



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

COMPLIANCE & ENFORCEMENT

Office of the Assistant Commissioner

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Lt. Governor

CATHERINE R. MCCABE
Commissioner

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ADMINISTRATIVE
CONSENT ORDER

IN THE MATTER OF:

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY
ONE DEKORTE PARK PLAZA
P.O. BOX 640
LYNDHURST, NJ 07071

EA ID # NEA190001 - 13317

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("Department") by N.J.S.A. 13:1D-1 *et seq.*, and the Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq.* (the "Act"), and the Solid Waste Management Act, N.J.S.A. 13:1E-1 *et seq.* and/or the Solid Waste Utility Control Act N.J.S.A. 48:13A-1 *et seq.*, duly delegated to the Assistant Commissioner of Compliance & Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. NEW JERSEY SPORTS AND EXPOSITION AUTHORITY (NJSEA) owns the facility, known as KEEGAN SANITARY LANDFILL (SLF) at 437 Bergen Ave Block(s) 205 and Lot(s) 18,19,02, 24, 27, 29, 30, 31 and 33 in Kearny Town, Hudson County, New Jersey (ID# 13317).
2. The Keegan SLF was re-opened in 2009 by the New Jersey Meadowlands Commission (NJMC). The NJMC was later merged with the NJSEA. The NJSEA is currently authorized to operate the solid waste landfill facility pursuant to a Certificate of Authority to Operate (Certificate No. CTO180001) issued by the Department on November 14, 2018.
3. As the result of a compliance investigation conducted March 1, 2019, the Department has determined that NJSEA failed to comply with applicable requirements as follows.

Requirement: Pursuant to N.J.A.C. 7:27- 7.3, no person shall cause, suffer, allow, or permit hydrogen sulfide to be emitted from a sanitary landfill, legacy landfill, or closed sanitary landfill facility as defined in the Solid Waste rules at N.J.A.C. 7:26-1.4 and 2A.9(b) in a concentration greater than 30 parts per billion by volume (ppbv) averaged over any 30-minute period at or beyond the property line of the sanitary landfill. [N.J.A.C. 7:27- 7.3]

Description of Noncompliance: NJSEA emitted hydrogen sulfide from the Keegan SLF in a concentration greater than 30 parts per billion by volume (ppbv) averaged over a 30 minute period beyond your property line on March 1, 2019 between 13:02 and 13:32 hours. The average of nine readings was 34.33 ppb, in violation of N.J.A.C. 7:27-7.3.

4. Based on the facts set forth in these FINDINGS, the Department has determined that NJSEA has violated Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the regulations promulgated pursuant thereto, specifically, N.J.A.C. 7:27- 7.3.
5. NJSEA shall comply with all operation, maintenance and odor control requirements of the Solid Waste Management Act in order to prevent violations of the Air Pollution Control Act as noted in the above FINDINGS. In order to resolve this matter without trial or adjudication or admission of any fault or liability, NJSEA has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. HEARING REQUEST

6. NJSEA hereby waives its right to request an administrative hearing with respect to the enforcement action which has been issued and which is described in paragraph 3, above.

B. COMPLIANCE SCHEDULE

7. NJSEA shall take all actions that may be necessary to achieve and maintain compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1.1 et seq. and its applicable rules, the Solid Waste Management Act, N.J.S.A. 13:1E-1.1 et seq. and its applicable rules, the Solid Waste Utility Control Act, N.J.S.A. 48:13A-1 et seq. and its applicable rules, and the Certificate of Authority to Operate No: CTO180001 issued to Keegan SLF on November 14, 2018, including but not limited to the following:

- a. Submit a monitoring action plan to the Department no later than April 1, 2019. Said plan shall include the type and specifications for proposed monitoring devices, proposed locations of monitors, the data acquisition system proposed for use, and the method and frequency of data transmittal to the Department. The plan must also identify the specific actions that NJSEA will take to control and/or mitigate the emissions of hydrogen sulfide in order to achieve and maintain compliance with N.J.A.C. 7:27-5.2(a) and 7.3 and N.J.A.C. 7:26-2A.7(f)4 in response to hydrogen sulfide monitoring data that meets or exceeds the following Action/Criteria Level:

Ambient Air Concentration (30 minutes) \geq 30 ppb

- b. Within 30 days of monitoring action plan approval, install and operate a continuous hydrogen sulfide ambient air monitoring system. The monitoring system shall consist of at least eight continuous hydrogen sulfide ambient fence-line monitors, equally spaced around the boundary of the landfill. These monitors shall run twenty-four hours per day, seven days a week. The monitoring system shall be designed in accordance with 40 CFR Part 58, Appendix D and shall meet the requirements set forth in N.J.A.C. 7:26-2A.7(h)10ii and 2A.8(h)12.
- c. NJSEA shall immediately notify the Department at 1-877-WARNDEP if monitoring at the property's fence line indicates H₂S concentrations equal to or greater than 30 ppbv (see N.J.A.C. 7:27-7.3), and/or if other information demonstrates the presence of an air contaminant concentration that has the potential to cause an odor complaint or air pollution as defined in N.J.A.C. 7:27-5. NJSEA shall take all reasonable measures to control or eliminate any such emissions.
- d. Reasonable measures shall include, but need not be limited to, providing additional cover, and excavation and removal of malodorous waste.
- e. Perform and submit to the Department an analysis to estimate the generation of emission rates for hydrogen sulfide and any other air contaminants from the landfill for calendar years 2019 through 2024 by May 30, 2019.
- f. Immediately implement measures in order to return to compliance with N.J.A.C. 7:27-5.2(a) and 7.3, and N.J.A.C. 7:26-2A.7(f)4 and 2A.8(b)30, including but not limited to the following:

1. Minimize or eliminate the acceptance of C&D waste which contains gypsum wallboard, especially gypsum fines;
 2. Evaluate the use of additional or alternative cover material and/or cover products;
 3. Properly compact daily cover material;
 4. Minimize the surface area of the working face of the landfill.
- g. If compliance with N.J.A.C 7:27-5.2(a) and 7.3, and N.J.A.C 7:26-2A.7(f)⁴ is not achieved to the Department's satisfaction by September 1, 2019, NJSEA shall, within 30 days of Department notification, submit a proposal for the design, installation, operation and maintenance of a gas collection system to prevent and control the migration of landfill gasses off-site in accordance with N.J.A.C 7:26-2A.7 and 2A.8 and apply for required air pollution permits in accordance with N.J.A.C. 7:27-8 and/or 22.
8. If NJSEA is not able to achieve compliance by taking the above actions, NJSEA is responsible for taking whatever additional actions are necessary in order to comply with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein.

C. PROGRESS REPORTS

9. NJSEA shall submit progress reports on compliance measures as outlined above to the Department by the first day of each month following execution of this ACO. Each report shall explain the status of NJSEA's compliance with this ACO and shall include, but not be limited to, the following:
- A. Identification of site and reference to this ACO;
 - B. Status of permitting and planning approvals and any work at the site and progress to date;
 - C. Difficulties or problems encountered during reporting period and actions taken to rectify;
 - D. Activities planned for the next reporting period;
 - E. Required and actual completion date for each item required by this ACO;
 - F. An explanation of any non-compliance with the compliance schedule; and
 - G. Evaluation of all corrective measures implemented to date.

D. PENALTY

10. In settlement of the Air Pollution Control Act violations cited in the above findings, NJSEA shall pay a penalty of \$2,000.00. Payment shall be made by check made payable to the Treasurer, State of New Jersey and remitted to the Division of Revenue at the address stated on the enclosed invoice within 30 days of execution of this ACO.

E. STIPULATED PENALTIES

11. NJSEA shall pay stipulated penalties to the Department, as set forth below, for failure to comply with any of the provisions of this ACO unless the Department has notified NJSEA in writing that a stipulated penalty will not be assessed pursuant to the force majeure provisions of this ACO or in the Department's sole discretion.

<u>Calendar Days After Due Date</u>	<u>Per Calendar Day</u>
1-7	\$500
8-14	\$1000
15 or more	\$2500

12. Within 30 calendar days after NJSEA's receipt of a written demand from the Department for stipulated penalties, NJSEA shall submit a check to the Department as outlined in paragraph 10 above.
13. If NJSEA fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70. In any such action, the Department reserves the right to seek additional penalties as may be appropriate for violations of this ACO.
14. The payment of stipulated penalties does not alter NJSEA's responsibility to complete all requirements of this ACO.

F. FORCE MAJEURE

15. If any event occurs which is beyond the control of NJSEA and which NJSEA believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, NJSEA shall notify the Department in writing within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, NJSEA shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. NJSEA shall take all necessary action to prevent or minimize any such delay.

16. The Department may adjust the deadlines in the compliance schedule of this ACO for a period no longer than the delay if the Department finds that:
 - A. NJSEA has complied with the notice requirements of paragraph 15;
 - B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of NJSEA; and
 - C. NJSEA has taken all necessary actions to prevent or minimize the delay.
17. If the Department denies NJSEA's force majeure request, NJSEA may be subject to stipulated penalties. The burden of proving that any delay is caused by circumstances beyond the control of NJSEA and the length of any such delay attributable to those circumstances shall rest with NJSEA. Increases in the cost or expenses incurred by NJSEA in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure.

G. GENERAL PROVISIONS

18. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
19. This ACO shall be binding on NJSEA, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
20. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
21. NJSEA agrees not to contest the terms or conditions of this ACO except that NJSEA may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
22. This ACO shall not relieve NJSEA from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
23. No modification or waiver of this ACO shall be valid except by written amendment duly executed by NJSEA and the Department or by the Department's written modification pursuant to the force majeure provisions herein.

24. Unless otherwise specifically provided herein, NJSEA shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Tom Farrell Manager
Division of Solid Waste Enforcement
Mail Code 09-01
PO Box 420
9 Ewing Street
Trenton NJ 08625-0420

Jeffrey Meyer, Manager
Division of Air Enforcement
Bureau of Air Compliance & Enforcement-Northern
7 Ridgedale Avenue
Cedar Knolls, NJ 07927

The date the Department receives the certified mail or executes the acknowledgment will be the date the Department uses to determine NJSEA's compliance with this ACO.

25. Unless otherwise specifically provided herein, any communication made by the Department to NJSEA pursuant to this ACO shall be sent to:

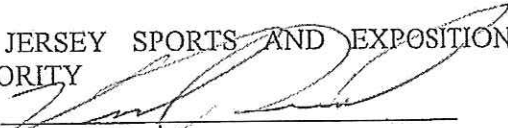
New Jersey Sports and Exposition Authority
1 Dekorte Park Plaza
Lyndhurst, NJ 07071
ATTN: Thomas Marturano and Office of the President & CEO

26. NJSEA shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving NJSEA of its obligations under its Certificate of Authorization to Operate, any permits issued to NJSEA, this ACO, the Air Pollution Control Act and/or its regulations, the Solid Waste Management Act and/or its regulations, and/or the Solid Waste Utility Control Act and/or its regulations.


27. In addition to the Department's statutory and regulatory rights to enter and inspect, NJSEA shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.

28. Nothing in this ACO shall preclude the Department from taking enforcement action against NJSEA for matters not set forth in the findings of this ACO.
29. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
30. NJSEA shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of NJSEA's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that NJSEA enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
31. The Department reserves all statutory and common law rights to require NJSEA to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
32. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
33. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.
34. This ACO represents the entire integrated agreement between the Department and NJSEA on the matters contained herein.
35. The Department reserves the right to unilaterally terminate this ACO in the event NJSEA violates its terms and to take any additional enforcement action it deems necessary.
36. This ACO shall terminate upon receipt by NJSEA of written notice from the Department that all the requirements of this ACO have been satisfied.

37. This ACO shall become effective upon the execution hereof by all parties, subject to completion of any required public participation process.

DATED: 3/21/19
NEW JERSEY SPORTS AND EXPOSITION
AUTHORITY
BY: 
NAME: Vincent Prieto
TITLE: President and CEO

By this signature, I certify that I have full authority to execute this document on behalf of NEW JERSEY SPORTS AND EXPOSITION AUTHORITY.

DATED: 3/22/19
NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
BY: 
NAME: Jeffrey Meyer
TITLE: MANAGER

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP.