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Commissioner

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March 31, 2006

Honorable David Mathis, Supervisor
Town of Ava
P.O. Box 68
Ava, New York 13303

Re: Oneida-Herkimer Solid Waste Management Authority

Dear Mr. Mathis:

Thank you for the recent correspondence regarding the Consent Order (Order) recently executed between the New York State Department of Environmental Conservation (Department), and the Oneida-Herkimer Solid Waste Management Authority. In the letter, the Town of Ava (Town) questions why the Order did not contain an acknowledgment of responsibility, and why the remedy (a fine of \$1,900, and the holding of a spring clean up) does not appear to match the "magnitude and severity of the violation." The Town suggests that the Department should have conferred with or consulted with the Town before agreeing to a spring clean up that is already provided by the Town to its residents. The Town also views the Order as permitting the "continued pollution of Moose Creek" and questions the Department's willingness "to take adequate measures to enforce the permit and protect the environment." Finally, the Town requests that the Order be rescinded and an "appropriate enforcement action taken."

This reply to the letter must be somewhat restrained since the Adirondack Communities Advisory League (ACAL) has recently caused a notice of intent to commence a citizen suit under the provisions of the Clean Water Act. The Department's policy is not to specifically comment on matters that are pending litigation, since the Department is represented by the Attorney General.

The Order provides for the identification of the problem, and how the Department and Authority agree to go from this point forward to correct the violations. In the Order the Authority agreed to perform the work to address this issue.

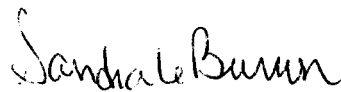
The Department recognizes that the construction required by the Order will continue until completion. The penalty in the Order should be assessed based on the proportionality of the violation. In this case, the discharges to Moose Creek are mostly color. There has been no measurable effect on the environmental aspects of the creek, except the visual aspect. Therefore, proportionality indicates that the penalty collected from the contractor and the Authority must be viewed in light of these conditions.

The Department regulations and policy do not allow the Department to allow a third party to be involved with consent order settlement discussions. The fact that the Town does a clean up day every spring indicates that this service is useful to the citizens of the Town. I support the Town's clean up programs and hope you will continue to sponsor them in the future. The Order benefits the citizens of the Town in that the currently budgeted amount can be utilized for other important town priorities, without the Town being involved in "host community benefits."

The Order regulates future discharges that may occur at the landfill. As the nature of the discharges are better understood, there will be better responses to elimination of the discharges altogether. The Order requires implementation of approved compliance measures related to the turbidity of discharges from the site. The Order does not authorize indefinite violations.

I appreciate the concerns of the Town and its citizens in this matter. If there are any further questions or concerns, feel free to call me at (315) 785-2239.

Sincerely,



Sandra LeBarron
Regional Director
Region 6

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