

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X
ADIRONDACK COMMUNITIES ADVISORY
LEAGUE,

Plaintiff,

COMPLAINT

-against-

Civ. No.

ONEIDA-HERKIMER SOLID WASTE
MANAGEMENT AUTHORITY,

JURY TRIAL DEMANDED

Defendant.

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Plaintiff Adirondack Communities Advisory League, by and through its attorneys Dreyer Boyajian LLP, as and for its complaint against defendant, alleges as follows:

I. NATURE OF THE ACTION

1. Plaintiff Adirondack Communities Advisory League (“ACAL”) brings this action against defendant Oneida-Herkimer Solid Waste Management Authority (“Authority”) under the citizens’ suit provisions of the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, concerning past and continuing Clean Water Act violations at the Authority’s regional solid waste landfill located in the Town of Ava, Oneida County, New York (“the Landfill”).

2. The Authority was granted federal and state permits allowing it to commence construction of the Landfill. Construction of the Landfill has commenced and is continuing to date.

3. On at least twenty-six (27) occasions between April 18, 2005 and June 3, 2006, the Authority has caused and permitted sediments, silt and other pollutants to be discharged from the Landfill into the South Branch of Moose Creek, its tributaries, and associated wetlands. The

discharges violate Clean Water Act permits issued to the Authority by the New York State Department of Environmental Conservation (“DEC”) and the U.S. Army Corps of Engineers (“COE”). The discharges also constitute unpermitted discharges in violation of the Clean Water Act.

4. The unlawful discharges of pollutants from the Landfill are continuing in nature, and are likely to be repeated unless enjoined by this Court and deterred by imposition of significant financial penalties.

5. ACAL seeks a declaratory judgment, injunctive relief, imposition of civil penalties, and an award of attorneys’ and expert witness fees and costs.

II. PARTIES

6. ACAL is a not-for-profit corporation organized under the laws of the State of New York.

7. ACAL was incorporated on September 16, 1993.

8. ACAL’s purposes are to protect indigenous fish, wildlife, and plant life in the Towns of Ava, Boonville, Lewis and Leyden in the Tug Hill Plateau region of New York; to preserve the scenic and historic qualities of the region; to foster the maintenance of the ecological balance in the region; to preserve and maintain pure air and clean water in the region and discourage pollution in all forms; to encourage general community participation in activities that may result in the conservation and enhancement of aesthetic and scenic values in the region; to disseminate information promoting conservation practices; to maintain and make available to the public materials on conservation and allied subjects; to stimulate, encourage and educate the public on the use of conservation practices in the region; to conduct research and cooperate with competent authorities to investigate and report on environmental, natural resources, and conservation problems in the

region and disseminate such research; to assist other organizations, individuals and groups who are concerned with the welfare and benefits of the region; to conduct factual studies of conditions affecting the region; and to promote regional planning, research and development and sponsor plans and projects for the conservation and beautification of the region.

9. ACAL's members reside in the Towns of Ava, Boonville, Leyden, and Lewis.

10. ACAL's members include persons who own real property along the South Branch of Moose Creek, downstream of the Landfill; and persons who utilize the South Branch of Moose Creek, its associated wetlands, and the Sugar and Black rivers (to which the South Branch of Moose Creek is a tributary), for a variety of recreational and aesthetic purposes, including but not limited to fishing, boating, bird-watching, and hiking.

11. ACAL and its members have a significant interest in maintaining the ecological integrity of the South Branch of Moose Creek and the rivers to which it is a tributary; protecting the fish and wildlife that inhabit or are dependent on those waterbodies; protecting the water quality in those waterbodies; and preserving the aesthetic and scenic values of those waterbodies.

12. The unlawful discharges from the Landfill adversely affect and interfere with the use and enjoyment of property owned by ACAL members along the South Branch of Moose Creek, downstream of the Landfill. The unlawful discharges from the Landfill also adversely affect and interfere with the recreational and aesthetic use by ACAL members of the South Branch of the Moose River and its associated wetlands.

13. The Authority is a public authority created by N.Y. Public Authorities Law § 2049-cc.

14. Upon information and belief, the Authority's principal office is located at 1600 Genesee Street, Utica, New York.

15. The Authority is the owner and operator of the Landfill.

16. The Authority is a “person” within the meaning of the Clean Water Act, 33 U.S.C. §§ 1362(5) and 1365(a)(1).

III. JURISDICTION AND VENUE

17. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1367, and 2201, and 33 U.S.C. § 1365(a).

18. As required by Clean Water Act § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A), ACAL provided written notice of the violations alleged herein to the Administrator of the U.S. Environmental Protection Agency, to the Commissioner of DEC, and to the Authority more than sixty (60) days prior to commencement of this action.

19. Venue is proper in the Northern District of New York pursuant to 33 U.S.C. § 1365(c)(1).

IV. FACTS

Geographic Setting

20. The Landfill site consists of approximately eight hundred forty-eight (848) acres of land located in the Town of Ava, Oneida County, New York.

21. As currently designed by the Authority, approximately one hundred fifty acres (150) acres of the Landfill site will be used for landfill operations.

22. The Landfill site includes a portion of the South Branch of Moose Creek, as well as several tributaries to the South Branch of Moose Creek.

23. The South Branch of Moose Creek is classified by DEC as a Class C stream. 6 NYCRR § 878.6 Table I.

24. The best usages of a Class C stream are defined by DEC at 6 NYCRR § 701.8 as follows:

Class C fresh surface waters. The best usage of Class C waters is fishing. These waters shall be suitable for fish propagation and survival. The water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes.

25. The DEC regulations, 6 NYCRR § 878.6 Table I, provide that the water quality classification applicable to the South Branch of Moose Creek is C(T).

26. Part 180.5 of the DEC regulations provides:

Definition of trout waters. For the purposes of the Fish and Wildlife Law and this Title, the terms trout waters, trout streams, trout ponds and trout lakes shall mean those waters, streams, ponds and lakes inhabited . . . by trout. Waters, streams, ponds and lakes . . . for which a standard (T) . . . is designated are trout waters for the purpose of the Fish and Wildlife Law.

27. The South Branch of Moose Creek has been designated by DEC as a “trout water.”

28. Upon information and belief, the South Branch of Moose Creek contains trout spawning habitat and is used by trout for spawning.

29. The DEC regulations, 6 NYCRR § 878.6 Table I, provide that the water quality classification applicable to several tributaries to the South Branch of Moose Creek is C(TS), which means that those tributaries are utilized by trout for spawning.

30. The South Branch of Moose Creek flows into the Sugar River downstream of the Landfill. The Sugar River is a tributary of the Black River.

31. The South Branch of Moose Creek, its tributaries, its associated wetlands, the Sugar River, and the Black River are each “navigable waters” within the meaning of the Clean Water Act,

33 U.S.C. § 1362(7).

Federal and State Permits

32. The Authority has been issued several permits required under federal and state environmental laws and regulations for construction of the Landfill.

33. On or about June 4, 2001, the Authority was issued a COE permit (Permit No. 95-987-30(1)) under authority of Section 404 of the Clean Water Act, 33 U.S.C. § 1344 (“COE 404 Permit”).

34. Special Condition 8 of the COE 404 Permit provides “That temporary or permanent disposal of trees, brush and other debris in any stream corridor, wetland or surface water is prohibited.”

35. Special Condition 9 of the COE 404 Permit provides “That efforts shall be made to keep construction debris from entering the waterways or wetlands. Any debris found in such areas shall be removed immediately and shall be disposed of properly.”

36. Special Condition 10 of the COE 404 Permit provides “That mechanical equipment used to execute the work authorized herein shall be operated in such a way as to minimize turbidity that could degrade water quality and adversely affect aquatic life.”

37. Special Condition 11 of the COE 404 Permit provides “That siltation barriers shall be installed between the wetlands and the adjoining development, to prevent siltation into the wetlands.”

38. Special Condition 12 of the COE 404 Permit provides “That during construction erosion control devices such as hay bales or a filter fabric fence shall be used to prevent erosion of the dredged material or disturbed soil. The hay bales or filter fabric fence shall be installed in

accordance with appropriate construction techniques, including placing the hay bales and filter fabric fence in a shallow trench, backfilling the toe of the filter fabric fence and securing the hay bales with stakes.”

39. Special Condition 13 of the COE 404 Permit provides “That as soon as possible following construction all exposed banks and slopes shall be seeded and mulched to prevent erosion.”

40. Special Condition 14 of the COE 404 Permit provides that “All erosion and sediment control practices shall be in place prior to any grading or filling operations and installation of proposed structures or utilities. They shall remain in place until construction is completed and the area is stabilized.”

41. Special Condition 15 of the COE 404 Permit provides that “All erosion and sedimentation controls shall be inspected daily and after rainfall events greater than 0.5 inches to ensure that the controls are functioning properly. Inspection records will be prepared and retained on a weekly basis and/or after 0.5 inch rainfall events.”

42. Special Condition 16 of the COE 404 Permit provides that “All necessary precautions shall be taken to preclude the contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious substance associated with the project.”

43. On or about March 22, 2004, the Authority was issued a DEC combined permit (DEC Permit # 6-3024-00009/00007) under authority of N.Y. Environmental Conservation Law (“ECL”) Article 15, title 5 (protection of waters); Article 19 (air pollution control); Article 24 (freshwater wetlands); Article 27 (solid waste management); 6 NYCRR Part 608 (protection of waters); and 6

NYCRR Part 364 (waste transporter) (“DEC Combined Permit”).

44. Construction Condition # 16 of the DEC Combined Permit provides:

Prior to and during any construction, the permittee must take adequate measures to prevent uncontrolled or unreasonable siltation of surface waters including drainage ditches, streams and wetlands through and adjacent to the site. This must include provisions for frequent observation of potentially affected water courses, sampling if directed by the Department, appropriate corrective action in response to any observable increases in turbidity and incorporation of observations, incidents, and corrective actions taken into monthly reports.

45. Upon information and belief, prior to commencement of construction of the Landfill, the Authority filed a Notice of Intent for Construction Activities with DEC, thereby triggering the applicability to the Landfill of DEC General Permit for Stormwater Discharges from Construction Activity (GP-02-01), issued under authority of section 402 of the Clean Water Act, 33 U.S.C. § 1342, and the New York State Pollution Discharge Elimination System (“SPDES”), ECL Article 17 (“SPDES General Stormwater Permit”).

46. Part I.A of the SPDES General Permit provides:

Maintaining Water Quality - It shall be a violation of this general permit and the [ECL] for any discharge authorized by this general permit to either cause or contribute to a violation of water quality standards as contained in [6 NYCRR] Parts 700 through 705 . . . including, but not limited to:

1. There shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions;
2. There shall be no increase in suspended, colloidal and settleable solids that will cause deposition or impair the waters for their best usages; and
3. There shall be no residue from oil and floating substances, nor visible oil film, nor globules of grease.

47. Part I.C.6 of the SPDES General Permit provides:

Activities Which Are Ineligible for Coverage Under This General Permit - All of the following stormwater discharges from construction are **not** authorized by this permit . . . Discharges which either cause or contribute to a violation of water quality standards adopted pursuant to the ECL and its accompanying regulations (Emphasis in original).

48. Part III.D.3 of the SPDES General Permit sets forth site assessment and inspection requirements. Site inspections must be conducted by a qualified professional at least every 7 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

49. As part of the regular site inspections required under Part III.D.3 of the SPDES General Permit, the qualified professional must “[i]nspect all sediment control practices and record the approximate degree of sediment accumulation as a percentage of the sediment storage volume (for example, 10 percent, 20 percent, 50 percent).”

50. As part of the regular site inspections required under Part III.D.3 of the SPDES General Permit, the qualified professional must “[i]nspect all erosion and sediment control practices and record all maintenance requirements such as verifying the integrity of barrier or diversion systems (earthen berms or silt fencing) and containment systems (sediment basins and sediment traps) . . . [d]ocument any excessive deposition of sediment or ponding water along barrier or diversion systems . . . [and] [r]ecord the depth of sediment within containment structures, any erosion near outlet and overflow structures”

51. Records of all inspections required under Part III.D.3 of the SPDES General Permit are required to be maintained in a site log book.

52. Under Part III.D.5 of the SPDES General Permit, “sediment shall be removed from sediment traps or sediment ponds whenever their capacity has been reduced by fifty (50) percent from the design capacity.”

53. Part V of the SPDES General Permit provides:

The operator shall also prepare a written summary of its status with respect to compliance with this general permit at a minimum frequency of every three months during which coverage under this permit exists. The summary should address the status of achieving each component of the [Stormwater Pollution Prevention Plan] . . .

Unlawful Discharges From the Landfill

54. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant unless the discharge is in compliance with various enumerated sections of the Act.

55. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits, *inter alia*, discharges of dredge or fill material that are not authorized by, or in violation of, the terms of any permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344.

56. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits, *inter alia*, discharges that not authorized by, or in violation of, the terms of a SPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

57. The terms and conditions of the COE 404 Permit, the DEC Combined Permit, and the SPDES General Permit constitute “effluent standards or limitations” within the meaning of the Clean Water Act, 33 U.S.C. §§ 1362(11) and 1365(a)(1)(A).

58. Commencing in or about April 2005 and continuing to the present, the Authority has caused and permitted discharges of sediments, silt and other pollutants from point and non-point sources at the Landfill to enter navigable waters of the United States.

59. Specifically, the Authority has caused and permitted discharges of sediments, silt and other pollutants from, among other areas, storm water detention ponds, siltation retention areas, berms, and ditches at the Landfill to enter the South Branch of Moose Creek, its tributaries, and associated wetlands.

60. The sediments, silt and other pollutants discharged from point and non-point sources at the Facility are “pollutants” within the meaning of the Clean Water Act, 33 U.S.C. § 1362(6), and its New York counterpart, the Water Pollution Control Act, ECL § 17-0105(17).

61. The above-described unlawful discharges from the Landfill have occurred on numerous occasions, including but not limited to April 18, June 16, June 17, July 14, July 15, July 17, August 25, August 31, September 5, September 26, September 29, October 8, October 12, October 13, October 15, October 23, and November 30, 2005; and January 18, March 10, March 11, March 13, April 1, April 9, April 22, April 23, May 13, and June 3, 2006.

62. Discharges of sediments, silt and other pollutants from point and non-point sources at the Landfill have entered the South Branch of Moose Creek, its tributaries, and associated wetlands.

63. Upon information and belief, the discharges of pollutants from the Landfill have also entered the Sugar and Black rivers.

64. The point source discharges from the Landfill constitute violations of the COE 404 Permit, the DEC Combined Permit, and the SPDES General Permit.

65. Specifically, the point source discharges from the Landfill violate Special Conditions 8, 9, and 16 of the COE 404 Permit; Construction Condition # 16 of the DEC Combined Permit; and Parts I.A, and I.C.6 of the SPDES General Permit.

66. The point source discharges from the Landfill constitute violations of an effluent standard or limitation within the meaning of 33 U.S.C. § 1365(a)(1).

67. The point source discharges from the Landfill also constitute unlawful discharges of pollutants without a permit in violation of 33 U.S.C. § 1311(a).

68. The non-point source discharges from the Landfill constitute violations of the COE 404 Permit, the DEC Combined Permit, and the SPDES General Permit.

69. Specifically, the non-point discharges from the Landfill violate Special Conditions 8, 9, and 16 of the COE 404 Permit; Construction Condition # 16 of the DEC Combined Permit; and Parts I.A and I.C.6 of the SPDES General Permit.

70. Upon information and belief, the Authority has also violated Special Conditions 10, 11, 12, 13, 14, and 15 of the COE 404 Permit.

71. Upon information and belief, the Authority has failed to take appropriate corrective action in response to observable increases in turbidity in violation of Construction Condition # 16 of the DEC Combined Permit.

72. Upon information and belief, the Authority has failed to incorporate observations, incidents, and corrective actions taken into monthly reports, in violation of Construction Condition # 16 of the DEC Combined Permit.

73. Upon information and belief, the Authority has also violated Part III.D.3 and Part V of the SPDES General Permit.

74. The unlawful point and non-point source discharges from the Landfill have caused or contributed to violations of New York State water quality standards in the South Branch of Moose Creek and its tributaries including, but not limited to, the water quality standard set forth in 6

NYCRR § 703.2 which prohibits any “increase [in turbidity] that will cause a substantial visible contrast to natural conditions.”

75. Upon information and belief, the unlawful point and non-point source discharges from the Landfill have caused or contributed to violations of New York State water quality standards in the Sugar River and the Black River.

DEC’s Administrative Consent Order

76. On or about February 23, 2006, DEC and the Authority entered into an Administrative Consent Order (“ACO”) which purported to address some of the unlawful discharges from the Landfill.

77. Among other things, the ACO acknowledged that “since late July, storm water run-off from the [Landfill] has intermittently caused a substantial visible contrast in the South Branch of Moose Creek.”

78. The ACO also concedes that continuing unlawful discharges from the Landfill are likely to occur. Section II of the ACO, entitled “**Continuing Discharges,**” provides:

During the effective period of this Order, so long as the Authority . . . adhere[s] to the terms, conditions, and stipulations of this Order, discharges from the Authority’s storm water management system that cause a substantial visible contrast from the natural stream condition will not constitute a violation of this Order, nor result in institution of additional actions or proceedings by the Department. If any provision in this Order is breached, the Department may institute appropriate proceedings as allowed by law.

(Emphasis added).

79. The ACO imposed a civil penalty of nine thousand six hundred dollars (\$9,600), of which one thousand nine hundred dollars (\$1,900) was payable upon execution of the ACO. The

remaining seven thousand seven hundred dollars (\$7,700) was suspended and extinguished provided that the Authority participates in a “spring cleanup program” pursuant to which the Landfill will accept solid waste at no charge from residents of the Town of Ava.

80. The ACO violates the Clean Water Act and is therefore of no force or effect. Specifically, Section II of the ACO purports to authorize discharges in violation of the Clean Water Act, the New York Water Pollution Control Act, and New York water quality standards by providing that discharges from the Landfill which cause a substantial visible contrast from the natural stream condition “will not constitute a violation of this Order, nor result in institution of additional actions or proceedings by the Department.”

81. DEC has no authority to authorize continuing discharges from the Landfill which violate the Clean Water Act, the New York Water Pollution Control Act, and New York State water quality standards, unless such discharges are authorized as part of a schedule of compliance designed to bring the Landfill into compliance with applicable laws and regulations, including New York water quality standards.

82. The ACO includes no schedule of compliance, and its purported authorization of continuing illegal discharges from the Landfill in violation of New York water quality standards therefore violates the Clean Water Act and ECL Article 17, and is null and void, and of no legal force and effect.

ACAL’s Notice to the Authority and Federal and State Agencies

83. By letter dated March 21, 2006 and sent certified mail, return receipt requested (“Notice of Intent to Sue”), ACAL notified the Authority of the unlawful point source discharges from the Landfill, and of ACAL’s intention to bring a citizens’ suit under the Clean Water Act

concerning those violations. Copies of the Notice of Intent to Sue were sent by certified mail, return receipt requested, to EPA, DEC, COE and the New York Attorney General's office. The return receipts show that the Notice of Intent to Sue was received by the Authority, and by the federal and state government agencies, more than sixty (60) days prior to commencement of this action.

84. By letter dated May 9, 2006 and sent certified mail, return receipt requested ("Supplemental Letter"), ACAL supplemented the Notice of Intent to Sue by notifying the Authority that the discharges from the Landfill also constituted unlawful non-point source discharges. Copies of the Supplemental Letter were sent by certified mail, return receipt requested, to EPA, DEC, COE and the New York Attorney General's office.

85. The Notice of Intent to Sue and Supplemental Letter were sent after numerous prior meetings, written communications, and telephone calls involving the Authority, DEC, EPA, and COE, among others, in which ACAL identified the unlawful discharges from the Landfill and requested that immediate action be undertaken to remedy those discharges.

86. Neither EPA nor DEC has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or New York State concerning the violations alleged herein.

Continuing Discharges

87. The unlawful point and non-point source discharges from the Landfill described herein are likely to continue unless the Authority is enjoined by this Court and is deterred by significant financial penalties.

88. The continuing nature of unlawful discharges from the Landfill is demonstrated by the fact that such discharges have continued even after the Authority received ACAL's Notice of

Intent to Sue on March 22, 2006, as evidenced by the certified mail return receipt.

89. Specifically, following the Authority's receipt of the Notice of Intent to Sue, additional unlawful discharges from the Landfill occurred on April 1, April 9, April 22, April 23, May 13, and June 3, 2006.

90. As noted above, the continuing nature of the unlawful discharges from the Landfill was explicitly acknowledged in the ACO entered into between DEC and the Authority.

91. The continuing nature of unlawful discharges from the Landfill is demonstrated by the fact that such discharges have continued even after DEC and the Authority entered into the ACO on or about February 23, 2006.

92. Specifically, following the Authorities entry into the ACO, additional unlawful discharges occurred on March 10, March 11, March 13, April 1, April 9, April 22, April 23, May 13, and June 3, 2006.

Adverse Environmental Effects of the Authority's Illegal Discharges

93. Upon information and belief, the illegal discharges from the Landfill have had and are continuing to have adverse environmental effects on the South Branch of Moose Creek, its tributaries, and associated wetlands.

94. Upon information and belief, the illegal discharges from the Landfill have had and are continuing to have adverse effects on the best usages of the South Branch of Moose Creek and its tributaries, which DEC has identified as including fish propagation and survival and primary and secondary contact recreation.

95. Upon information and belief, the Authority's illegal discharges have had adverse environmental effects on the South Branch of Moose Creek, its tributaries, and associated wetlands

including, but not limited to, sedimentation of trout spawning, feeding and rearing habitat, resulting in damage to such habitat; sedimentation of instream invertebrate, fish, and wildlife habitat, resulting in damage to such habitat; changes to stream morphology; sedimentation of associated wetlands, resulting in adverse effects on wetland values and functions; and significant deterioration of aesthetic and visual values.

FIRST CAUSE OF ACTION

96. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

97. The discharges of pollutants from the Landfill are not authorized by, and are in violation of, the COE 404 Permit issued to the Authority, and each such discharge therefore constitutes a violation of 33 U.S.C. §§ 1311(a) and 1344.

SECOND CAUSE OF ACTION

98. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

99. The discharges of pollutants from the Landfill are not authorized by, and are in violation of, the DEC Combined Permit issued to the Authority, and each such discharge therefore constitutes a violation of 33 U.S.C. §§ 1311(a) and 1342.

THIRD CAUSE OF ACTION

100. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

101. The discharges of pollutants from the Landfill are not authorized by, and are in violation of, the DEC SPDES General Permit issued to the Authority, and each such discharge

therefore constitutes a violation of 33 U.S.C. §§ 1311(a) and 1342.

FOURTH CAUSE OF ACTION

102. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

103. The discharges of pollutants from point sources at the Landfill are not authorized by any federal or state Clean Water Act permit, and each such discharge therefore constitutes a violation of 33 U.S.C. §§ 1311(a) and 1342.

FIFTH CAUSE OF ACTION

104. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

105. Each of the water quality standards promulgated by DEC constitutes an “effluent standard or limitation” within the meaning of the Clean Water Act, 33 U.S.C. §§ 1362(11) and 1365(a)(1)(A).

106. The discharges of pollutants from the Landfill have caused or contributed to a condition in violation of a state water quality standard, 6 NYCRR § 703.2, and each such discharge therefore constitutes a violation of 33 U.S.C. 1311(a).

SIXTH CAUSE OF ACTION

107. Plaintiff repeats and realleges each of the preceding paragraphs as if fully set forth herein.

108. ECL § 17-0501 provides:

It shall be unlawful for any person, directly or indirectly, to throw, drain, run or otherwise discharge into such waters [of the state] organic or inorganic matter that shall cause or contribute to a

condition in contravention of the [New York State water quality] standards

109. The prohibition set forth in ECL § 17-0501 constitutes “an order issued by a State with respect to an [effluent] standard . . . or limitation.”

110. The discharges of pollutants from the Landfill violate the prohibition set forth in ECL § 17-0501, and each such discharge therefore constitutes a violation of the Clean Water Act and is actionable under 33 U.S.C. §§ 1311(a) and 1365(a)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully demands judgment against defendant as follows:

- A. Declaring that defendant’s discharges from the Landfill violate Sections 301, 302 and 304 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342, and 1344.
- B. Declaring that defendant’s discharges from the Landfill violate a state water quality standard, 6 NYCRR § 703.2;
- C. Declaring that defendant’s discharges from the Landfill violate ECL § 17-0501.
- D. Enjoining defendant from causing or permitting any further point or non-point source discharges from the Landfill in violation of the Clean Water Act, New York State water quality standards, or any New York State order with respect to an effluent standard or limitation;
- E. Enjoining defendant to fully restore all areas of the South Branch of Moose Creek, its tributaries, and associated wetlands adversely affected by the unlawful discharges from the Landfill;

- F. Enjoining defendant to provide to plaintiff copies of all future reports submitted by defendant to DEC concerning or relating to stormwater discharges from the Landfill;
- G. Imposing civil penalties in the amount of twenty-five thousand dollars (\$25,000) per day for each violation identified herein, as well as for each violation that occurs subsequent to the filing of this Complaint and before a final determination of the merits of this action, as authorized by Sections 309(d) and 505(a) of the Clean Water Act, 33 U.S.C. §§ 1319(d) and 1365(a);
- H. Awarding plaintiff its costs, including reasonable attorney and expert witness fees, as authorized by Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d); and
- I. Granting such other and further relief as the Court deems just and proper.

Dated: Albany, New York
June 7, 2006

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