

FILED

MAR 06 2020

Jeffrey R. Jablonski, P.J.Ch.

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(973) 808-1234
Attorneys for Plaintiff

<p>TOWN OF KEARNY, <i>Plaintiff,</i></p> <p>v.</p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION HUDSON COUNTY DOCKET NO. HUD-C-72-19</p>
<p>NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, <i>et al.,</i> <i>Defendants.</i></p>	<p>Civil Action</p>
<p>TOWN OF KEARNY, <i>Plaintiff,</i></p> <p>v.</p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION HUDSON COUNTY DOCKET NO. HUD-C-177-19</p>
<p>NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, <i>et al.,</i> <i>Defendants.</i></p>	<p>Civil Action</p> <p>JUDICIAL CONSENT ORDER</p>

THIS MATTER opened to the Court jointly by the parties through their attorneys, Gregory J. Castano Jr. of CASTANO QUIGLEY LLC appearing for the Town of Kearny, James Stewart of LOWENSTEIN SANDLER LLP appearing for the New Jersey Sports and Exposition Authority (“NJSEA”) and Robert J. Kinney of the OFFICE OF THE ATTORNEY GENERAL appearing for the New Jersey Department of Environmental Protection (“NJDEP”), and the parties having advised they have amicably resolved the matters, and the Court having considered the matters, it is

On this 6th day of March, 2020,

ORDERED that:

1. The above captioned matters are consolidated.
2. For purposes of this Judicial Consent Order (“JCO”), the “Keegan Property” shall mean Block 205, Lots 18, 19.02, 24,27, 28, 29, 30, 31, 32 and 33, all located in the Town of Kearny, New Jersey.
3. At its sole cost and expense and as set forth in the Administrative Order Governing Closure of Keegan Landfill (“Closure Order”) to be executed by NJSEA and NJDEP in as a condition of this JCO, NJSEA shall apply for all necessary permits and authorizations from the NJDEP to permanently close the Keegan Landfill portion of the Keegan Property. “Closure” of the Keegan Landfill shall mean, but not be limited to, installation of an impermeable geomembrane cap over the Keegan Landfill, installation of landfill gas collection and control mechanisms, appropriate contouring of the Keegan Landfill and long-term operation and management of the same. The impermeable cap shall meet all NJDEP required specifications as specified in the Closure Order and closure shall be conducted in accordance with the Closure Order and any applicable statutes or regulations. NJSEA agrees with the Town to make best efforts to perform in accordance with the schedule on Exhibit 1 attached, or as may be amended as agreed to by the Town and the NJSEA, or as finally approved and included in permits issued by NJDEP.
4. Until such time as the landfill cap and landfill gas management and control measures are put into place, NJSEA shall take all necessary and appropriate measures to prevent emissions of hydrogen sulfide (H₂S) gas from the Keegan Landfill in violation of N.J.A.C. 7:27-7.3 and N.J.A.C. 7:27- 5.2(a), and shall be authorized to import NJDEP and Town approved cover materials to accomplish this purpose. NJSEA shall apply for any and comply with all necessary permits or authorizations required by NJDEP to control H₂S emissions until the cap and landfill gas management systems are operational.

5. The Keegan Landfill is permanently enjoined from engaging in any solid waste disposal operations. The Keegan Landfill may, however, accept NJDEP and Town approved materials for the sole purpose of permanently closing the landfill as required by the Closure Order, and for the purpose of controlling landfill gas emissions from the landfill as may be necessary and authorized.

6. NJSEA represents that it will request appropriations necessary to fund its closure and post-closure requirements, and that it shall make best efforts to obtain appropriations. The Town will support NJSEA's appropriation request.

7. In consideration of the settlement agreed to herein, the NJSEA waives any right in perpetuity to operate, or permit others to operate, the Keegan Landfill as a landfill, transfer station, or other waste disposal or recycling facility of any kind, or for wind farm activities, dredge disposal or composting.

8. Upon the installation of the impermeable cap, the NJSEA shall construct all improvements necessary for the use of appropriate portions of the Keegan Property as public passive recreation, including: (1) the creation of public access through the appropriate portions of the Keegan Property to the Kearny Marsh after the Keegan Landfill has been fully closed and impermeably capped, or (2) other purposes or uses as agreed upon by the Town and the NJSEA. NJSEA will provide the Town with the plans for public access for review and approval. NJSEA shall obtain any necessary authorization from NJDEP for use of the Keegan Property for said purposes.

9. Within 60 days of the execution of this JCO, the NJSEA shall file a deed restriction precluding the uses set forth in Paragraph 7 above and shall forward a copy of the recorded document to the Town. At least five business days before sending the deed restriction for

recording, the NJSEA shall send a proposed form of deed restriction to the Town for review and comment.

10. By March 15, 2020 the NJSEA shall pay the Town of Kearny \$250,000.00 (two hundred and fifty thousand dollars) in satisfaction of all claims asserted in the docket numbers identified in the caption of this JCO and shall pay the Town's ongoing air monitoring costs for air monitoring stations AMS-1 and AMS-2 until the installation of the impermeable cap. The Town shall provide NJSEA with direct, real time access to monitoring data from AMS-1 and AMS-2.

11. The NJSEA may utilize the \$3 million escrow fund that had been established for recreational use on the top of the landfill portion of the Keegan Landfill for the installation of the impermeable cap and agrees to use its best efforts to fully replenish that fund from third-party sources so it can be used for the creation of public access through the Keegan Landfill to the Kearny Marsh after the landfill portion of the Keegan Landfill has been fully closed and capped. Nothing in this paragraph affects the NJSEA's obligation in paragraph eight above to construct improvements for public passive recreation.

12. All pending motions in the consolidated actions are withdrawn.

13. The verified complaint and amended verified complaint in the matter bearing docket number HUD-C-72-19 are dismissed with prejudice.

14. Upon entry of this JCO the Town shall withdraw its appeal (and otherwise dismiss claims made) in the matter entitled *I/M/O the Petition of the Town of Kearny for Host Community Benefits from New Jersey Sports and Exposition Authority, Permittee Under Solid Waste Facility Permit No. LOP070001 Pursuant to N.J.S.A. 13:1E-28, Superior Court of New Jersey, Appellate Division, Docket No. A-807-18T4.*

15. Upon entry of this JCO the NJSEA shall withdraw its appeal in the matter entitled *Town of Kearny v. New Jersey Sports and Exposition Authority, et al.*, Appellate Division, Docket No. AM-88-19T4.

16. The Town, NJDEP and the NJSEA mutually release, give up, acquit and forever discharge any and all claims of every kind, type and description they may have against each other of a similar nature or type to claims raised in Docket No. HUD-C-72-19 and Docket No. HUD-C-177-19, with prejudice, without any costs or attorney fees, including those claims of which they are not aware and those not mentioned in this JCO, except for those claims set forth in the matter entitled *New Jersey Sports and Exposition Authority v. Town of Kearny*, Appellate Division Docket No. A-2487-18. This release applies to claims resulting from anything which has happened up to now.

17. The NJDEP shall expeditiously process any applications needed to effectuate the permanent closure and impermeable capping of the landfill portion of the Keegan Property. The NJSEA shall implement all requirements of the approved permits within the times the permits require.

18. Other than approvals needed to implement the Closure Order for the Keegan Landfill, the NJDEP shall not issue any other permits, approvals or certificates that authorize any further solid waste operations on the Keegan Property. NJSEA will submit documents related to the closure in accordance with the schedule in the Closure Order.

19. The verified complaint in the matter bearing docket number HUD-C-177-19 is dismissed with prejudice.


20. The Town of Kearny shall receive real-time copies of any and all correspondence and written communications, including electronic mail, between the NJSEA and the NJDEP and

may review and comment upon any submissions and participate in any meetings or discussions between NJSEA and NJDEP related to implementation of the Closure Order on the Keegan Property. The Town shall continue to receive copies of all daily monitoring data, which monitoring shall be continued by the NJSEA in the manner currently effected until the impermeable cap is completed, or thereafter as may be required by the NJDEP.

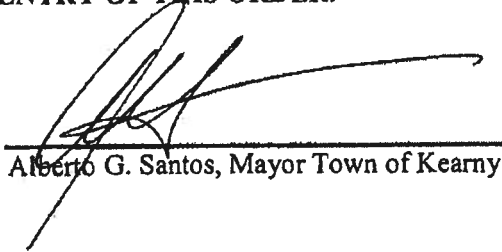
21. If this JCO is breached by the NJSEA and the breach is caused by failure to close the Keegan Landfill or failure to install an impermeable liner and the breach is caused by matters within NJSEA's control and such breach is not cured within a reasonable time after receipt of written notice from the Town, those claims in paragraphs a and b of the "Wherefore" clause of the First Amended Complaint bearing docket number HUD-C-72-19 may be revived, restored and re-asserted; however, before those claims may be revived, restored or re-asserted, the NJSEA shall have the right to have the issue of whether a breach occurred decided by this Court. Notwithstanding anything to the contrary contained herein, a breach of Paragraph 20 shall not constitute a breach of this JCO for purposes of the Paragraph 21.

22. Attached as Exhibits 2, 3 and 4 are the respective approvals authorizing the execution of this JCO by counsel.

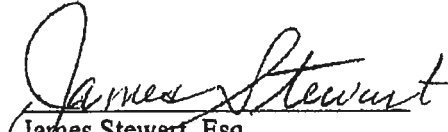
23. This Court retains jurisdiction to enforce this JCO.


Jeffrey R. Jablonski, P.J.Ch.

**WE CONSENT TO THE
ENTRY OF THIS ORDER.**



Alberto G. Santos, Mayor Town of Kearny



James Stewart, Esq.
Lowenstein Sandler, LLP
Counsel and Authorized Agent for New
Jersey Sports and Exposition Authority

DATED: March 6, 2020

DATED: March 6, 2020

Mark Pedersen, Assistant Commissioner
New Jersey Department of Environmental
Protection

DATED: March 6, 2020

Attorneys for the Town of Kearny

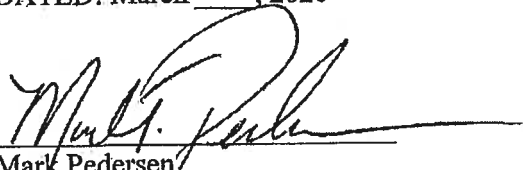
Attorneys for the New Jersey Sports and
Exposition Authority

DATED: March __, 2020

DATED: March __, 2020

Alberto G. Santos
Mayor Town of Kearny

DATED: March __, 2020



Mark Pedersen
Assistant Commissioner
Site Remediation and Waste Management
Program
New Jersey Department of Environmental
Protection

DATED: March 6, 2020

TOWN Schedule Revised

ID	Task Name	Duration	Start	Finish	2020												2021											
					Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
1	Enclosed Flare Permit Application	29 days	Wed 11/6/19	Mon 12/16/19	[Gantt bar from 11/6/19 to 12/16/19]																							
2	2nd Interim Flare Installation	33 days	Wed 1/15/20	Fri 2/28/20	[Gantt bar from 1/15/20 to 2/28/20]																							
3	GCCS Expansion	28 days	Wed 1/15/20	Fri 2/21/20	[Gantt bar from 1/15/20 to 2/21/20]																							
4	Enclosed Flare Procurement	96 days	Mon 11/4/19	Mon 3/16/20	[Gantt bar from 11/4/19 to 3/16/20]																							
5	Enclosed Flare Installation/Startup	20 days	Tue 3/17/20	Mon 4/13/20	[Gantt bar from 3/17/20 to 4/13/20]																							
6	Enclosed Flare Shakedown	40 days	Tue 4/14/20	Mon 6/8/20	[Gantt bar from 4/14/20 to 6/8/20]																							
7	NUDEP Approval of All Required Permits	1 day?	Mon 8/24/20	Mon 8/24/20	[Milestone diamond at 8/24/20]																							
8	Design Final Cover	110 days	Mon 2/17/20	Fri 7/17/20	[Gantt bar from 2/17/20 to 7/17/20]																							
9	Aerial Topo	15 days	Mon 2/17/20	Fri 3/6/20	[Gantt bar from 2/17/20 to 3/6/20]																							
10	Grading	25 days	Mon 3/9/20	Fri 4/10/20	[Gantt bar from 3/9/20 to 4/10/20]																							
11	Stormwater Management	26 days	Mon 4/13/20	Mon 5/18/20	[Gantt bar from 4/13/20 to 5/18/20]																							
12	Bidding and Contracting	40 days	Tue 5/19/20	Mon 7/13/20	[Gantt bar from 5/19/20 to 7/13/20]																							
13	Phase 1 West Side	310 days	Mon 1/6/20	Fri 3/12/21	[Gantt bar from 1/6/20 to 3/12/21]																							
14	West Side Filling	110 days	Mon 1/6/20	Fri 6/5/20	[Gantt bar from 1/6/20 to 6/5/20]																							
15	West Side Subgrade	20 days	Tue 8/25/20	Mon 9/21/20	[Gantt bar from 8/25/20 to 9/21/20]																							
16	West Side Capping	100 days	Tue 9/22/20	Mon 2/8/21	[Gantt bar from 9/22/20 to 2/8/21]																							
17	Phase 2 East Side	358 days	Mon 6/8/20	Wed 10/20/21	[Gantt bar from 6/8/20 to 10/20/21]																							
18	East Side Filling	208 days	Mon 6/8/20	Wed 3/24/21	[Gantt bar from 6/8/20 to 3/24/21]																							
19	East Side Subgrade	30 days	Thu 3/25/21	Wed 5/5/21	[Gantt bar from 3/25/21 to 5/5/21]																							
20	East Side Capping	120 days	Thu 5/6/21	Wed 10/20/21	[Gantt bar from 5/6/21 to 10/20/21]																							

Project: Keegan Landfill - Closures Date: Fri 2/7/20

Task	Project Summary	Manual Task	Start-only	Deadline
Split	Inactive Task	Duration-only	Finish-only	Progress
Milestone	Inactive Milestone	Manual Summary Rollup	External Tasks	Manual Progress
Summary	Inactive Summary	Manual Summary	External Milestone	