

**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

		RE:	DARTMOUTH-BWP/Solid Waste
In the matter of:)		Closure/Capping of the
)		Cecil Smith Landfill
Mary Robinson)		452 Old Fall River Road
383 Hixville Road)		ADMINISTRATIVE CONSENT ORDER
North Dartmouth, Massachusetts)		WITH PENALTY
)		File No.: ACOP-SE-14-4002
)		

**ADMINISTRATIVE CONSENT ORDER WITH PENALTY
AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Massachusetts Department of Environmental Protection (the “MassDEP” or the “Department”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Southeast Regional Office at 20 Riverside Drive, Lakeville, Massachusetts, 02347.

2. Mary Robinson (“Respondent”) is an Individual who resides at 383 Hixville Road, North Dartmouth, Massachusetts. Respondent is the owner of land located at 452 Old Fall River Road, Dartmouth, Massachusetts (the “Site”).

II. STATEMENT OF FACTS AND LAW

3. The Department is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150A and 150A1/2, the Solid Waste Management Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR

5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. The Site consists of approximately sixty (60) acres of site-assigned land. Located on the Site is an unlined/uncapped solid waste landfill (the "Landfill"). The Landfill is approximately 25-acres in size. According to MassDEP records, the Landfill accepted primarily construction and demolition ("C&D") waste and was operated between 1954 until 1974, when it ceased operations. In and around 1988, the Landfill was closed/capped according to plans approved by the Department.
5. In 1996, MassDEP conducted a Site inspection and observed multiple violations of applicable solid waste regulations established at 310 CMR 19.000, including the unpermitted dumping/storage/disposal of: tires, wooden pallets, wood waste, scrap metal, construction and demolition waste, paint cans, and evidence of open burning. MassDEP also observed that the Landfill's clay cap had been removed. MassDEP also observed that the Landfill/Site had no storm water controls and that the wetland resource areas around the perimeter of the Landfill had been compromised, as evidenced by multiple areas of ponded water, erosion, siltation and waste deposition. A review of Department files further indicated that routine environmental monitoring had not been performed and that an environmental site assessment had not been conducted.
6. Between 2002 and 2005, the United States Environmental Protection Agency ("USEPA") conducted site assessment investigation activities at the Site. The USEPA determined that although the Landfill had caused adverse impacts to the environment, as a result of measured elevated levels of contaminants in the ground water and sediments and soil, the impact was relatively low, and as such the Landfill was classified to be a low priority for further assessment, and that no further action by USEPA was planned.
7. On July 17, 2009 in response to a complaint alleging that there was unpermitted landfill disruption activity occurring at the Landfill, MassDEP conducted an inspection and observed that the Landfill had been disrupted as it displayed signs of excavation and presence of

exposed solid waste. In some areas of the Landfill there were accumulations of recyclable metal that appeared to have been excavated from the Landfill and that the residual materials had been placed back into the excavation area. MassDEP also observed evidence of ash and partially burned solid waste materials that had been excavated from the Landfill.

8. On August 7, 2009, MassDEP issued a Unilateral Administrative Order (“#UAO-SE-09-4001”) to the Respondent citing the following violations as observed on July 17, 2009:

- 310 CMR 19.142(5)(a), “Post-Closure Requirements”, for not taking corrective actions to remediate or mitigate conditions that compromised the integrity of the final cover system, including but not limited to the removal of the final cover system.
- 310 CMR 19.130(32)(a), “Disruption of Landfilled Areas”, for causing and/or allowing the excavation, disruption and/or removal of previously buried solid waste material without prior written approval.
- 310 CMR 7.07(5), “Open Burning”, for causing and/or allowing open burning to be conducted at the Site.

The UAO required:

- Immediate cessation of all unapproved post-closure use activities at the Landfill (especially that of landfill excavation/mining) and to promptly cover all exposed waste materials with six (6) inches of clean soil.
- Immediate implementation of a Health & Site Safety Plan (“HASp”) in order to ensure the protection of public health and safety on the Landfill/Site, especially regarding potential exposure to chemical and physical dangers associated with the buried waste materials.

- Within thirty (30) days, submittal of a Remedial Action Plan that would be prepared by a registered professional engineer in order to conduct an assessment of the Landfill/Site, and submit for review and approval a plan and schedule to: clean up, re-cap and otherwise remediate the Landfill.
9. MassDEP records indicate that the “Respondent” did not appeal the UAO.
 10. On August 28, 2009, MassDEP granted the Owner a thirty (30) day extension to comply with the UAO.
 11. MassDEP records indicates that the Respondent failed to comply with all of the requirements of the UAO.
 12. On March 20, 2011, MassDEP notified the Respondent of their failure to comply with the UAO.
 13. On June 22, 2011, MassDEP conducted an Enforcement Conference with the Respondent regarding the failed compliance with the UAO.
 14. On August 23, 2011, MassDEP issued to the “Respondent”, for their signature, an Administrative Consent Order with Penalty regarding the past issues of noncompliance and the establishment of a compliance plan and schedule.
 15. MassDEP records indicate that the “Respondent” failed to sign the Administrative Consent Order with Penalty. Therefore, the ACOP never became effective.
 16. On or about July 2, 2012, MassDEP met with Boston Environmental Corporaton (BEC), who stated that it had Powers of Attorney for the Owner for purposes of achieving compliance with 310 CMR 19.000 and the outstanding UAO dated August 7, 2009. BEC proposed utilization of the Department’s “Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites” (“Inactive Landfill Closure Guidelines”) dated July 6, 2001, and as revised on February 16, 2007, to close and cap the Landfill through the

use of approved grading/shaping materials, including mildly contaminated soils pursuant to MassDEP Policy #COMM-97-001, and processed construction and demolition materials, in order to accrue sufficient funds to pay for the closure/capping of the Landfill, as well as to fund the Landfill's post-closure monitoring and maintenance during the post-closure period of thirty (30) years.

17. On or about December 17, 2012, MassDEP received a conceptual landfill closure proposal (the "Conceptual Closure Proposal") from BEC pursuant to the Department's "Inactive Landfill Closure Guidelines". As proposed, the existing footprint of the Landfill would be excavated/consolidated to a final size of 23-acres, and an estimated one-million cubic-yards of approved grading shaping materials would be used to achieve final landfill closure grades/configuration.
18. On May 22, 2013, MassDEP, as part of its review of BEC's "Conceptual Closure Proposal", conducted an inspection of the Landfill/Site. During the inspection, MassDEP observed that many of the previously observed violations of 310 CMR 19.000, as described in the UAO, had not been corrected. MassDEP also observed additional violations including: numerous agricultural, farming and commercial activities being conducted on top of and/or immediately adjacent to the unlined/uncapped Landfill. Additionally, MassDEP observed a residential house had been constructed within the footprint of the Landfill and appeared to be occupied. The observed issues of noncompliance included:
 - A. 310 CMR 19.142(5) – Failure to Maintain Cap: MassDEP observed that the previous issue of noncompliance concerning the removal of the Landfill's cap still has not been resolved. MassDEP also observed many areas of exposed waste at the Site. As a result, this matter is a continued regulatory violation thereto.
 - B. 310 CMR 19.143(1) – Unpermitted Post-Closure Use of a Landfill: MassDEP observed that the entire landfill surface is being used, without approval, for agricultural and animal husbandry purposes. Included with these noncompliant activities, MassDEP also observed that many structures (e.g. sheds, barns, fences, etc.) have been constructed

on/in the Landfill. MassDEP has also learned that the single family home has been constructed at the Site, within the foot-print of the uncapped/unlined landfill, and that a private drinking water supply well and septic system are similarly constructed within the foot-print of the uncapped/unlined landfill.

- C. 310 CMR 19.130(32)(a) – Unpermitted Disruption of a Landfill: MassDEP observed that although many of the previously observed disrupted landfill-mining areas have ceased operation, many of these areas have not been properly covered with clean soil, and as a result, there are many areas of exposed waste at the Site. In addition, and as indicated above, MassDEP also observed that many structures (e.g. sheds, barns, fences, etc.) have been constructed on/in the Landfill, resulting in further disruption and penetration of the Landfill.
- D. 310 CMR 19.150(1)(b) – Failure to Conduct Environmental Site Assessment: An environmental site assessment has not been performed on the Landfill/Site as previously required under the UAO dated August 7, 2009.
- E. 310 CMR 19.132(2)(c) – Failure to Conduct Environmental Monitoring: Environmental monitoring data for the Landfill/Site has not been submitted to MassDEP for an extended period of time, as required under 310 CMR 19.132.
- F. 310 CMR 19.143(1) – Failure to Perform a Health Risk Assessment and Failure to Submit a Health and Safety Plan (“HASP”): The required Health and Safety Assessment and Plan has not been implemented/submitted as previously required under the UAO dated August 7, 2009.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to this Order:

19. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for

herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

20. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.

21. Respondent shall perform the following actions:

A. The Respondent shall also enter into Administrative Consent Order #ACO-SE-14-4001, concurrently with this Consent Order, which sets forth a schedule to achieve compliance with the UAO dated August 7, 2009, as well as all requirements to bring the Landfill into compliance with applicable regulations set forth at 310 CMR 19.000 regarding the assessment and closure of the Landfill.

B. **Within thirty (30) days of the Effective Date of this Consent Order**, the Respondent shall cease all unpermitted post-closure use activities at the Landfill/Site.

C. The Respondent shall comply with Administrative Consent Order #ACO-SE-14-4001.

22. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

23. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

Civil Administrative Penalty

24. Respondent shall pay to the Commonwealth the sum of One-Hundred Sixty Eight Thousand (\$168,000) Dollars as a Civil Administrative Penalty for the violations identified in Part II above, according to the following schedule:

- A. Respondent shall pay to the Commonwealth the sum of **Forty-Two Thousand (\$42,000) Dollars**, which represents twenty-five percent (25%) of the total Civil Administrative Penalty for the past violations identified in Part II above. Payment of above described 25% of the total Civil Administrative Penalty shall be paid to MassDEP pursuant to Paragraph 30 (below) in twelve (12) equal payments, the first payment being due thirty (30) days from the Effective Date of this Order.

This Consent Order establishes the schedule of payments, and constitutes notice that the payments are due as described above. Except for the first payment, and solely for Respondent's convenience, billing notices may be sent to Respondent before each payment due date. All payments must be made according to the schedule and terms agreed upon in this Consent Order, regardless of whether Respondent receives billing notices. All payments made after the first payment must include the billing stub from the billing notice (if received by Respondent). Failure to make timely payments in accordance with the foregoing payment plan shall result in revocation of the payment plan. In such event, the entire remaining penalty amount, plus interest dating back to the default date, shall become immediately due to the Commonwealth.

Supplemental Environmental Project ("SEP")

- B. MassDEP has determined that it is appropriate to include a Supplemental Environmental Project ("SEP") in the resolution of this matter. Such SEP is included for the purpose of mitigating the administrative penalty and not in lieu thereof. The terms of the SEP are set forth below:

- C. The value of the SEP shall be One Hundred and Twenty-Six Thousand (\$126,000) Dollars which represents seventy-five percent (75%) of the total Civil Administrative Penalty as described above in Paragraph 24.
- D. The Respondent shall establish an escrow account in a bank incorporated and located in the Commonwealth of Massachusetts. The escrow account shall be funded in three (3) equal installments of **Forty-Two Thousand (\$42,000) Dollars** each to be paid within twelve (12), twenty-four (24) and thirty-six (36) months from the Effective Date of this Order.

The Respondent shall provide information regarding the name of the bank and the account number to the Department within seven days from the date of the establishment of the account. The Respondent shall arrange for copies to be sent to the Department of all bank statements or other information provided to the Respondent by the bank regarding this account. The Respondent shall take appropriate steps to authorize the Bank to respond to inquiries regarding the account from an authorized representative of the Department. The bank records establishing the account shall stipulate that no funds may be withdrawn from this account without the written approval of MassDEP.

Any withdrawal of funds without the Department's approval shall be considered a violation of this Order.

The specific projects to be funded through the SEP shall be determined after review by the Department and after consultation with the Town Administrator for the Town of Dartmouth, and may include projects that mitigate impacts to the Town's residents or Town infrastructure affected by the activities required under this Administrative Consent Order with Penalty #ACOP-SE-14-4002, or provide additional environmental protection or remediation secured as a consequence of activities required by said Order, provided that all such projects are approved by the MassDEP to be consistent with the *Policy on Supplemental Environmental Projects*, ENF-07.001, as revised.

Respondent shall complete the SEP within four years of the Effective Date of this Order.

- E. Respondent hereby certifies that as of the Effective Date of this Consent Order, Respondent is not required to perform the actions of the SEP by: (1) any contractual or other legal obligation; (2) any federal, state or local law or regulation; or (3) any agreement, grant or as injunctive relief.
- F. Within thirty (30) days of completing the SEP, Respondent shall submit to MassDEP a SEP Completion Report, which shall document completion of the SEP by including: (1) a description of the actions to complete the SEP; (2) verification and documentation that the required expenditures were made and the dates of such expenditures; and (3) the following certification:

“I **Name, Title**, hereby attest under the pains and penalty of perjury that (i) I have personally examined and am familiar with the information contained herein; (ii) the information contained herein is true, accurate and complete to the best of my knowledge and belief; (iii) Respondent implemented the SEP in accordance with the requirements of this Consent Order; and (iv) I am fully authorized to make this attestation on behalf of the Respondent. I am aware that there are significant penalties, including without limitation possible fines and imprisonment, for willfully submitting false, incomplete or inaccurate information.”

- G. Respondent shall pay a stipulated Civil Administrative Penalty to the Commonwealth in the amount of **One Hundred and Twenty-Six Thousand (\$126,000) Dollars** if Respondent fails to perform and complete the SEP in accordance with this Consent Order .

- H. In the event the cost of performing and completing the SEP in accordance with the provisions of this paragraph is less than One Hundred and Twenty-Six Thousand (\$126,000) Dollars, Respondent shall pay to the Commonwealth as a Civil Administrative Penalty the difference between One Hundred and Twenty-Six Thousand (\$126,000) Dollars and the actual amount expended. Such penalty shall be paid on or before the due date for the completion of the SEP Completion Report as set forth above and payment shall be made in the manner set forth in this Consent Order for payment of all Civil Administrative Penalties.
- I. Respondent shall state in a prominent manner whenever it publicizes the SEP, or the results thereof, that the SEP was undertaken, or is being undertaken, as part of the resolution of an environmental enforcement action by MassDEP.
25. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP. This Consent Order may be modified only by written agreement of the parties hereto.
26. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.
27. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

28. This Consent Order shall be binding upon Respondent and upon Respondent's heirs, successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

Stipulated Civil Administrative Penalties

29. In addition to the penalty set forth in this Consent Order (including any suspended penalty), if Respondent violates "any provision" of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of one-thousand dollars (**\$1,000.00**) per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of

MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

30. Respondent shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, cashier's check, or money order made payable to the Commonwealth of Massachusetts, or by electronic funds transfer. If payment is made by certified check, cashier's check, or money order, Respondent shall clearly print on the face of its payment Respondent's full name, the file number appearing on the first page of this Consent Order, and the Respondent's Federal Employer Identification Number, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

In the event Respondent fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, Respondent shall be liable to the Commonwealth for up to three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time such penalty became due and attorneys' fees, including all costs and attorneys' fees incurred in the collection thereof. The rate of interest shall be the rate set forth in M.G.L. c. 231, § 6C.

31. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

32. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 452 Old Fall River Road in Dartmouth (the "Site") for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.
33. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.
34. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.
35. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To: Mary Robinson

This final document copy is being provided to you electronically by the Department of Environmental Protection. A signed copy of this document is on file at the DEP office listed on the letterhead.

By: _____

Mary Robinson, Owner

Federal Tax Payer Identification Number: On file

Date: 3/2/14

Issued By: MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document

By: _____
is on file at the DEP office listed on the letterhead.

Philip Weinberg, Regional Director
Southeast Regional Office
Massachusetts Department of Environmental Protection
20 Riverside Drive
Lakeville, MA 02347

Date: 3/28/14