by MLI and disposed of at the Moretown Landfill increased each year beginning in 2008 and continuing through 2011, and was much higher in 2011 and 2012 than in prior years.

60. 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 landfill'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.

61. MLI failed to consistently follow the preferred or alternative methods for disposal of biosolids.

62. On March 22, 2012 ANR personnel observed that MLI was not following the biosolid disposal methods set forth in the Biosolids Management Plan in that biosolids were being stored in rolloffs and unloaded at locations other than the working face, and were not immediately disposed of at the working face and covered.

63. On April 12, 2012 ANR personnel observed a large pile of biosolids which had been dumped and left unattended on pavement near the top of the Cell 2 access road.

64. 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).

65. ANR personnel advised MLI on a number of occasions, including September 29, 2011; March 22, 2012; April 18, 2012; and August 15, 2012, that it may need to cease accepting odiferous biosolids in order to control odor.

66. MLI failed to properly manage the biosolids it accepted and failed to timely prohibit or restrict its acceptance and disposal of any loads of biosolids.

67. Between August 31, 2011 and October 28, 2013, MLI's contractor, through investigating individual complaints, confirmed 18 incidents of moderate to strong off-site odors attributable to biosolids.

68. Independent of the complaints confirmed by MLI's contractor, between October 14, 2011 and November 6, 2012, ANR employees confirmed off-site odors attributable to biosolids on 7 separate occasions.

69. Residents living in close proximity to the Moretown Landfill reported to ANR that landfill odors have disrupting their quality of life and adversely affected their health.

70. MLI's failure to take all necessary steps to prevent and/or control odors resulted in the discharge of air contaminants which caused injury, detriment, nuisance, or annoyance to a considerable number of people, and endangered their comfort and repose.

71. MLI's failure to take all necessary steps to prevent or control nuisance odors violated SWMR 701(6), and its discharge of air contaminants caused injury, detriment, nuisance, or annoyance to a considerable number of people, in violation of VAPCR 5-241(1).

#### **Count Four – Excessive Landfill Gas Temperature and Oxygen Levels**

72. The State restates and incorporates by reference herein Paragraphs 1-71, above.

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

74. 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.

75. MLI undertook to monitor and record temperature and oxygen levels in order to comply with this requirement.

76. MLI records provided by MLI to ANR show that gas temperatures 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 one wellhead in October 2012, at two wellheads in October 2013, and at two wellheads in November 2013.

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

78. MLI violated the Certification and 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**

79. The State restates and incorporates by reference herein Paragraphs 1-78, above.

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

81. Leachate increases the production of landfill gas. Leachate released to the environment may contaminate soil, groundwater, and surface water and is a source of odors.

82. Double liner systems installed at Cells 1, 2, and 3 of the Moretown Landfill are designed to collect leachate. However, some leachate is released even from a properly maintained double liner system.

83. At all relevant times, Moretown Landfill 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.

84. 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.

85. Condition 38 of Certification Amendment 1 required the Permittee to maintain records of, inter alia, such leachate flow measurements and make them available to the State for inspection.

86. Commencing no later than July 13, 2009 and continuing to at least December 7, 2012, MLI failed to measure and record leachate flow from Cell 1's primary and secondary leachate collection systems to the leachate storage tanks, in violation of Condition 39 of Certification Amendment 1 and the Land Use Permit.

87. Commencing no later than July 13, 2009 and continuing until at least September 20, 2012, MLI failed to measure and record leachate flow from Cell 2's primary and secondary leachate collection systems to the leachate storage tanks, in violation of Condition 39 of Certification Amendment 1 and the Land Use Permit.

88. Commencing no later than September 29, 2008 and continuing until at least July 29, 2011, MLI failed to measure and record leachate flow from Cell 3's primary and secondary leachate collection systems to the leachate storage tanks, in violation of Condition 39 of Certification Amendment 1 and the Land Use Permit.

89. MLI failed to maintain records of the leachate flow measurements for Cells 1, 2, and 3, for the time periods stated in Paragraphs 86-88, above, in violation of Condition 38 of Certification Amendment 1 and the Land Use Permit.

#### **Count Six – Excessive Leachate Depth on Liner**

90. The State restates and incorporates by reference herein Paragraphs 1-89, above.

91. As the depth of leachate (leachate head) that accumulates on a landfill cell liner increases, the rate and amount of leachate passing through the liner increases, thereby increasing potential impacts to soil and groundwater.

92. 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. Following such an emergency, leachate may be stored on the liner for a maximum of five (5) days. Leachate collection tanks shall be managed in accordance with Section 3.10 of the FOM. Storage tanks shall be monitored with an alarm system. The alarm system shall consist of visual and audible alarms at the Facility, and a 24 hour automatic telephone system which will activate an alarm.

93. According to records obtained by ANR from MLI, the depth of leachate on the Cell 2 primary liner exceeded twelve (12) inches on April 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, and violated Certification Amendment 1, Condition 26, and the Land Use Permit.

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

94. The State restates and incorporates by reference herein Paragraphs 1-93, above.

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

96. 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."

97. 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 base of Cell 3.

98. 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.

99. 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; a stone lined trench leading from a portion of Cell 3 to a stormwater channel; and areas of Cell 3 side slope located immediately above a stormwater conveyance that were unstable and exhibited gully erosion, which allowed runoff to come in contact with waste.

100. 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.

101. 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.

102. With respect to each of the conditions described in Paragraphs 97-101, above, MLI did not collect and treat water that came into contact with waste or leachate as leachate.

103. 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**

104. The State restates and incorporates by reference herein Paragraphs 1-103, above.

105. 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 and/or control spills, nuisance dust, vectors, windblown debris and odors.”

106. Certification Amendment 1, Condition 31 states:

The Permittee shall inspect for and pick up litter at and around the Facility daily. The Permittee shall inspect for and pick up litter daily along both sides of Route 2 between the current "Vermont Testing Lab" business and the Winooski River iron bridge at the Moretown- Middlesex Town line.

107. FOM § 2.1 states:

4. Area Policing

The Facility Manager shall supervise the placement of refuse and daily cover within the landfill Cell. Additionally, the Facility Manager and site Foreman shall supervise the clean up of wind blown litter from the site and access roads and facility monitoring for landfill gas, odors and other nuisance conditions. The Facility Manager shall be responsible for inspecting the facility to ensure that adequate daily and intermediate cover is in place, to ensure that litter is removed promptly.

108. FOM § 2.6 states:

WSI performs litter control and clean-up on a routine basis. Daily patrols for litter along Route 2 are to be conducted. Cleanup of wind-scattered debris on the site shall include the removal of any debris that may occasionally blow into adjacent areas of the site. The Facility Manager shall determine the frequency of litter removal operations needed in each area of the site based upon the area of active operations, weather conditions and the amount of litter that is present based upon inspection. Particular attention shall be given to areas of the site that are visible from off-site.

Permanent and temporary litter control fencing shall be used to minimize windblown litter. Permanent litter control fencing shall be placed outside the limit of liner and/or cap where active landfill disposal occurs within proximity to the edge of liner and/or cap. Permanent litter control fence poles will not be placed above the landfill liner or landfill cap. Temporary and mobile litter fencing using surface supported mounting systems will be used where operationally feasible to minimize litter from the active area.

109. FOM § 6.2 repeats the requirements of FOM § 2.6 set forth in

Paragraph 108, above, and also states:

As a contingency measure, during periods of extreme wind additional temporary staffing for litter control may be used or the Facility Manager may utilize the services of a vacuum litter removal service for particularly heavily littered areas.

.....

As a contingency measure during periods of extreme wind, the Facility Manager may order a temporary stop to refuse unloading activities, may instruct operators to cover portions of the active operating face earlier in

the day than practiced under normal conditions, or may instruct operators to place cover material through the day prior to placement of final daily cover.

110. FOM § 3.12 states, in pertinent part, that “[t]he site shall be maintained in a condition that minimizes aesthetic impacts, . . .”

111. ANR personnel observed excessive litter at the Moretown Landfill on numerous occasions, including on April 26, 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; and December 5, 2012.

112. Among other things, at times, ANR personnel observed litter from the landfill that had escaped Cell 3 and blown approximately 1,000 feet before going through an unmaintained litter fence and spreading throughout the woods south of Cell 2; litter on and along Cell 3; litter collected along litter fences, the magnitude of which indicates it accumulated over a lengthy period of time; litter on landfill sideslopes and in eroded channels; and litter in stormwater conveyances and a stormwater pond.

113. Some of the litter observed by ANR was visible from Route 2.

114. MLI’s contractor, Weston & Sampson, regularly reported to MLI issues regarding litter in quarterly inspection reports it prepared from 2008 through 2012.

115. MLI continued to permit excessive windblown debris despite ANR’s efforts to get MLI to address the issue, including Notices of Alleged Violation

dated May 9, 2011 and April 18, 2012, and despite the reports on litter issues in Weston & Sampson's quarterly inspection reports.

116. MLI violated the Certification and the Land Use Permit regarding use of litter patrols and litter fences, and violated SWMR § 7-701(6) by failing to take all steps necessary to prevent and control windblown debris.

**Count Nine – Failure to Maintain Limit-of-Waste-Containment Markers**

117. The State restates and incorporates by reference herein Paragraphs 1-116, above.

118. 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.

119. 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, resulting in odors.

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

121. The markers remained absent until at least November 27, 2012.

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

**Count Ten – Failure to Conduct Random Load Inspections**

123. The State restates and incorporates by reference herein Paragraphs 1-122, above.

124. Certification Amendment 1, Condition 24 states:

The Permittee shall conduct random inspections of incoming loads of solid waste and manage wastes removed in accordance with Section 2.7 of the FOM.

125. Section 2.7 of the FOM states, in pertinent part:

[The Permittee] shall take all practical steps to prevent the inclusion of hazardous wastes, as defined and regulated by Vermont's Hazardous Waste Management Regulations, into the waste stream managed by the facility. This shall include implementation of a load inspection program for incoming wastes . . . .

A minimum of three loads per week shall be inspected for hazardous waste as well as other banned or unacceptable materials. Trucks will be selected at random.

126. Review of MLI load inspection forms and other information provided by MLI in connection with and following a September 20, 2012 ANR inspection of the Moretown Landfill indicates that MLI was singling out certain haulers for inspection and was not selecting for inspection at random the minimum three loads per week, in violation of Certification Amendment 1, Condition 24, FOM § 2.7, and the Land Use Permit.

### **Count Eleven – Failure to Report**

127. The State restates and incorporates by reference herein Paragraphs 1-126, above.

128. 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.

129. 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.

130. MLI failed to submit to ANR the required report for the violations described in Counts Five (Failure to Monitor Leachate Flow), and Six (Excessive Leachate Depth on Liner), in violation of 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**

131. The State restates and incorporates by reference herein Paragraphs 1-130, above.

132. The Stormwater Construction Permit was issued in connection with certain construction activities at the Moretown Landfill, including excavation related to a proposed new landfill cell known as Cell 4, construction of an access road, and improvements to stormwater ponds.

133. 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.

134. The EPSC Plan specified a sequence for conducting construction work and implementing related erosion prevention and sediment control measures. Rather than performing the work in the required sequence, MLI moved forward borrow pit extraction activities, deferred erosion prevention and sediment control measures, and failed to properly complete them in accordance with the EPSC Plan prior to the end of the 2012 construction season.

*Failure to Install Erosion Prevention and Sediment Control Measures Before Commencing Earthwork*

135. The EPSC Plan set forth a number of requirements to undertake erosion prevention and sediment control measures before commencing earthwork activities, including, *inter alia*:

- a. “[The contractor shall] [i]nstall the required temporary erosion and sediment control measures in accordance with the Drawings and Specifications prior to the commencement of earthwork activities (Pre-construction)” (EPSC § 4.0);
- b. “The Contractor shall implement the temporary erosion prevention and sediment control measures depicted in the Drawings that are down gradient of the work area prior to commencing earthwork activities.” (EPSC § 5.1);
- c. “Silt fence along the down gradient limits of work shall be in place prior to commencing earthwork activities, including clearing, grubbing, and stripping.” (EPSC § 5.3);

d. "Earthwork activities shall be planned and sequenced so that stormwater conveyance structures are constructed and stabilized prior to performing the remaining earthwork in an area tributary to the conveyance structures." (*Id.*);

e. "Soil erosion and sediment control devices shall be installed prior to the start of work within the limit of disturbance. Soil erosion and sediment control devices shall be stabilized before directing runoff to them." (EPSC Plan Drawings, Sheet 1); and

f. The Preconstruction Sequence shall include delineating limits of disturbance with wood stakes and flagging tape, staging equipment and supplies within the limits of disturbance for the project, installing perimeter silt fence, installing temporary stone check dams in existing swales, and installing inlet protection on culverts and inlets. (EPSC Plan Drawings, Sheet 1).

136. Construction at the Moretown Landfill during the 2012 construction season commenced on or about July 2, 2012.

137. As ANR personnel observed during a site visit, as of July 16, 2012, MLI was in violation of the Stormwater Construction Permit and the Land Use Permit because earthwork had begun and a number of required erosion prevention and sediment control measures had not been implemented, including:

- a. delineation of limits of disturbance;
- b. installation of reinforced silt fence;
- c. installation of downgradient silt fence;
- d. staging of equipment and supplies within the area of disturbance for the project; and
- e. installation of temporary stone check dams in existing swales.

*Failure To Timely and Properly Construct Clean Water Diversion Channel SW-4*

138. The EPSC Plan, Land Use Permit Amendment #5W0164-34, and a Clean Water Act § 404 permit issued by the United States Army Corps of Engineers to MLI, required MLI to construct two clean water diversion channels, referred to in the EPSC Plan as the Southeastern Clean Water Diversion Channel (SW-4) and the Southwestern Clean Water Diversion Channel (SW-5). A purpose of the diversion channels was to divert stormwater runoff from areas upgradient of the construction site around the construction site to prevent it from commingling with potentially sediment-laden stormwater runoff from the construction site.

139. The Southeastern Clean Water Diversion Channel (SW-4) was to convey stormwater from areas upgradient of the construction site to an infiltration basin on the eastern side of the Moretown Landfill near Route 2.

140. The EPSC Plan required MLI to construct SW-4 and stabilize it with seed and mulch *before* beginning excavation from the Phase II Borrow Area.

141. Biweekly reports filed by MLI with ANR indicate that blasting and excavation in the Phase II Borrow Area began between July 16 and July 29, 2012. However, work on SW-4 did not begin until between August 13 and August 26, 2012.

142. In addition to requiring that MLI stabilize SW-4 before beginning excavation of the Phase II Borrow Area, the EPSC Plan required that seeding occur by September 15.

143. MLI photographs dated September 26, 2012, October 10, 2012, and October 24, 2012 show an absence of grass in “grass-lined swale” SW-4.

144. Because SW-4 did not have well-established vegetation by October 15, 2012, the EPSC Plan required MLI to line it with erosion-control matting, geotextile, or stone to limit scouring.

145. During an October 26, 2012 site visit, ANR observed erosion of SW-4, as well as erosion-control matting in SW-4 that had not been installed in accordance with the specifications of the EPSC Plan. ANR also observed that MLI had not constructed SW-4 in a manner that prevented commingling of clean stormwater from offsite with sediment-laden stormwater from the construction site.

146. MLI failed to properly complete and stabilize SW-4 prior to the approach of winter conditions. Ultimately, MLI temporarily diverted the flow of SW-4 into an excavation on the construction site based on MLI’s contractor’s determination that if SW-4 in its then-existing condition were directed toward its ultimate outfall there could be a release of sediment-laden water. This diversion remained in place until Spring.

147. MLI's failure to timely construct and stabilize SW-4 in accordance with the EPSC Plan violated the Stormwater Construction Permit and the Land Use Permit.

*Failure to Timely and Properly Construct Grass Lined Swales SW-1 and SW-2*

148. MLI stockpiled earthen material that it excavated from the Phase II Borrow Pit in an area known as the Northern Soil Stockpile/Borrow Area.

149. The EPSC Plan required the construction and maintenance of grass lined swales SW-1 and SW-2 around the Northern Soil Stockpile Borrow Area.

150. According to MLI's biweekly reports, MLI began stockpiling material in the Northern Soil Stockpile Borrow Area between July 16 and July 29, 2012.

151. According to MLI's biweekly reports, construction of SW-1 began between September 24 and October 7, 2012, and construction of SW-2 began between October 8 and October 21, 2012.

152. As ANR observed during a site visit, as of October 29, 2012, grass had not been established in SW-1 or SW-2, and SW-1 and SW-2 had not been otherwise stabilized.

153. MLI failed to timely construct and stabilize SW-1 and SW-2 in accordance with the EPSC Plan, in violation of 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**

154. The State restates and incorporates by reference herein Paragraphs 1-153, above.

155. 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.

156. As ANR observed during a site visit, as of October 26, 2012, MLI was in violation of the Stormwater Construction Permit, EPSC Plan, and Land Use Permit in that it had failed to properly:

- a. Install erosion-control matting;
- b. Install check dams;
- c. Install a stabilized construction entrance;
- d. Stabilize areas of earth disturbance;
- e. Protect inlets; and
- f. Maintain culverts.

157. As ANR observed during another site visit, as of October 29, 2012, MLI was in violation of the Stormwater Construction Permit, EPSC Plan and

Land Use Permit in that it had failed to stabilize areas of earth disturbance, including steep slopes.

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

158. The State restates and incorporates by reference herein Paragraphs 1-157, above.

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

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

161. As ANR observed during a site visit, as of October 26, 2012, MLI was pumping water out of the excavated Phase II Borrow Area, and was not directing the water through a filter or into an approved sediment-trapping device, in violation of the Stormwater Discharge Permit and Land Use Permit.

162. MLI did not have a site-specific dewatering plan, and the dewatering was not conducted in accordance with such a plan, in violation of the Stormwater Discharge Permit and Land Use Permit.

**Count Fifteen – Unpermitted Discharges to Waters of the State**

163. The State restates and incorporates by reference herein Paragraphs 1-162, above.

164. Section 1259(a), 10 V.S.A., prohibits the unpermitted discharge of any waste, substance, or material into waters of the state.

165. 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.

166. 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.

167. The discharges were attributable to failures of erosion prevention and sediment control measures, including silt fences and culvert inlet protection measures, MLI's improper use of sediment-laden stone to line a diversion channel that was designed to convey stormwater from clean upgradient areas around the perimeter of the construction site, and MLI's failure to construct the diversion channel in such a way that stormwater from the construction site would not flow into the channel.

168. The discharges were not permitted by any permit issued to MLI.

169. The discharges of sediment to the stream violated 10 V.S.A. § 1259(a).

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

170. The State restates and incorporates by reference herein Paragraphs 1-169, above.

171. 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.

172. 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.

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

174. MLI persisted in failing to timely file the required reports, and committed additional violations of the Stormwater Construction Permit and Land Use Permit by failing to timely file the biweekly reports for August 27 - September 9, 2012, September 10 - 23, 2012, and September 24 - October 7, 2012.

### **Prayer for Relief**

WHEREFORE, the State of Vermont respectfully requests that the Court enter judgment in its favor:

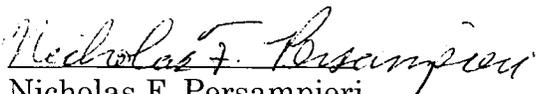
Office of the  
ATTORNEY  
GENERAL  
109 State Street  
Montpelier, VT  
05609

- A. Adjudging MLI liable for each of the violations of law alleged in Counts One through Sixteen, above;
- B. Ordering MLI to pay civil penalties to the State pursuant to 10 V.S.A. § 8221(b)(6) for each of the violations alleged in Counts One through Sixteen, above;
- C. Ordering MLI to reimburse the State for its costs of enforcement;
- and
- D. Ordering such other and further relief as the Court deems just and proper.

Dated: November 6, 2014.

Respectfully submitted,

WILLIAM H. SORRELL  
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