

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

In the Matter of:

Albert Dumont and
Attleboro Landfill, Inc.
1 Rathbun Willard Drive
Attleboro, Massachusetts 02703

OADR Docket Nos. 2005-051 and 2005-072
Enforcement Document Number:
00002500
Issuing Bureau: BAW
Issuing Region/Office: SERO
Issuing Program: SW
Primary Program Cited: SW
Suffix: SETT
FMF/Program ID # 132263

**ADMINISTRATIVE CONSENT ORDER AND
NOTICE OF NONCOMPLIANCE**

I. THE PARTIES

1. The Department of Environmental Protection ("Department" or "MassDEP") 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. Attleboro Landfill, Inc. ("ALI" or "Respondent") is a Massachusetts corporation with its principal office located at One Rathbun Willard Drive, Attleboro, Massachusetts 02703. ALI's mailing address for the purpose of this Consent Order is One Rathbun Willard Drive, Attleboro, Massachusetts 02703.
3. Albert Dumont ("Dumont") is the sole officer and director of ALI. For purposes of this Consent Order ALI and Dumont are referred to collectively as Respondents.

II. STATEMENT OF FACTS AND LAW

4. MassDEP 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.

5. ALI is the owner/operator of a solid waste disposal facility (the "Landfill") located off Peckham Street, Attleboro, Massachusetts.

6. The following facts and allegations have led MassDEP to issue this Consent Order:

A. MassDEP records indicate that the Landfill consists of approximately 55 acres of land that have been divided into two areas Phase A and Phase B. Phase A of the Landfill consists of approximately 32 acres and Phase B of the Landfill consists of approximately 23 of acres. Solid waste has been disposed of in both Phase A and in approximately 9.9 acres of Phase B. Phase A is unlined and capped. The disposal area of Phase B is unlined and uncapped. The Landfill has been granted a solid waste site assignment in accordance with M.G.L. c. 111, §§ 150A and 150A1/2, by the City of Attleboro as a solid waste disposal facility.

B. The Landfill operated as an open dump from approximately 1942 to 1975. In 1975, the solid waste disposal operation at the Landfill (i.e., Phase A) was converted to a solid waste sanitary landfill under the terms and conditions of a plan approval issued by MassDEP. ALI operated Phase A from 1975 to 1994.

C. On December 30, 1992, MassDEP issued a partial approval for the closure and capping of Phase A. The partial approval was based on proposed plans to develop and operate the Phase B area as a lateral expansion of the solid waste Landfill. According to the regulations at the time of permit issuance, the Phase B area was required to be constructed with a liner and leachate collection system. As proposed, the liner of Phase B would serve as the cap for the rear side-slope of Phase A.

D. On or about December 24, 1993, ALI advised MassDEP that ALI was not going to pursue plans for the development of Phase B.

E. On or about June 30, 1994, ALI ceased accepting solid waste in Phase A.

F. On or about May 5, 1995, ALI submitted final closure plans for Phase A.

G. On June 16, 1995, MassDEP issued a provisional permit to ALI to complete the capping of Phase A.

H. Subsequent to June 16, 1995, and after numerous inspections, meetings and discussions, and the failure of ALI to successfully close/cap Phase A, MassDEP and ALI entered into an Administrative Consent Order (#ACO-SE-01-4004) (2001 Consent Order) on September 7, 2001. The 2001 Consent Order established specific compliance timeframes,

deadlines and requirements for: the capping and continued maintenance of Phase A, the capping of Phase B, the establishment of a Financial Assurance Mechanism ("FAM"), the remediation of impacted wetland resource areas, the continued routine performance of quarterly environmental monitoring, and the continued routine performance of monthly landfill gas characterization for the facility's landfill gas to energy plant. The 2001 Consent Order also required that ALI achieve and maintain overall compliance with all applicable solid waste regulations and requirements applicable to the Landfill.

I. On February 1, 2002, MassDEP amended the 2001 Consent Order ("2002 Amendment") by extending the deadline for the submittal of a BWPSW25 closure plan for Phase B until March 7, 2002.

J. On August 23, 2002, ALI submitted a Closure Certification Report pursuant to 310 CMR 19.140 certifying the final closure of Phase A.

K. In November of 2003 representatives of ALI and representatives of MassDEP met to discuss compliance issues associated with the 2001 Consent Order and 2002 Amendment and ALI's conceptual proposal for closure of Phase B in accordance with the "Revised Guidelines for Determining Closure Activities at Inactive Unlined Landfill Sites" dated July 6, 2001 ("Closure Guidelines"). Representatives of ALI submitted Phase B closure proposals and held numerous discussions with MassDEP in 2004 concerning the Phase B closure. In the Fall of 2004 MassDEP informed ALI that MassDEP would not approve the Phase B closure proposal then being discussed, and it was withdrawn in October 2004.

L. On February 11, 2005, MassDEP issued a Unilateral Administrative Order (UAO – SE-05-4003) ("UAO") and a Penalty Assessment Notice (PAN-SE-05-4001) ("PAN") to ALI as a result of non-compliance with the 2002 Amendment and cited the following violations:

- i. **310 CMR 19.051 – Financial Assurance Mechanism ("FAM")** - for failing to obtain, secure and maintain a FAM for the Landfill.
- ii. **310 CMR 19.112 – Landfill Final Cover Systems** - for failing to install a final cover system on the Phase B area of the Landfill.
- iii. **310 CMR 19.130(15) – Cover Material** – for failing to install sufficient amounts of cover material on the Phase B area of the Landfill.
- iv. **310 CMR 19.130(31) – Phase Completion of the Landfill** - for failing to install a final cover system on the Phase B area of the Landfill.
- v. **310 CMR 19.121(4) – Landfill Gas Recovery Operations** – for failing to perform and submit the required landfill gas characterization and condensate generation data/reports.

- vi. **310 CMR 19.132(1)&(4) – Environmental Monitoring Requirements** - for failing to perform and submit the required environmental monitoring data/reports for ground water, surface water, and landfill gas.
- vii. **310 CMR 19.140 – Landfill Closure Requirements** - for failing to submit a final closure/capping plan for and failing to close/cap the Phase B area of the Landfill.
- viii. **310 CMR 19.142 – Landfill Post-Closure Requirements** - for failing to operate and maintain the facility in accordance with applicable post-closure requirements.

The PAN sought to impose liability on Dumont as the “owner/operator of ALI.”

M. ALI appealed the UAO and ALI and Dumont appealed the PAN to the Division of Administrative Law Appeals (“DALA”), which later transferred the case to MassDEP’s Office of Appeals and Dispute Resolution (“OADR”). Based on ALI’s financial situation, the Parties requested that the appeal be stayed while the Parties attempted to resolve the issues; primarily, the proper capping and closure of Phase B and the funding mechanism for post-closure maintenance and monitoring of the Landfill. ALI has represented that it has limited financial resources to complete the Phase B closure and to conduct Landfill monitoring and maintenance required under 310 CMR 19.000, the Solid Waste Management Regulations. The DALA Administrative Magistrate and the OADR Presiding Officer directed the Parties to submit periodic status reports concerning their settlement efforts (DEP Docket Nos. 2005-051 and 2005-072).

N. On May 8, 2006, ALI, through its environmental consultant, submitted an application for a minor modification of the Landfill permit seeking to reduce the groundwater monitoring program at the Landfill. ALI asserted that it was unable financially to perform the full scope of environmental monitoring.

O. On January 3, 2007, MassDEP issued a Provisional Approval of a Temporary Post-Closure Ground Water Monitoring Program for the Landfill. The Provisional Approval contained conditions, including reiterating ALI’s obligation to continue its efforts to fund and perform the closure/capping of Phase B and to establish a Financial Assurance Mechanism (“FAM”) for all closure/post-closure monitoring and maintenance costs for the Landfill.

P. From 2002 to 2012 ALI and its consultants submitted several conceptual proposals/plans to MassDEP under the MassDEP’s Closure Guidelines. The purpose of these conceptual proposals/plans was to provide a means to generate revenue to fund the Phase B closure and Landfill monitoring and maintenance through the use of grading and shaping materials to reshape Phase B to meet the regulatory requirements for a proper landfill cap. The conceptual proposals/plans were submitted in an effort to resolve the appeals of the UAO and PAN.

Q. In 2013, ALI retained Enviro-Cycle, LLC (“Enviro-Cycle”) to develop a new closure plan for Phase B of the Landfill on behalf of ALI. Enviro-Cycle is a Massachusetts Limited Liability Company established to market a recycled material known as “Re-Crete™” used in various construction applications.

R. In November 2013, Enviro-Cycle submitted to MassDEP a conceptual closure proposal, on behalf of ALI, to grade and shape Phase B with Re-Crete™, which is a mixture of construction and demolition (“C&D”) materials fines produced at C&D material processing facilities and concrete. The use of C&D fines was intended to provide the necessary funding to cover expenses associated with the Phase B grading and shaping activities, Phase B final cover system construction, and post closure monitoring and maintenance of the Landfill. Representatives of ALI, Enviro-Cycle, and MassDEP discussed the technical specifications of the project at various times in 2014.

S. On May 14, 2014, MassDEP conducted an inspection of the Landfill and reviewed the Landfill files. MassDEP determined that many of the previously observed violations of 310 CMR 19.000, as described in the UAO, had not been corrected.

T. Enviro-Cycle prepared and submitted to MassDEP a “Conceptual Closure Proposal” for Phase B, dated December 2, 2014, in accordance with the MassDEP’s Closure Guidelines.

U. On March 10, 2015, pursuant to the Closure Guidelines, ALI and Enviro-Cycle sponsored a public information session to describe the Phase B Conceptual Closure Proposal. On March 10, 2015, MassDEP also established a formal thirty (30) day Public Comment Period that ended on April 11, 2015. MassDEP provided the comments received during the public comment period to Enviro-Cycle for review.

V. Enviro-Cycle developed a Draft Traffic Control Plan and met with City of Attleboro and Town of Norton officials on July 26, 2016 to review the Draft Traffic Control Plan.

W. ALI, Enviro-Cycle and MassDEP prepared responses to the comments received on the conceptual closure proposal and held several meetings to discuss the proposal with state and local officials.

X. On February 16, 2017, Enviro-Cycle prepared and submitted to MassDEP a document entitled “Attleboro Landfill Inc. Response to Public Comments on the Attleboro Conceptual Closure Project” (“Response to Comments”) and a separate Traffic Control Plan with revised haul routes.

Y. As directed by the DALA Administrative Magistrate and OADR Presiding Officer, the Parties have submitted periodic status reports concerning their settlement efforts (DEP

Docket Nos. 2005-051 and 2005-072). On March 27, 2018, the parties participated in a Status Conference with the Presiding Officer to report their settlement efforts.

Z. During the course of the settlement efforts, ALI submitted financial information to MassDEP for consideration of its ability to pay the penalty as required by the PAN. After MassDEP performed an analysis of the financial documentation submitted, MassDEP determined that ALI meets the criteria for Financial Inability pursuant to MassDEP's Comprehensive Policy for Assessing Financial Condition (Ability to Pay) Final 11/3/14; Policy #14-4001, and that ALI does not have an ability to pay the assessed penalty. Accordingly, no penalty is currently assessed pursuant to this Consent Order.

AA. MassDEP has determined that Enviro-Cycle's Conceptual Closure Proposal as described herein, meets the requirements of the Solid Waste Regulations and the Closure Guidelines, and notified ALI that it may proceed with the preparation and submittal of requisite permit applications pursuant to the applicable requirements set forth at 310 CMR 19.000, and as required by the separate Consent Order (Enforcement Document Number 00002501) regarding the Corrective Action for Phase B of the Landfill.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby issues, and Respondents hereby consent to this Order:

7. 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. Respondents enter into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondents agree not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order.

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

9. Concurrent with its execution of this Consent Order, ALI shall enter into and comply with Administrative Consent Order Number 00002501, which sets forth requirements to bring the Landfill into compliance with applicable regulations set forth at 310 CMR 19.000 regarding the assessment and closure of Phase B of the Landfill. A fully executed copy of Administrative Consent Order Number 00002501 is attached hereto.

10. 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 ALI or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

11. 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 Respondents' alleged noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondents hereby agree, that the deadlines set forth above constitute reasonable periods of time for Respondents to take the actions described.

12. Pursuant to M.G.L. c. 30A and 310 CMR 1.01 (8)(c), MassDEP and Respondents agree to the issuance of a Final Decision incorporating this Consent Order and submit this Consent Order for approval as required by 310 CMR 1.01(8)(c) in order to finally resolve the above-referenced adjudicatory appeals of the UAO and PAN proceeding as set forth in this Consent Order. Except as otherwise provided herein, this Consent Order settles and releases all claims between the Parties raised in this proceeding concerning OADR Docket Nos. 2005-051 and 2005-072. Upon the issuance of such Final Decision, MassDEP and Respondents hereby agree that any right to additional administrative review of this matter before MassDEP and to appeal to any Court shall be waived.

13. MassDEP and Respondents understand that any Final Decision incorporating this Consent Order shall not be subject to 310 C.M.R. 1.01(14)(b).

14. Respondents understand, and hereby waive, their 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

15. This Consent Order may be modified only by written agreement of the parties hereto.

16. 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.

17. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

18. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondents with respect to any subject matter not covered by this Consent Order.

19. This Consent Order shall be binding upon ALI and upon ALI's successors and assigns. ALI shall not violate this Consent Order and shall not allow or suffer ALI's directors, officers, employees, agents, contractors or consultants to violate this Consent Order. Until ALI has fully complied with this Consent Order, ALI 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

20. In addition to the penalty set forth in this Consent Order, if any, including any suspended penalty, if ALI violates any provision of the Consent Order, ALI shall pay stipulated civil administrative penalties to the Commonwealth in the amount of **five-hundred dollars (\$500.00)** 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 ALI corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified ALI 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 ALI 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 ALI'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 ALI's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, ALI shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

ALI reserves whatever rights it may have to contest MassDEP's determination that ALI 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, ALI 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.

21. ALI shall pay all civil administrative penalties due under this Consent Order, including suspended and stipulated penalties, by certified check, or cashier's check 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, ALI shall clearly print on the face of its payment ALI's full name and Federal Employer Identification Number, and the enforcement

document number appearing on the first page of this Consent Order (00002500) 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 ALI fails to pay in full any civil administrative penalty as required by this Consent Order, then pursuant to M.G.L. c. 21A, § 16, ALI 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.

22. Failure on the part of MassDEP to complain of any action or inaction on the part of ALI 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.

23. To the extent authorized by the current owner, ALI agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to 179 Peckham Street in Attleboro (the "Landfill") 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.

24. This Consent Order may be executed in one or more counterpart originals, all of which when executed shall constitute a single Consent Order.

25. 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.

26. This Consent Order shall become effective on the date that the Commissioner or his designee issues a Final Decision incorporating this Consent Order.

27. This Consent Order shall terminate upon ALI's submission of a complete Landfill Closure Certification Report for Phase B of the Landfill (including responses to any MassDEP comments), required pursuant to Administrative Consent Order Number 00002501, Respondents' submission of proof of filing a Notice of Landfill Operation pursuant to 310 CMR 19.141, and MassDEP's written determination that closure of Phase B of the Landfill has been

Page 10

completed. MassDEP shall provide ALI with written acknowledgement of the termination of this Consent Order.

Consented To:

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: _____

Albert Dumont

Consented To:

Attleboro Landfill, Inc. (the "Owner")

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: _____

Albert Dumont, President
1 Rathbun Willard Drive
Attleboro, Massachusetts 02703
Federal Employee Identification No. : 04-2563326

Date: June 15, 2018

IMPORTANT INSTRUCTIONS

- 1) Sign TWO (2) copies of the ACO and send the TWO (2) signed copies to the address below.
(MassDEP will return to you a signed duplicate original for your records.)

Department of Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347
Attention: Mark Dakers, Chief
Solid Waste Management Section

- 2) DO NOT INCLUDE ANY PAYMENT with the two (2) signed copies of this Administrative Consent Order (ACO).

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

By: _____
Millie Garcia-Serrano
Regional Director
MassDEP Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

Date: June 21, 2018