

Town of Tuxedo, Consent Order Modification
DEC Case No. R3-20100630-69

The Town of Tuxedo entered into an Order on Consent with the Department regarding violations at the mulch site located at the Town DPW facility at 984 Long Meadow Road, Tuxedo (Case no. R3-20100630-69, effective date October 11, 2011). Pursuant to our meeting on June 19, 2012 and subsequent plan submittals regarding the facility, enclosed please find a Modification of the 2011 Consent Order's Schedule of Compliance ("Modification"). In the event of any conflict between the Order on Consent and this Modification, this Modification shall control. Except as modified by this Modification, the Order on Consent shall remain in full force and effect.

3. Remedial Activities and Milestones: Respondent shall timely perform the activities set forth below in a good and workmanlike manner and supply all required labor, equipment and materials at Respondent's own cost and expense:

On-Site Environmental Monitor

- A. The Respondent shall fund an On-Site Environmental Monitor ("OSEM") as set forth in Appendix A, attached, for an amount of \$13,000.00 for the last 6 months of state fiscal year 2012-2013. Such payment shall be submitted to the Department upon execution of this Order.
- B. Subsequent payments to fund this OSEM shall be made by the Respondent to fund 10% of an OSEM work-year for a period of three state fiscal years (April 1, 2013 to March 31, 2014; April 1, 2014 to March 31, 2015; April 1, 2015 to March 31, 2016). This amount shall not exceed \$13,000.00 per fiscal year. If the facility ceases to operate and closes prior to March 31, 2016, Respondent and Department staff shall re-evaluate the funding of the OSEM.

Wetland SL-12

- C. Within 14 days of the effective date of this Modification, a physical barrier (such as large boulders or concrete blocks) shall be placed on the line of the adjacent area of wetland SL-12 as shown on the survey submitted by H2M dated 7/19/12.
- D. Within 30 days of the effective date of this Modification, Respondent shall restore the adjacent area of wetland SL-12 by removing all material including without limitation mulch, log storage or equipment placed into the adjacent area. Respondent shall restore the adjacent area of SL-12 by removing fill and re-grading to the approximate pre-existing elevation, within 100 feet of the wetland boundary. Respondent shall seed the disturbed soil with perennial grass seed and maintain a mulch of hay or straw until fully vegetated. No solid waste processing or storage shall be conducted within the adjacent area.

Management of mulch processing

- E. Regarding mulch facilities, only the following material may be accepted for processing into mulch: tree parts including branches (with leaves), brush, stumps,

trunks and wood chips from utility line, right of way clearing or storm events. Leaves, grass clippings, garden debris, aquatic weeds and other similar materials resulting from activities such as municipal, commercial or residential lawn mowing, gardening, grounds keeping, landscaping and other routine property maintenance activities are prohibited.

- F. Within 30 days from the effective date of this Modification, Respondent shall submit for Department approval a plan indicating the location, size and separation distance of soil and incoming and processed mulch piles to be maintained by the Respondent and any operator. The plan shall be consistent with or certified by a NYS licensed professional engineer to be as effective as accepted best management practices such as found in the States of Kansas and Pennsylvania (attached). In the interim period before Department approval of the final plan, the Respondent shall maintain all mulch piles not to exceed 50' in height. A minimum separation distance of 25' shall be maintained between adjacent piles, pursuant to 6 NYCRR § 360-16.4(f)(3) requirements, including all incoming and processed piles. The plan shall also indicate the areal limit/boundary of what will be the registered facility (if that shall continue), the types of materials that will be accepted, the volume of materials (in cubic yards), and how long the material will remain on site; these details can be written on a second site plan or submitted in a separate process flow diagram. The plan shall also include a fire management and prevention plan as well as a water use minimization plan. Records will be maintained on site for both incoming and outgoing materials, including the type and amounts of material.
- G. Within 90 days of Department approval of the plan submitted pursuant to item F above, Respondent shall implement the Department approved plan.

Site Drainage

- H. As of the effective date of this Order, Respondent shall have eliminated all surface water discharges from the facility.
- I. Respondent shall submit for Department approval a revised Final Site Drainage Report certified by a licensed New York Professional Engineer which includes an implementation schedule.
- J. Within 30 days of Department approval of the revised Report submitted in item I, the Respondent shall implement the approved Report.
- K. Within 90 days of completion of the approved Final Site Drainage Report as set forth in the approved implementation schedule (item I and J above), the Respondent shall submit a licensed New York Professional Engineer (PE) Certification and final as-built plans certifying that all work contained in the approved engineering report and plans to collect mulching runoff has been completed as required by the terms and conditions of this Modification and shall certify that all discharges to the environment have permanently ceased.

Water testing

- L. Within 30 days of the effective date of this Modification, the Respondent shall provide a protocol for a water testing plan for wetland SL-12 adjacent to the facility for Department review and approval. The protocol shall provide for a minimum of three points to be tested on a monthly basis for a minimum period of six months to ensure the implementation of the Final Site Drainage Report is controlling mulch runoff.
- M. Within 90 days of Department approval of the water testing protocol submitted pursuant to item L above, the Respondent shall implement the approved water testing plan.

All other terms and conditions of the October 11, 2011 Order on Consent shall continue in full force and effect.

4. Stipulated Penalties:

PERIOD OF NONCOMPLIANCE - PENALTY PER DAY

Violations occurring on the 1st Day through 30th Day:	\$1,000.00/Day
Violations occurring on the 31st Day through 60th Day:	\$2,000.00/Day
Violations occurring each day thereafter:	\$3,000.00/Day

If the DEC determines that the Respondent has failed to strictly and timely comply with any provision of this Modification, the Department may serve upon Respondent a Notice of Noncompliance ("Notice"), which shall set forth the nature of the failure to comply and the calculation of stipulated penalties due. Respondent shall be granted five days from receipt of that Notice to comply with the items listed in the Notice without incurring penalty for the identified noncompliance. Respondent shall submit proof of compliance with the identified Notice items within the five days to the Department. If Respondent fails to comply with those items identified in the Notice within five days of receipt of the Notice, or if Respondent fails to submit to the Department proof of such compliance, the Department shall in its sole discretion determine whether to demand all or a portion of the stipulated penalties. If the Department determines to demand all or a portion of the stipulated penalties due, the Department shall send a demand to the Respondent, which amount shall be due and payable within 10 (ten) business days after receipt of such demand. Neither the Department's demand for payment of a stipulated penalty, nor Respondent's payment thereof, shall discharge Respondent from the obligation to comply with any obligation established in this Modification, or the 2004 Consent Order. The payment of stipulated penalties shall also not limit the Department's right to seek other and further relief as may be authorized by law.

**Order on Consent
DEC Case No. R3-20100630-69
Consent Order Modification**

The Town of Tuxedo hereby consents to the issuing and entering of this Modification of the Order on Consent entered into by the Town of Tuxedo with effective date of October 11, 2011, waives the right to notice and hearing, and agrees to be bound by the previous terms and conditions, and the terms and conditions contained herein, by execution hereof, by a person authorized by the Town to do so.

Town of Tuxedo

By: _____
Supervisor Peter M. Dolan

Date: _____

Joseph J. Martens
Commissioner
New York State Department of Environmental Conservation

By: _____
William C. Janeway
Regional Director, Region 3

Date: _____

This Order on Consent has been reviewed and approved
by the Regional Attorney as to form.

By: _____
Zackary D. Knaub
Regional Attorney, Region 3