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New York State Department of Environmental Conservation  
Office of General Counsel, Region 8  
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Phone: (585) 226-5369 • Fax: (585) 226-9485  
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Joe Martens  
Commissioner

July 14, 2014

(via email and regular mail)

Mr. Dale Irwin  
Vice President  
Lockwood Hills LLC  
590 Plant Road  
P.O. Box 187  
Dresden, New York 14441

Frank Bifera, Esq.  
Hiscock Barclay  
80 State Street  
Albany, New York

Re: Lockwood Hills Ash Disposal  
Case No. R8-20140710-47

Dear Messrs. Irwin and Bifera:

Please be advised that I have been requested to commence enforcement action against Lockwood Hills LLC and Atlas Holdings LLC for violations of the New York State Environmental Conservation Law and the Part 360 and SPDES facility permits that have been issued for operations at the Lockwood Hills Ash Disposal site.

It is the Department's preference to resolve violations of this sort by an administrative consent order. Towards that end, I am enclosing a draft consent order for your consideration. The order contains the terms of settlement which are acceptable to the Department to resolve the violations.

If the terms of the consent order are acceptable, I request that you have an authorized representative of your company sign the document in the presence of a notary public and return it to me within thirty (30) days. Then, I will arrange to have the order signed by our regional director on behalf of the Department and you will be provided with a fully executed copy of the document.

If you wish to discuss the order, feel free to contact me at 585-226-5369. Your anticipated cooperation and prompt response to this letter is appreciated.

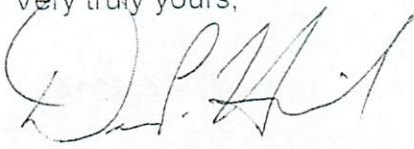
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WATER DIVISION  
NYSDEC REGION 8

Tech park Owner LLC  
July 29, 2011  
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Very truly yours,



Dennis P. Harkawik  
Regional Attorney

enclosure

cc: S. Sheeley, S. Foti, S. Rodabaugh, F. Ricotta (all with enclosure)

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WATER DIVISION  
MSDC REGION 8

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Articles 17 and 27 of the New York  
State Environmental Conservation Law by

**CONSENT  
ORDER**

Lockwood Hills LLC and Atlas Holdings LLC,

CASE NO.  
R8-20140710-47

Respondents.

-----X  
**WHEREAS:**

**FIRST.** The New York State Department of Environmental Conservation (the "Department" or "DEC") is and at all times mentioned herein has been a Department of the State of New York (the "State") with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law ("ECL"), and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR" or the "regulations").

**SECOND.** The Department is charged with the responsibility and authority to promote and coordinate the management of the water, land, fish, wildlife and air resources of the State to assure their protection, enhancement, provisions, allocation and balanced utilization, pursuant to ECL § 3-0301.

**THIRD.** The Department is charged with jurisdiction over the maintenance of the quality of the waters of the State, and over the discharge to such waters, including groundwater, pursuant to Article 17 of the ECL and regulations promulgated pursuant thereto.

**FOURTH.** Pursuant to ECL Article 27 and the regulations promulgated pursuant thereto, the Department regulates solid waste management facilities in the state as defined at 6 NYCRR § 360-1.2(b)(158).

**FIFTH.** The Department is authorized to seek penalties and other appropriate sanctions for any violations of Articles 17 and 27 of the ECL, the regulations promulgated and permits issued pursuant thereto.

**SIXTH.** Lockwood Hills LLC (“Lockwood Hills”) and Atlas Holdings LLC (“Atlas”) (together referred to as “Respondents”) are limited liability companies authorized to do business in the State.

**SEVENTH.** Lockwood Hills LLC is the owner and operator of a solid waste management facility, a wastewater disposal system, and related improvements at a location in the town of Torrey, Yates County, New York, commonly known as the Lockwood Ash Landfill (the “Landfill”). The Landfill accepts for disposal coal ash originating from the Greenidge Generating Station. Among the improvements at the Landfill is an unlined leachate and stormwater collection pond (the “Leachate Pond”).

**EIGHTH.** GMMM Lockwood LLC currently is the named permittee for a SPDES permit (NY – 010 7069) (the “SPDES permit”) and a solid waste management facility permit (8-5736-00005/00003-0) (the “Part 360 permit”) that govern certain operations at the Landfill. These permits, *inter alia*, regulate the collection, management and discharge of leachate and stormwater at the site,

including the Leachate Pond..

**NINTH.** On February 28, 2014, Atlas purchased all of the membership interest in GMMM Lockwood LLC; and Lockwood Hills, an affiliate of Atlas, has applied for the transfer of the SPDES permit and Part 360 permit to Lockwood Hills.

**[PLACEHOLDER FOR FURTHER INFORMATION TO CHARACTERIZE LEGAL RELATIONSHIPS]**

**TENTH.** The application to transfer the permits is currently under review by the Department.

**ELEVENTH.** Based upon a review of information in the possession of and provided to the Department, the Department has determined that groundwater at the site contains substances in excess of the duly promulgated water quality standards for, inter alia, total dissolved solids, boron, manganese, magnesium, iron, sodium and sulfate.

**TWELFTH.** The Department has further determined that the Leachate Pond is a source of the substances.

**THIRTEENTH.** The discharge of leachate to groundwater from the Leachate Pond is not permitted or otherwise authorized by the Department.

**FOURTEENTH.** Said discharge has contributed to and continues to contribute to a condition in contravention of duly promulgated water quality standards in violation of ECL § 17-0501.

**FIFTEENTH.** Said discharge is also in violation of 6 NYCRR 360-1.14(b)(2).

**SIXTEENTH.** Each violation heretofore stated, is subject to the sanctions authorized by ECL Article 71, Titles 19 and 27.

**SEVENTEENTH.** Issuance of this Consent Order by the Department is necessary before the Department can approve pending and future permit applications necessary to restart the Greenidge Generating Station.

**EIGHTEENTH.** Representatives of Respondents and the Department have conferred and have agreed to execute this Consent Order (the "Consent Order") in settlement of Respondents' civil liability for the violations related to the groundwater discharges described and identified herein.

**NINETEENTH.** Respondents affirmatively waive the right to a hearing in this matter, consent to the issuance of this Consent Order and each agree to be jointly and severally bound by its provisions, terms and conditions.

**NOW**, being duly advised and having considered the matter, **IT IS ORDERED THAT:**

**I. OBJECTIVE.** It is the objective of this Consent Order for Respondents to eliminate the groundwater discharge of leachate from the Leachate Pond and to provide for a satisfactory monitoring regime for groundwater impacted by the discharge . Towards those ends, Respondents shall perform the compliance requirements stated in this Consent Order and take such other and further steps necessary to attain the objectives of this Consent Order or as otherwise directed by

the Department pursuant to its lawful authority.

**II. COMPLIANCE REQUIREMENTS: WATER QUALITY MONITORING.**

All groundwater, surface water and leachate monitoring already required under the Landfill SPDES permit, Part 360 Permit, Environmental Monitoring Plan and Site Analytical Plan dated February 2007 shall continue.

**III. COMPLIANCE REQUIREMENTS: SEGREGATING AND MANAGING LEACHATE AND STORMWATER; REMOVING CONTAMINATED SEDIMENTS FROM LEACHATE POND; MODIFYING PERMITS.**

A. Within 4 months of the effective date of the Consent Order, Respondents shall submit an Engineering Report (the "Report") to the Department for its review and approval, which details a plan to: (1) segregate stormwater from leachate at the site; (2) re-route leachate to an on-site holding tank; (3) treat and dispose of leachate at the site or at an appropriate offsite facility; (4) remove and dispose of all contaminated sediment in the Leachate Pond; and (5) use the remediated Leachate Pond for an erosion and sediment control pond to facilitate stormwater management at the site.

B. The Report shall include a proposed implementation schedule so that all items of the approved Report will be completed and necessary approvals obtained by December 31, 2015.

C. Within 4 months of the Department's approval of the Report, Respondents shall submit engineering plans and specifications for the performance of the

approved Report to the Department for review and approval.

D. When the proposed plans and specifications are approved by the Department, Respondent shall commence work according to the terms, conditions and schedule approved by the Department.

E. Within 30 days of completion of all work required under the approved Report, Respondent shall submit the following to the Department for its review and approval: (1) as built drawings or other appropriate documentation which demonstrates that all work has been completed; and, (2) an engineering certification that construction and implementation of the approved Report has been completed in accordance with the approved Report.

F. Within 30 days after the Department approves the submission required in § III.E, Respondents shall apply for and diligently pursue a modification of its SPDES permit and Part 360 permit to reflect the segregation of stormwater from leachate, the re-routing, storage, treatment and disposal of the leachate and appropriate monitoring requirements.

**IV. GENERAL CONDITIONS APPLICABLE TO SUBMISSIONS REQUIRED UNDER THIS ORDER.** The following conditions apply to the submissions required under the Consent Order:

A. Should Respondents fail to make any submission in a timely fashion, or should the submission otherwise fail to comply with the requirements of the Consent Order, the Department may declare Respondents to be in violation of the Consent Order and pursue any other remedy against Respondent provided by law;



B. All submissions must be prepared by a professional engineer licensed in the state unless the Department specifies otherwise;

C. All submissions required under the Consent Order shall be made to the Regional Material Management Engineer in the Department's Region 8 office in Avon, NY;

D. Respondents shall diligently reply to all questions, comments and issues raised by the Department in its review of any submission; and

E. The terms and conditions of the Department's approval of any submission, including any schedule established thereby, constitute and become material parts of the Consent Order and are enforceable as such without further modification of the Consent Order.

**V. STIPULATED PENALTIES.**

Respondents shall pay the following stipulated civil penalties for each day it fails to satisfactorily complete any action by a designated milestone date.<sup>1</sup>

<u>Number of Days Respondent Exceeds any Milestone Date</u>	<u>Amount of Stipulated Civil Penalty Per Day of Violation</u>
1 - 30	\$500
31 - 60	\$750
61 and beyond	\$1000

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<sup>1</sup> A "milestone date" is a date or timeframe established by this Consent Order for the completion of a designated act, or a date or timeframe established for the completion of a designated act in an approval issued by the Department in response to submissions required under this Consent

C. Respondent shall remit the appropriate stipulated penalties to the Department within thirty (30) days of receipt of written notice from the Department that the Department has elected to assess same.

**VI. EFFECT OF PAYMENT OF PENALTY.** Assessment and payment of any civil penalty imposed shall not in any way alter Respondents' obligation to satisfactorily perform any action required by the Consent Order or by any approval issued by the Department in response to submissions required under the Consent Order.

**VII. EFFECTIVE PERIOD OF THIS CONSENT ORDER.** The effective date of the Consent Order is the date it is signed by a representative of the Commissioner of the Department. The Consent Order will remain in effect until Respondent has obtained a final decision from the Department modifying the Part 360 and SPDES permits pursuant to §III.F of this Consent order and all times to challenge the decision have expired; otherwise fulfilled all of the compliance requirements stated in the Consent Order; and, paid any penalties that may be assessed hereby.

**VIII. STANDARD PROVISIONS.** Respondent shall further comply with the standard provisions recited on the attached blue cover, which constitute material

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Order.

and integral terms and conditions of the Consent Order and are hereby incorporated into the Consent Order by reference.

DATED: \_\_\_\_\_  
Avon, New York

JOE MARTENS, Commissioner  
New York State Department of  
Environmental Conservation

By \_\_\_\_\_  
PAUL J. D'AMATO  
Regional Director



