

Exhibit “A”



State of New Jersey

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WASTE ENFORCEMENT, PESTICIDES & RELEASE PREVENTION

BUREAU OF SOLID WASTE COMPLIANCE & ENFORCEMENT

P.O. BOX 420, MAIL CODE 09-01

TRENTON NJ 08625-0420

TEL. (609) 292-6305

FAX. (609) 292-4539

CATHERINE R. McCABE

Commissioner

CERTIFIED MAIL/RRR

Mr. Leonard Lepore
Township Engineer
Township of West Orange
25 Lakeside Avenue
West Orange, New Jersey 07052

RE: ADMINISTRATIVE CONSENT ORDER

Dear Mr. Lepore:

Enclosed for service upon you are two draft Administrative Consent Orders ("ACO") prepared by the New Jersey Department of Environmental Protection ("NJDEP" or the "Department") pursuant to the provisions of 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.

If the terms meet with your approval, please sign and return to me within fifteen (15) days of receipt. Upon full execution of this Administrative Consent Order, a copy will be sent to you.

Please be advised that the enclosed agreement and offers contained therein, absent confirmation from the Department, will expire on the thirty-first (31st) day following its receipt by the above named parties. Failure to sign and return this ACO within the above time period will be considered a rejection of its terms, and consequently may subject the Township to perfunctory enforcement action.

Should you have any questions concerning the enclosed ACO, please contact Ms. Gina Lugo at (609) 203-3732.

Sincerely,

Tom Farrell, Chief
Bureau of Solid Waste Compliance & Enforcement

C: Gina Lugo, Supervisor, Solid Waste Compliance and Enforcement

Enclosure



State of New Jersey

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WASTE ENFORCEMENT, PESTICIDES & RELEASE PREVENTION
BUREAU OF SOLID WASTE COMPLIANCE & ENFORCEMENT

P.O. Box 420, MAIL CODE 09-01

TRENTON NJ 08625-0420

TEL. (609) 292-6305

FAX. (609) 292-4539

CATHERINE R. McCABE

Acting Commissioner

CERTIFIED MAIL/RRR

Mr. Leonard Lepore
Township Engineer
Township of West Orange
25 Lakeside Avenue
West Orange, New Jersey 07052

RE: ADMINISTRATIVE CONSENT ORDER

Dear Lepore:

Enclosed for your records is the fully executed Administrative Consent Order ("ACO") between the New Jersey Department of Environmental Protection and The Township of West Orange, pursuant to the provisions of 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.

Should you have any questions concerning the enclosed ACO, please contact Ms. Gina Lugo at 609-203-3732.

Sincerely,

Tom Farrell, Chief
Bureau of Solid Waste Compliance & Enforcement

C: Gina Lugo, Supervisor, Solid Waste Compliance and Enforcement

Enclosure



State of New Jersey

PHILIP D. MURPHY

Governor

SHEILA Y. OLIVER

Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WASTE ENFORCEMENT, PESTICIDES & RELEASE PREVENTION

BUREAU OF SOLID WASTE COMPLIANCE & ENFORCEMENT

P.O. BOX 420, MAIL CODE 09-01

TRENTON NJ 08625-0420

TEL. (609) 292-6305

FAX. (609) 292-4539

CATHERINE R. McCABE

Acting Commissioner

IN THE MATTER OF

The Township of West Orange

Property known as The Former Selecto

Flash Property, 18 Central Avenue, West

Orange, Essex County, New Jersey

:

: **ADMINISTRATIVE CONSENT ORDER**

:

:

:

:

This Administrative Consent Order (hereinafter "ACO") is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq., 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., and duly delegated to the Chief, Bureau of Solid Waste Compliance and Enforcement, pursuant to N.J.S.A. 13:1B-4.

A. FINDINGS

1. The Township of West Orange (hereinafter referred to as "Respondent"), in Essex County, New Jersey is a generator of solid waste and owns the property known as the Former Selecto Flash Property and located at Block 9, Lot 36 at 18 Central Avenue, West Orange, Essex County, New Jersey.
2. As the result of a self-disclosed unforeseen circumstance, Respondent will be retaining material currently characterized as solid waste beyond the six month storage limit established within the regulations that implement the Solid Waste Management Act. Such solid waste is in the form of approximately 1,100 cubic yards of concrete and associated fines containing contaminants at concentrations above the Direct Contact Soil Remediation Standards, but below the concentrations that would yield it as hazardous waste. While this ACO does not remove the classification of such concrete and associated fines as a solid waste, as there may be a future beneficial use for this material, it is hereinafter referred to as "the subject material"). Respondent has provided a scaled site map depicting the location of the subject material which is included in this ACO as **Attachment 1**.

3. The Department and Respondent have entered into this ACO to ensure that a mutually agreeable schedule is established to address the appropriate management of the subject solid waste.

NOW, THEREFORE, IT IS HEREBY AGREED THAT:

B. COMPLIANCE SCHEDULE

4. Respondent shall take whatever actions are necessary to achieve and maintain full compliance with this ACO on or before May 18, 2020, including but not limited to the following:
 - a. Proper disposal or legal reuse for the subject material, outlined in section A.2, above.

In the interim of achieving this objective, Respondent shall ensure that the contamination within the subject material is prevented from emanating from it, and, that the subject material containing such contamination is immobilized. Respondent represents that such control will be achieved based on the following: storing the subject material on competent impervious surface; preventing the runoff of the subject material in compliance with the provisions of the applicable storm water permit from the Department; and, storing the subject material in a distinct separated area without the comingling of other site debris.

Respondent shall contact the Department's Bureau of Nonpoint Pollution Control to determine which type of Storm Water Permit is applicable to the storage of the subject material.

A copy of the completed application submitted to the Bureau of Nonpoint Pollution Control for such Storm Water Permit shall be submitted to the Department's Bureau of Solid Waste Compliance and Enforcement within sixty (60) days upon execution of this ACO. Respondent may continue storing the subject material in the interim of the Department's approval of such Storm Water Permit application provided that no discharge of hazardous substances, fines or other contaminants from the subject material that would cause a violation of the Water Pollution Control Act occurs so as to avoid associated penalty assessment(s) and corrective action(s) which may require the immediate removal of the subject material. Failure to timely respond to any deficiencies in the Storm Water Permit application identified by the Department's Bureau of Nonpoint Pollution Control may, at the Department's discretion, trigger the Stipulated Penalties provision in paragraph 11 of this ACO and/or cause this ACO to be terminated such that the subject materials would be required to be immediately removed.

5. If Respondent is unable to achieve compliance by taking the above actions, Respondent shall be subject to actions available to the Department as set forth in this ACO, and shall be 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

6. Respondent shall submit progress reports to NJDEP every six (6) months; the first progress report shall be due on or before the first (1st) calendar day of the upcoming month, after 180 days have elapsed from the effective date of this ACO. Upon receipt by the Department of the first progress report, each subsequent progress report thereafter shall be due on or before the same calendar day as the first report. Each progress report shall detail the activities taken to comply with this ACO and shall include the following:
 - i. Identification of site and reference to this ACO;
 - ii. Status of work at the site and progress to date;
 - iii. Difficulties or problems encountered during the reporting period;
 - iv. Actions taken or to be taken to rectify difficulties or problems;
 - v. Activities planned for the next reporting period;
 - vi. Required and actual completion dates for each item required by this ACO;
 - vii. An explanation of any non-compliance with the ACO schedule;
 - viii. A performance evaluation of all corrective remedial measures implemented to date.

D. PROJECT COORDINATION

7. When returning this ACO with appropriate signature, Respondent shall indicate in the fields provided below the individual who shall serve as Respondent's contact for the Department, for all matters concerning this ACO:

Name: Craig McCarrick, LSRP

Title: Project Manager

Mailing Address: Matrix New World, 26 Columbia Turnpike, Florham Park, NJ 07932

Phone: 973-240-1800

Email: cmccarrick@matrixnewworld.com

8. The above information shall be used by the Department for all communications to Respondent related to this ACO, including the issuance, if applicable, of Notices of ACO Violation(s) and or Stipulated Penalty Demand Letters via first class mail and/or email. Should this information change, Respondent are solely responsible for providing updated information to the NJDEP contact noted in paragraph 10 of this ACO. Failure to update this information in the event of a change, or providing unreliable or incorrect information that results in failure of reasonable efforts by the Department to contact Respondent, shall not constitute an affirmative defense to actions initiated by the Department to enforce this ACO.
9. Respondent shall submit to the Department all documents required by this ACO, including correspondence relating to force majeure issues, by certified mail or hand delivery with an acknowledgement of receipt from the Department. The date that the Department receives the certified mail or executes the acknowledgement will be the date the Department uses to

determine Respondent's compliance with the requirements of this ACO and the applicability of stipulated penalties and any other remedies available to the Department.

10. Unless otherwise directed in writing by the Department, Respondent shall submit two (2) copies of all documents required by this ACO to the individual identified below, who shall be the Department's contact for all matters concerning this ACO::

Department of Environmental Protection
Bureau of Solid Waste Compliance and Enforcement
9 Ewing Street, Mail Code 09-01
P.O. Box 420
Trenton NJ 08625-0420
Attention: Supervisor, Northern Region

E. STIPULATED PENALTIES

11. Respondent shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO, unless the Department has notified Respondent in writing that a stipulated penalty will not be assessed for violations of the compliance schedule pursuant to the force majeure provisions of this ACO.

<u>Calendar Days After Due Date</u>	<u>Per Calendar Day</u>
1 – 7	\$100
8 – 14	\$200
15 – over	\$500

12. Within 45 calendar days after Respondent's receipt of a written demand from the Department for stipulated penalties, Respondent shall submit payment to the Department as outlined therein.
13. If Respondent 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, or assess civil administrative penalties for violations of this ACO.
14. The payment of stipulated penalties does not alter Respondent's responsibility to complete all requirements of this ACO.

F. FORCE MAJEURE

15. If any event occurs which is beyond the control of Respondent and which Respondent believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, Respondent shall notify the Department in writing within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, Respondent 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. Respondent 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:
 - i. Respondent has complied with the notice requirements of the above paragraph;
 - ii. Any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of Respondent, and;
 - iii. Respondent has taken all reasonable actions to prevent or minimize the delay.
17. If the Department denies Respondent's force majeure request, Respondent may be subject to stipulated penalties. The burden of proving that any delay is caused by circumstances beyond the control of Respondent, and the length of any such delay attributable to those circumstances, shall rest with Respondent. Increases in the cost or expenses incurred by Respondent 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. RESERVATION OF RIGHTS

18. The Department reserves the right to unilaterally terminate this ACO in the event Respondent violates any term. However, before the Department terminates this ACO pursuant to this paragraph, the Department will notify Respondent in writing of their obligations, and Respondent shall have reasonable time under the circumstances, not to exceed thirty (30) calendar days, to perform said obligations.
19. The Department reserves the right to seek reimbursement for past costs incurred in the oversight of this ACO.
20. This ACO shall not be construed to affect or waive claims of federal or state natural resources trustees against any party for damages or injury to natural resources.
21. The Department reserves the right to require Respondent to take any and all additional measures should the Department determine that such measures are necessary to protect human health and/or the environment. Nothing in this ACO constitutes a waiver of any statutory right or enforcement powers of the Department to require Respondent to undertake such additional measures should the Department determine that they are necessary.

H. GENERAL PROVISIONS

22. 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).

23. This ACO shall be binding on Respondent, their respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
24. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
25. Respondent agrees not to contest the terms or conditions of this ACO except that Respondent 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.
26. This ACO shall not relieve Respondent 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.
27. Nothing in this ACO shall preclude the Department from taking immediate action or seeking injunctive relief to protect the public health, safety, welfare and/or environment.
28. No modification or waiver of this ACO shall be valid except by written amendment duly executed by Respondent and the Department or by the Department's written modification pursuant to the force majeure provisions herein.
29. Unless otherwise specifically provided herein, Respondent 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:

Department of Environmental Protection
Bureau of Solid Waste Compliance and Enforcement
9 Ewing Street, Mail Code 09-01
P.O. Box 420
Trenton NJ 08625-0420
Attention: Supervisor, Northern Region

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

30. Respondent 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 Respondent of their obligations under applicable Department permit(s) and approvals, this ACO, and or any applicable statutes or regulations promulgated thereunder.
31. In addition to the Department's statutory and regulatory rights to enter and inspect, Respondent shall allow the Department and its authorized representatives access to the site at

all times for the purpose of determining compliance with this ACO.

32. Nothing in this ACO shall preclude the Department from taking enforcement action against Respondent for matters not set forth in the findings of this ACO.
33. 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.
34. Respondent 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 Former Selecto Flash Property which is 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 the Former Selecto Flash Property. In addition, the parties agree that any contract, lease, deed or any other agreement that Respondent enters into to convey any permit, approval, property, or operational control of same 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.
35. The Department reserves all statutory and common law rights to require Respondent 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.
36. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
37. 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.
38. This ACO represents the complete and integrated agreement of, and shall be binding upon, and/or inure to the benefit of, the State of New Jersey, the Department, and their divisions, agencies, and respective successors, and Respondent and their respective responsible corporate officials, agents, successors, assignees, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
39. The Department reserves the right to unilaterally terminate this ACO in the event Respondent violates its terms and to take any additional enforcement action it deems necessary.
40. This ACO shall terminate upon receipt by Respondent of written notice from the Department that all the requirements of this ACO have been satisfied.

41. Respondent hereby agrees to comply with this ACO, which shall be fully enforceable as a final agency order in the Superior Court of New Jersey, including under N.J. Court Rules 4:67 and 4:70. Respondent agrees not to contest the terms or conditions of this Settlement Agreement in any action brought by the Department to enforce its provisions.
42. This ACO shall become effective upon the execution hereof by all parties, subject to completion of any required public participation process.
43. The below-named warrant that they are authorized to act as Signatories in this ACO, and bind themselves, their successors, assignees, and/or trustees to comply with the terms and provisions of this ACO.

DATED: _____

BY: _____

NAME: Leonard Lepore

TITLE: West Orange Township Engineer

By this signature, I certify that I have full authority to execute this document on behalf of the Township of West Orange (Respondent to this ACO)

NEW JERSEY DEPT. OF ENVIRONMENTAL PROTECTION

DATED: _____

BY: _____

NAME: _____

TITLE: _____

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

ATTACHMENT 1

Site Map Depicting Location of The Subject Material