

**COUNTY COUNCIL OF CECIL COUNTY, MARYLAND**  
**LEGISLATIVE SESSION**

**RESOLUTION NO. 06-2013**

**Date Introduced:** February 5, 2013                      **Legislative Session Day:** 2013-03

**Introduced by:** Council President on behalf of the County Executive

A **RESOLUTION** regarding the Consent Order between the State of Maryland Department of Environment and Cecil County, Maryland with regard to alleged violations of the Sediment Control Act, Water Pollution Control Act, and the Water Supply Systems, Sewerage Systems, and Refuse Disposal Systems Act of the Environment Article.

**Introduced, ordered posted, and scheduled for consideration:**

**on:** February 19, 2013

Notice and title of Resolution having been posted on February 8, 2013 at the County Administration Building, 200 Chesapeake Blvd., Elkton and consideration by the Council having been scheduled on February 19, 2013.

**By:** James Massey  
Council Manager

COUNTY COUNCIL OF CECIL COUNTY, MARYLAND  
RESOLUTION NO. 06-2013

1           **WHEREAS**, a Consent Order between the State of Maryland, Department of the Environment and  
2 Cecil County, Maryland outlines in detail the violations, penalties and resolution to correct alleged  
3 environmental regulations that occurred on County owned property at 758 East Old Philadelphia Road  
4 known as the Cecil County Landfill; and

5           **WHEREAS**, the County Council of Cecil County was briefed on the terms of the Consent Order by the  
6 Director of the Department of Public Works on February 5, 2013; and


7           **WHEREAS**, the Council received a recommendation from the Cecil County Executive and Director of  
8 Public Works to execute the Consent Order to resolve the alleged violations against the County.

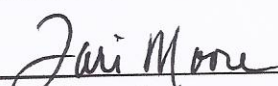
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10           **NOW, THEREFORE, BE IT HEREBY RESOLVED** that the County Council of Cecil County authorizes  
11 Robert J. Hodge, President of the County Council of Cecil County to sign the Consent Order between the  
12 State of Maryland, Department of the Environment and Cecil County, Maryland to settle the alleged  
13 violations as outlined in the agreement (copy of Consent Order attached).

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15 INTRODUCED: February 5, 2013

16  
17 ADOPTED: February 19, 2013

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\_\_\_\_\_  
President of the Council

21 ATTEST:  
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23 \_\_\_\_\_  
24 Council Manager

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27 By the Executive:  
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29 \_\_\_\_\_  
30 County Executive

\_\_\_\_\_  
Date 2/20/13



WHEREAS, the County owns the property known as 758 East Old Philadelphia Road in Cecil County, Maryland ("Subject Property"). The Subject Property contains the Cecil County Central Landfill which encompasses 40-acres of fill area on 418-acres of land ("Facility"); and

WHEREAS, the County operates the Facility pursuant to Refuse Disposal Permit, No. 2007-WMF-0532. The subject Refuse Disposal Permit requires that the County operate the Facility in such a manner as to prevent water pollution; and

WHEREAS, the Department alleges that the County has discharged sediment-laden effluent from the Facility and into waters of the State. The subject discharges, which were observed by the Department on thirteen separate occasions between January 2009 and March 2011, constitute violations of Sections 4-413, 9-204, and 9-322, of the Environment Article; and

WHEREAS, the County submitted a proposal to the Department on May 6, 2011 to implement a Step-Pool Stormwater Conveyance ("SPSC") Demonstration Project at the Facility, the purpose of which is to evaluate the effectiveness of the SPSC technology in improving the quality of the stormwater runoff from the Facility and to assess the possible implementation of an SPSC system on a site-wide basis; and

WHEREAS, the County completed construction of the SPSC Demonstration Project as set forth in its May 6, 2011 proposal and has begun to monitor the performance of the project; and

WHEREAS, this Consent Order resolves alleged violations of Md. Code Ann., Envir. Art. Title 4, Subtitle 4, Title 9 Subtitle 2, and Title 9 Subtitle 3 against the County, and requires the County to take corrective actions, the Department agrees to the proposed SPSC Demonstration Project; and

WHEREAS, the Department is prepared to seek penalties for the alleged violations described above. Pursuant to Section 4-417, civil administrative penalties may be assessed up to \$10,000 per day of violation, not exceeding a total sum of \$100,000. Pursuant to Section 9-342, civil administrative penalties may be assessed up to \$5,000 per day of violation, not exceeding a sum of \$50,000. Pursuant to Section 9-268 of the Environment Article, Annotated Code of Maryland, a person who violates applicable provisions of Title 9, subsection 2, is liable for a civil penalty not exceeding \$10,000.

WHEREAS, the Department and the County (the "Parties") wish to settle the alleged violations without the necessity of filing a formal complaint in this matter and without the admission, imposition, or adjudication of liability or guilt.

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NOW THEREFORE, it is this \_\_\_ day of \_\_\_\_\_, 2013, agreed between the Director of the Water Management Administration and Cecil County, Maryland, in resolution of the violations described herein, that:

#### PENALTY

1. The Department has assessed a penalty of \$35,000 for the violations alleged above. \$15,000 of the penalty shall be payable to the Department. The County shall offset the remaining \$20,000 through the completion of a supplemental environmental project, set forth below.
2. Within thirty (30) calendar days of the execution of this Order, the County shall pay to the Department a penalty in the amount of fifteen thousand dollars (\$15,000) in full and final satisfaction of, and in resolution of any and all claims arising from the facts alleged herein. Payment shall be made by check, made payable to the Clean Water Fund, c/o Maryland Department of the Environment, Fiscal Services Division, Cash Receipts/Advances Unit, P.O. Box 2057, Baltimore, Maryland 21203.

#### CORRECTIVE ACTIONS

3. The County shall continue to monitor the performance of the SPSC demonstration project for a minimum of three months. The County may extend this monitoring period if a longer monitoring period is warranted in order to properly assess performance of the system based on the storm events and stormwater runoff conditions experienced during the monitoring period. Within 30 days after completion of the initial monitoring period, the County shall submit a report to the Department indicating the results of the monitoring period and whether any additional monitoring is warranted. If the monitoring period is extended, the County shall submit a final assessment report to the Department within 30 days after completion of the monitoring.
4. The County shall continue to make every reasonable effort to implement interim measures needed to minimize any discharges in violation of Sections 4-413, 9-204, and 9-322, of the Environment Article during design and construction of the SPSC Demonstration Project.

#### SUPPLEMENTAL ENVIRONMENTAL PROJECT

5. The County shall further complete a supplemental environmental project ("SEP") for the Removal and Stabilization of Bridge Number CE-006, Mill Lane over Scotchmans Creek, as proposed in a Proposed Site Plan dated January 11, 2010, which has been attached as Attachment A and incorporated herein. The SEP will

consist of the removal and disposal of all structural components associated with the subject bridge, the permanent stabilization of the road embankments on both sides of the bridge and the eastern side of the washed out portion of Mill Lane. The County, as part of the SEP will also stabilize these areas through the reduction of slopes, removal of washed out gullies, and the planting of regraded slopes. The County shall complete all work associated with the SEP by October 30, 2013.

6. The SEP will cost a minimum of \$60,000, as a means of offsetting the penalty assessed by the Department.
7. The County is responsible for the satisfactory completion of the SEP(s) in accordance with the requirements of this Order. Satisfactory completion means that the County shall complete the work in accordance with paragraph 5 and Attachment A, and shall spend, in total, not less than the amount set forth in paragraph 6, above. The County may use contractors and/or consultants in planning and implementing the SEP.
8. Within 60 days after the date set for completion of the SEP set forth in paragraph 5, the County shall submit a SEP Completion Report to the Department in accordance with the notice provisions of paragraph 17. The SEP Completion Report shall contain the following information:
  - a. A detailed description of the SEP as implemented;
  - b. A description of any problems encountered in completing the SEP and the solutions thereto;
  - c. An itemized list of all SEP costs, identify those that are Design Costs.
  - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
9. The Department may, in their sole discretion, request information in addition to that described in the preceding paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs.
10. After receiving a SEP completion report, the Department shall notify the County whether or not the County has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, stipulated

penalties may be assessed under paragraphs 13 and 14 of this Order. If the amount actually expended on performance of the SEP(s) is less than the amount set forth in paragraph 6, the County shall, within thirty (30) days after receiving notice from the Department that it has satisfactorily completed the SEP, submit payment in the amount of 50% of the difference between the amount set forth in paragraph 6 and the amount actually expended to the "Maryland Clean Water Fund," in accordance with the instructions in paragraph 2, above.

11. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear a certification that the information provided is complete and accurate.
12. Any public statement, oral or written, in print, film, or other media, made by the County making reference to the SEP under this Order shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken on behalf of the Maryland Department of the Environment under Title 9, Subtitle 3 of the Environment Article, Annotated Code of the State of Maryland."

#### STIPULATED PENALTIES

13. The County shall pay a stipulated penalty to MDE's "Clean Water Fund" upon written demand by the Department in accordance with the following criteria:

If the County fails to meet any milestone dates set forth in this Consent Order it shall pay \$100 per day for each day beyond the Milestone date, until the requirement is met. Failure to meet more than one milestone date shall subject the County to cumulative stipulated penalties for each day that each separate requirement is not met.

14. Stipulated penalties incurred pursuant to the Consent Order shall be due and payable to the Maryland Clean Water Fund, c/o Maryland Department of the Environment, P.O. Box 2057, Baltimore, Maryland 21203 within 30 days of the County's receipt of a written demand from the Department. The Department may, at its discretion, reduce or waive a stipulated penalty if it determines that noncompliance is attributed to a force majeure as described below.

#### FORCE MAJEURE

15. The County shall perform the requirements of this Consent Order in the manner and within the time limits set herein, unless the performance is prevented or

delayed by events that constitute a force majeure. The County shall have the burden of proving such a force majeure. A force majeure is defined by any event or circumstance arising from causes beyond the control of the County, which cannot be avoided or overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Order.

- a. Circumstances beyond the control of the County include earthquake, flood or other act of God, war, riot, injunction, fire, freight embargo, or strike. Such circumstances do not include increased costs of performance, changed economic circumstances, or failure to obtain federal, state or local permits unless the County has made timely and complete application for such permits.
- b. Within ten (10) working days after becoming aware of any event that the County believes constitutes a force majeure, it shall notify the Department of such event in accordance with paragraph 17 herein. Failure to comply with the notice provision of this section shall constitute a waiver of the County's rights to assert a force majeure claim.
- c. If the Department determines that the event or anticipated event that has caused or will cause the delay constitutes a force majeure, the Department may extend in writing the time for performance for an appropriate period of time as determined by the Department.

#### DELAY

16. If any event occurs which causes or which the County reasonably expects to cause a delay in the achievement of any requirement imposed by this Order, the County shall notify the Department, in writing, within ten (10) working days of obtaining knowledge of the occurrence of such event and of its impact on timely compliance. The notice shall identify the cause of the delay, an estimate of the anticipated length of delay, the measures taken and to be taken by the County to prevent or minimize the delay and an estimate of the date by which such measures will be completed. The County shall promptly implement all economically and commercially reasonable measures to prevent or minimize any such delay and to comply with all requirements of the Order as soon as reasonably possible. The County may request, in writing, an extension of any deadline as soon as practical upon learning about the likelihood of a delay. The Department may, at its sole discretion, grant an extension upon such a request.

#### NOTIFICATION

17. Any notifications required under this Order shall be in writing and sent to Chief, Enforcement Division, Water Management Administration, Maryland Department



of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

#### GENERAL PROVISIONS

18. The Department's approval of plans and specifications pursuant to this Consent Order does not in any way warrant that the plans and specifications will be successful in controlling water pollution or reducing Permit violations.
19. This Consent Order shall be in effect until all corrective actions have been completed in accordance with the plan and schedule contained herein.

#### NO ADMISSIONS OR WAIVERS

20. This Order is understood and intended by the Parties to be without any admission of liability or fact, and nothing in this Order shall be considered as an admission by any Party. Nothing in this Order shall be deemed to be a waiver of the Department's right to proceed in an administrative or civil action for violations of the terms of this Order or other violations of environmental laws or regulations at the Site nor shall anything set forth in this Order be deemed to be a waiver of the County's right to contest such proceedings by the Department.
21. Nothing in this Order shall be construed to relieve the County of any violations or obligations under laws and regulations promulgated or enforced by local, municipal, or federal entities.

#### SUBSEQUENT MODIFICATION

22. The terms of this Order are contractual and not mere recitals. This Order contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. This Order may not be modified except by written agreement of the Department and the County and shall be effective upon signature by the Department.

#### SEVERABILITY

23. If any provision or authority of this Order or the application of this Order to either Party or circumstance is held by any judicial or administrative authority to be invalid, the application of such provision or authority to the other Party or circumstances and the remainder of this Order shall not be affected thereby and shall remain in full force, unless such application would defeat the purposes of this agreement.

TERMINATION

- 24. This Order shall remain in force and effect until all obligations and terms referred to herein have been completed or satisfied.
- 25. Once all obligations and terms have been completed or satisfied, this Order releases, resolves, and settles any civil liability the County may have under State law for the alleged violations referenced herein. The Department will inform the County in writing that this Consent Order has been satisfied.

PERSONS BOUND BY THIS AGREEMENT

- 26. The terms of this Order are binding on the Parties and shall be enforceable in the Maryland courts. In the event that the County fails to pay the penalty or meet the conditions required herein, the Department may institute an action to enforce this Order against the County. In such or any other action, this Order shall be governed by and interpreted under the law of the State of Maryland.
- 27. This Order has been negotiated freely by the Department and the County and shall in all cases be construed as a whole, according to its fair meaning and not strictly for or against the Department or the County.
- 28. This Order will be executed in counterparts, each of which shall constitute one and the same instrument, and shall be deemed effective as of the date the Department signs the Order.

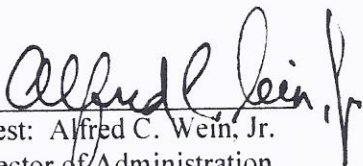
**IT IS SO AGREED AND ORDERED:**

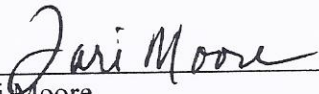
FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

\_\_\_\_\_  
Date

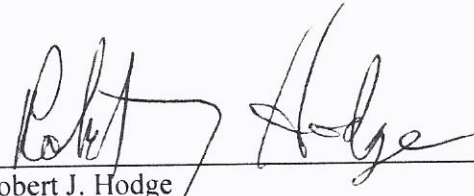
\_\_\_\_\_  
Jay G. Sakai, Director  
Water Management Administration  
Maryland Department of the Environment

FOR CECIL COUNTY, MARYLAND:

  
Attest: Alfred C. Wein, Jr.  
Director of Administration

  
Tari Moore  
County Executive

  
Attest: Council Manager

  
Robert J. Hodge  
President, County Council

Approved this \_\_\_<sup>th</sup> day of January, 2013,  
as to form and legal sufficiency.

\_\_\_\_\_  
Paul N. De Santis  
Assistant Attorney General

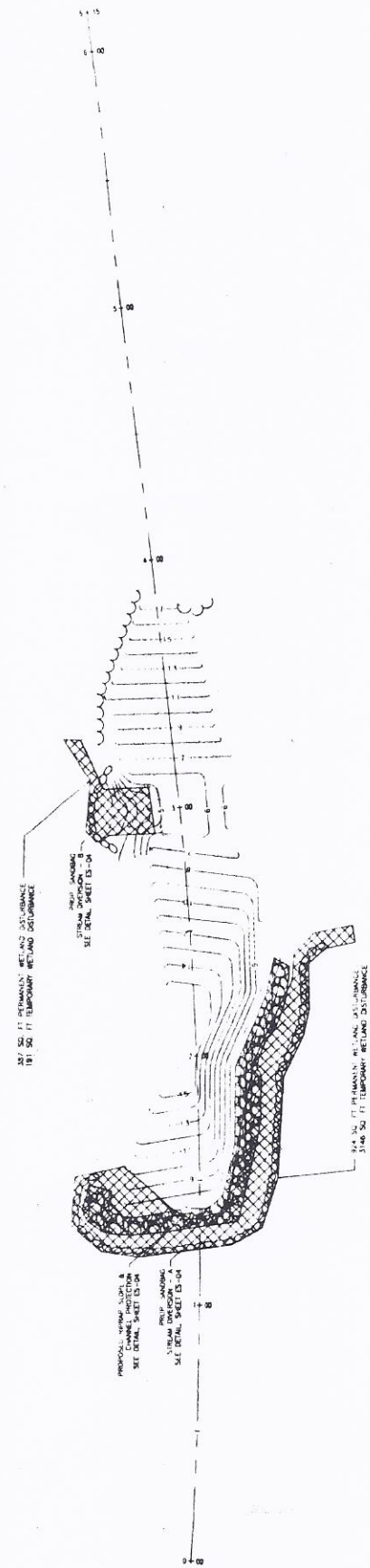
**Attachment A**

THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AGENCIES WITH JURISDICTION OVER THE PROJECT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES AND AGENCIES WITH JURISDICTION OVER THE PROJECT.

LEGEND

Symbol	Description	Notes
(Symbol)	Proposed Stormwater Retention Structure	Not required when there is no adjacent structure to be removed or replaced.
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REVISIONS

REV	REVISION	DATE
REV 1	REVISED PER CEE COMMENTS	06/11/10
REV 2	REVISED PER CEE COMMENTS	06/11/10
REV 3	REVISED PER CEE COMMENTS	06/11/10
REV 4	REVISED PER CEE COMMENTS	06/11/10
REV 5	REVISED PER CEE COMMENTS	06/11/10

DELE COUNTY  
DESIGN AND CONSTRUCTION DIVISION  
ENGINEERING AND CONSTRUCTION DIVISION

### REMOVAL & STABILIZATION OF BRIDGE NUMBER CE-0006 MILL LANE OVER SCOTCHMAN'S CREEK

#### PROPOSED SITE PLAN

DESIGNED BY: [Name] PROJECT NO: [Number]  
DRAWN BY: [Name] SCALE: [Scale]  
CHECKED BY: [Name] DATE: [Date]

DRAWING NO: **8-03** PAGE NO: 4 OF 3

**URS**

URS Inc. Corporate Center  
400 University Ave., Suite 300  
Newark, DE 19713  
Tel: 302.781.5900  
Fax: 302.781.5901

**811**  
One call to dig  
Call before you dig