

BOARD ORDER

IN THE MATTER OF

THE TOWNS OF CAMDEN, ROCKPORT)	ADMINISTRATIVE
LINCOLNVILLE and HOPE)	CONSENT AGREEMENT &
JACOB'S QUARRY LANDFILL)	ENFORCEMENT ORDER
ROCKPORT, KNOX COUNTY, MAINE)	

This Agreement by and among the Towns of Camden, Rockport, Lincolnville and Hope (hereinafter referred to as "the Towns"), the Board of Environmental Protection ("Board") and the State of Maine Attorney General is entered into pursuant to 38 MRSA, Section 347-A(1) and in accordance with the Department of Environmental Protection ("Department") Consent Agreement Policy, as amended.

The parties agree as follows:

1. In 1985, the Towns of Camden, Rockport, Lincolnville and Hope entered into a Joint Municipal Agreement to form a Regional Council of Governments known as CRLH for the purpose of solid waste management. CRLH operates a transfer station and a solid waste disposal facility known as Jacob's Quarry, both located off Quarry Street in Rockport, Maine. The Jacob's Quarry property is owned by the Town of Rockport.
2. Jacob's Quarry was formed between 1817 and 1907 by the removal of limestone from an area of approximately 12 acres. The Department estimates that the middle third of the quarry has been filled with solid waste. The northwesterly unfilled area is open water. The southeasterly unfilled area is covered with a floating mat of waste and vegetation. The outlet of the quarry is located on its southerly side and discharges to an unnamed Class B brook (38 MRSA, Section 468(3)). This brook flows approximately 1,000 feet and enters Lilly Pond, a Class GPA waterbody (38 MRSA, Section 465-A). The outlet of Lilly Pond forms an unnamed Class B brook (38 MRSA, Section 468(3)), which flows approximately 2,000 feet before entering Rockport Harbor, a Class SB waterbody (38 MRSA, Section 465-B).
3. The burning of municipal solid waste and disposal of the residue into Jacob's Quarry by the Towns of Camden and Rockport began in the early 1930s. The quarry was also used for the disposal of unburned municipal solid waste, tannery waste, construction and demolition debris, landclearing

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debris and inert fill. Lincolnvile and Hope began utilizing the quarry for solid waste purposes at later dates. Open burning of municipal solid waste with the resulting debris being pushed into the water-filled quarry continued until October of 1979. In October of 1979, Penscot Farms Inc. began shredding and composting municipal solid waste adjacent to the quarry pursuant to Board Order #07-4423-13110 which was approved on November 8, 1978. Since 1979, the quarry has continued to be utilized by the Towns for disposal of tannery waste, construction and demolition debris, landclearing debris and inert fill. Tannery waste is a special waste pursuant to 38 MRSA, Section 1303-C(34). In January of 1982, the Towns established a transfer station at Jacob's Quarry to facilitate the transport of municipal solid waste to licensed disposal facilities. In the spring of 1982, the Towns landfilled a new area near the northerly perimeter of the quarry with approximately 6,000 tons of municipal solid waste which had been shredded and stored by Penscot Farms Inc. The Towns did not seek or receive a solid waste facility permit for this landfilling activity.

- 4. Municipal use of Jacob's Quarry for solid waste disposal from the early 1930s until September 23, 1971, was not regulated by the State. The 1971 amendments to 38 MRSA, Section 413 made waste disposal into Jacob's Quarry after September 23, 1971, a violation of State Law unless the discharge of waste into the waters of Jacob's Quarry was registered with the Board by March 1, 1973. The discharge was not registered and as provided by Subsection 5 of that statute, "[a]ny discharge not so registered shall be unlawful and shall be considered an unlicensed discharge". The discharge of pollutants into Jacob's Quarry, and then into Lilly Pond and Rockport Harbor via the unnamed brooks as described in paragraph 2 above, has continued.
5. On July 8, 1976, in a Schedule of Compliance for the Jacob's Quarry Landfill issued to the Town of Rockport pursuant to 38 M.R.S.A. Section 421 (the "300 Foot Disposal Law"), the Board ordered that there shall be "[n]o disposal in groundwater or within 300 feet of classified water - within 30 days of this order." The Town of Rockport did not comply with this order.
6. On October 13, 1976, the Board denied the Towns' request for a variance to the 300 Foot Disposal Law and ordered that "the applicant shall develop a plan for closing the present

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dump quarry which is acceptable to the D.E.P. on or before May 1, 1977, and the applicant commence (sic) implimentation (sic) of the accepted plan within one month of approval by the D.E.P." (Board Order #09-3127-13110). The Towns did not submit a closing plan and continued to use Jacob's Quarry for solid waste disposal.

- 7. On August 1, 1977, Robert F. Crabtree, Elmer C. Hart and Richard L. Brodis, Selectmen of the Town of Hope, signed an Agreement of Facts and Consent Order which had been approved on July 13, 1977 by the Board. Point of Agreement #6 of that order states that "[t]he municipalities will cease disposal at the existing facility no later than June 1, 1978." The Towns, however, continued to use Jacob's Quarry for solid waste disposal after June 1, 1978.
8. On April 25, 1979, the Board approved a closing plan for the Jacob's Quarry Disposal Facility which was submitted by the Town of Rockport. The Board order provided that "[t]he closing of the dump will take place on or before October 1, 1979." On September 26, 1979, the Board acted "to extend the closing date of the dump to October 15, 1979" (Board Order #07-5410-13110). The Towns, however, continued to use Jacob's Quarry for solid waste disposal after October 15, 1979.
9. In January of 1982, the Towns established a transfer station for municipal solid waste at Jacob's Quarry without first obtaining a permit from the Board. On March 24, 1982, the Board granted after-the-fact approval to the Towns for the construction and operation of the transfer station at the Jacob's Quarry site (Board Order #07-7829-13110). Special Condition #2 of the Order provides that "no materials shall be deposited in either of the quarries." The Towns, however, have continued to use Jacob's Quarry for disposal of tannery waste, demolition debris, landclearing debris and inert fill.
10. Department investigation has revealed that approximately 50 million gallons of leachate per year are currently being discharged from Jacob's Quarry into an unnamed brook which is a tributary of Lilly Pond, as described in paragraph 2 above. Analysis of the leachate has documented the presence of numerous pollutants including phosphorus. The leachate's phosphorous content, ranging up to 1.5 milligrams per liter, is of special concern. Lilly Pond has persistent algae blooms due to phosphorous pollution and does not attain the

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standards of its assigned GPA classification. The discharge of leachate from Jacob's Quarry is a major contributor to the violation of water quality standards in Lilly Pond, a Class GPA waterbody. The results of limited groundwater monitoring from monitoring wells around the perimeter of the quarry are inconclusive regarding possible groundwater contamination. An extensive hydrogeological investigation will be necessary to determine the impact of Jacob's Quarry landfill on groundwater quality.

- 11. The violations referred to in paragraphs 3 through 10 above for which the Board and the State of Maine Attorney General grant a release pursuant to paragraph 21 below are as follows:
A. The indirect discharge of pollutants to Lilly Pond, Rockport Harbor and two unnamed brooks since March 1, 1973, as described in paragraphs 3 through 10 above. (38 M.R.S.A., Sec. 413)
B. The operation of a solid waste landfill closer than 300 feet to a classified body of surface water, as described in paragraphs 3 through 9 above. (38 M.R.S.A., Sec. 421)
C. The deposit or discharge of refuse directly or indirectly into the inland waters of this State, or in such a manner that the drainage therefrom may flow or leach into such waters, as described in paragraphs 3 through 9 above. (38 M.R.S.A., Sec. 417)
D. The establishment of a transfer station for municipal solid waste at Jacob's Quarry in January 1982 prior to obtaining a solid waste facility permit from the Department, as described in paragraph 9 above. (38 M.R.S.A., Section 1306(1))
E. Continuing disposal of solid waste at Jacob's Quarry after March 24, 1982, as described in paragraph 9 above. (Special Condition #2 of Board Order #07-7829-13110, dated March 24, 1982).
F. The establishment of a new solid waste landfill at Jacob's Quarry in the spring of 1982 without a permit issued by the Department, as described in paragraph 3 above. (38 M.R.S.A., Section 1306(1))

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By entering into this Agreement, the Towns do not admit that the actions described in paragraphs 3 through 10 above constitute the legal violations listed in this paragraph and do not waive any defense to any of the above-listed violations that would otherwise be available to them.

- 12. The restoration of Lilly Pond will annually require the pumping and treatment of approximately 50 million gallons of leachate now flowing from the quarry. The Town of Camden's Wastewater Treatment Facility has adequate hydraulic capacity to treat the leachate. The most recent chemical analysis of the leachate indicates that pretreatment of the wastewater will not be required. The Department's Bureau of Water Quality Control has given the Camden Wastewater Treatment Facility written approval to accept this wastewater.
13. Long-term mitigation should rely principally upon passive measures such as landfill capping rather than active measures such as the pumping and treatment of leachate. Because the future growth of Camden and environs may require regaining treatment capacity temporarily allocated to leachate, long-term mitigation measures must attempt to minimize the amount of leachate generated by Jacob's Quarry. The only practical means of reducing leachate generation is to cap the quarry, such that precipitation runs off the quarry rather than into it. The volume of material which would be needed to achieve the required grades has been estimated by the Department to be approximately 1.7 million cubic yards.
14. The utilization of Jacob's Quarry for disposal of non-putrescible wastes, including inert fill, landclearing debris, construction debris, demolition debris and other types of waste specifically approved in writing by the Department on a case-by-case basis, is an environmentally acceptable means of achieving the grades necessary to reduce leachate generation provided that the discharge of leachate from the quarry ceases.
15. The State's financial responsibility, pursuant to 38 M.R.S.A., Section 1310-F, for the remediation of Lilly Pond, Rockport Harbor and the unnamed brooks described in paragraphs 2 above, is contingent on the availability of bond money through the Department's Landfill Closure and Remediation Program and is limited to 90% of the following types of expenditures funded by the Towns:

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- A. site evaluation, planning and engineering necessary to prevent discharges of pollutants to Lilly Pond, Rockport Harbor and the unnamed brooks described in paragraph 2 above;
B. the installation of a system for pumping leachate to a wastewater treatment facility, excluding any hook-up charges for infiltration and inflow abatement; and
C. treatment costs associated with lowering the level of leachate in Jacob's Quarry, excluding the cost of treating leachate generated by inputs of precipitation, runoff and groundwater inflow.
16. The Board has regulatory authority over the activities described herein.
17. The Towns of Camden, Rockport, Lincolnville and Hope expressly waive:
A. notice of and opportunity for hearing;
B. any and all further procedural steps before the Board;
C. the making of any Findings of Fact by the Board; and
D. their right to appeal any portion of this Administrative Consent Agreement and Enforcement Order.
18. This Agreement shall not become part of the official record unless and until it is accepted by the Board.
19. To resolve the violations referred to in paragraphs 3 through 11 above, the Towns of Camden, Rockport, Lincolnville and Hope agree to:
A. Immediately cease disposal of tannery waste into Jacob's Quarry, and immediately cease disposal of all solid waste into Jacob's Quarry except for inert fill, landclearing debris, construction and demolition debris, and other types of waste specifically approved by the Department on a case-by-case basis.
B. Immediately begin keeping records of the operational costs associated with waste disposal into Jacob's Quarry and revenues generated by use of Jacob's Quarry for solid waste disposal. Any revenues which exceed operational expenditures or any additional Department-approved expenditures for the restoration of Lilly Pond or other environmental improvements shall be placed in

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an escrow account to provide for long-term expenses associated with closure of the facility. Following the establishment of final grade and cover acceptable to the Department, the Department shall authorize the release to the Towns of any funds in the escrow account which exceed the estimated amount necessary for the funding of long-term expenses associated with post-closure maintenance and monitoring of the facility.

- C. Within three months of the Board's approval of this agreement, submit to the Department for review and approval a plan for a hydrogeologic investigation of the landfill site which would determine whether the landfill will contaminate groundwater after the leachate level has been lowered.
D. Within three months after the Department's approval of the hydrogeologic investigation plan described in paragraph 19(C) above, complete the installation of all necessary monitoring equipment, including but not limited to monitoring wells and/or piezometers, and begin collecting hydrogeologic information according to the approved schedule.
E. Within six months of the Board's approval of this agreement, cease all surface water discharges of pollutants from Jacob's Quarry to Lilly Pond, Rockport Harbor and the unnamed brooks described in paragraph 2 above by completing the planning, site evaluation, engineering and construction necessary to:
(1) enter into an Industrial Users Agreement with the Camden Wastewater Treatment Facility which would allow the pumping of leachate to that facility in accordance with the written approval issued December 2, 1992, by the Department's Bureau of Water Quality Control, unless the diversion of leachate directly to Penobscot Bay through the existing storm sewer system or an acceptable alternate means has been approved by the Department's Bureau of Water Quality Control;
(2) begin lowering the leachate level by a minimum of ten (10) feet in Jacob's Quarry by pumping leachate either directly into Penobscot Bay, if approved by the Department, or to the Camden Wastewater Treatment Facility, provided, however,

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that if the drawdown of the leachate level is shown to have any unexpected adverse environmental effects on Lilly Pond, Rockport Harbor or the unnamed brooks described in paragraph 2 above, the Town shall immediately cease drawdown and submit to the Department for review and approval an alternate proposal for eliminating the flow of contaminated leachate into these waterbodies and the surrounding groundwater; and

- (3) prevent leachate from discharging out of the quarry through the porous substrate of solid waste located near its outlet.

F. Within six months after the Department's approval of the hydrogeologic investigation plan described in paragraph 19(C) above, submit to the Department a report which includes all results to date of the hydrogeologic investigation and which evaluates whether and to what extent additional lowering of the leachate level is necessary to prevent the landfill from contaminating groundwater.

G. Within six months after the Board's approval of this agreement, provide to the Department for review and approval:

- (1) an operations manual for the landfill which meets the requirements of Chapter 401.6(B) of the Maine Solid Waste Management Regulations and which also addresses control of phosphorous in run-off water and how unacceptable wastes are to be excluded from the facility;
(2) a closing plan, including a schedule of implementation, which shows grades for final cover and provides an estimate of what volume of solid waste is needed to achieve final grade and what types and volumes of materials are needed to provide final cover;
(3) a plan describing the manner in which the rate of acceptable waste disposal will be optimized through cooperation with other regional associations, municipalities and private businesses; and

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- (4) evidence of the establishment of an escrow account to meet the purposes described in paragraph 19(B) above.
H. Within eighteen months of the Department's approval of the hydrogeologic investigation plan described in paragraph 19(C) above, submit to the Department for review and approval a report on the hydrogeologic investigation.
I. Submit monthly progress reports to the Department by the fifteenth day of the following month until such time as all work items specified in paragraphs 19(C) through 19(H) above have been completed.
J. By February 1 of each year, submit an annual report to the Department which includes the type, quantity and origin of waste received, the equipment, personnel and cover used, the portion of the landfill used, any deviations made from the approved plans and specifications, data from the monitoring program, fiscal information, accident reports, equipment breakdowns, inspection records, fires and the accounting described in paragraph 19(B) above.
K. Within two years of the Department's approval of the hydrogeologic investigation plan, submit to the Department for review and approval either a complete application for licensing operation of the landfill or a closure plan in conformity with all applicable provisions of the Maine Solid Waste Management Regulations.
L. Unless otherwise agreed to in writing by the parties, the Towns shall, within 30 days from request, provide the Department's Landfill Closure and Remediation Program with all documentation and authorizations necessary for grants or remuneration.

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- M. In lieu of a civil monetary penalty, immediately place the sum of twenty-five thousand dollars (\$25,000.00) into an escrow account which shall be used for Lilly Pond restoration activities which have been previously reviewed and approved by the Department's Bureau of Water Quality Control.
N. Pay to the Treasurer, State of Maine, the sum of two hundred fifty dollars (\$250.00) per day per item for every day that each item specified in paragraphs 19(A) through 19(K) above has not been completed within the required timeframes.
20. By entering into this Agreement, the Towns do not admit responsibility for any remedial or corrective action arising from the discharge of pollutants to the groundwater surrounding Jacob's Quarry, except for those actions described in paragraph 19 above.
21. The Board and the State of Maine Attorney General grant the Towns of Camden, Rockport, Lincolnville and Hope a qualified release of their causes of action against the Towns of Camden, Rockport, Lincolnville and Hope for the specific violations listed in paragraphs 3 through 11 above on the express conditions that: (1) prior to approval of this consent agreement by the Board, the Towns of Camden, Rockport, Lincolnville and Hope demonstrate the authorization or ratification of this agreement by the Boards of Selectmen representing those municipalities; and (2) all actions in paragraph 19 above are completed in accordance with the express terms and conditions of this Agreement. However, there shall be no release by the Board or by the Attorney General from any cause of action against the Towns of Camden, Rockport, Lincolnville and Hope arising from the discharge of pollutants to the groundwater surrounding Jacob's Quarry. This release shall not become effective unless and until all the conditions of this paragraph are satisfied. This Agreement shall not prohibit the Department from requiring corrective action or other remedial measures at the Jacob's Quarry site if the Department determines that such action is necessary to protect the public health or the environment.

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ORDER

Pursuant to 38 M.R.S.A., Section 347-A(1) and the Department's Consent Agreement Policy, as amended; and based on the Agreement set forth above, the Board orders the Towns of Camden, Rockport, Lincolnvile and Hope to:

- 1. Immediately cease disposal of tannery waste into Jacob's Quarry, and immediately cease disposal of all solid waste into Jacob's Quarry except for inert fill, landclearing debris, construction and demolition debris, and other types of waste specifically approved by the Department on a case-by-case basis.
2. Immediately begin keeping records of the operational costs associated with waste disposal into Jacob's Quarry and revenues generated by use of Jacob's Quarry for solid waste disposal. Any revenues which exceed operational expenditures or any additional Department-approved expenditures for the restoration of Lilly Pond or other environmental improvements shall be placed in an escrow account to provide for long-term expenses associated with closure of the facility. Following the establishment of final grade and cover acceptable to the Department, the Department shall authorize the release to the Towns of any funds in the escrow account which exceed the estimated amount necessary for the funding of long-term expenses associated with post-closure maintenance and monitoring of the facility.
3. Within three months of the Board's approval of this agreement, submit to the Department for review and approval a plan for a hydrogeologic investigation of the landfill site which would determine whether the landfill will contaminate groundwater after the leachate level has been lowered.
4. Within three months after the Department's approval of the hydrogeologic investigation plan described in paragraph 19(C) of the Agreement, complete the installation of all necessary monitoring equipment, including but not limited to monitoring wells and/or piezometers, and begin collecting hydrogeologic information according to the approved schedule.

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- 5. Within six months of the Board's approval of this agreement, cease all surface water discharges of pollutants from Jacob's Quarry to Lilly Pond, Rockport Harbor and the unnamed brooks described in paragraph 2 of the Agreement by completing the planning, site evaluation, engineering and construction necessary to:
(A) enter into an Industrial Users Agreement with the Camden Wastewater Treatment Facility which would allow the pumping of leachate to that facility in accordance with the written approval issued December 2, 1992, by the Department's Bureau of Water Quality Control, unless the diversion of leachate directly to Penobscot Bay through the existing storm sewer system or an acceptable alternate means has been approved by the Department's Bureau of Water Quality Control;
(B) begin lowering the leachate level by a minimum of ten (10) feet in Jacob's Quarry by pumping leachate either directly into Penobscot Bay, if approved by the Department, or to the Camden Wastewater Treatment Facility, provided, however, that if the drawdown of the leachate level is shown to have any unexpected adverse environmental effects on Lilly Pond, Rockport Harbor or the unnamed brooks described in paragraph 2 of the Agreement, the Town shall immediately cease drawdown and submit to the Department for review and approval an alternate proposal for eliminating the flow of contaminated leachate into these waterbodies and the surrounding groundwater; and
(C) prevent leachate from discharging out of the quarry through the porous substrate of solid waste located near its outlet.
6. Within six months after the Department's approval of the hydrogeologic investigation plan described in paragraph 19(C) of the Agreement, submit to the Department a report which includes all results to date of the hydrogeologic investigation and which evaluates whether and to what extent additional lowering of the leachate level is necessary to prevent the landfill from contaminating groundwater.
7. Within six months after the Board's approval of this agreement, provide to the Department for review and approval:

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- (A) an operations manual for the landfill which meets the requirements of Chapter 401.6(B) of the Maine Solid Waste Management Regulations and which also addresses control of phosphorous in run-off water and how unacceptable waste are to be excluded from the facility;
(B) a closing plan, including a schedule of implementation, which shows grades for final cover and provides an estimate of what volume of solid waste is needed to achieve final grade and what types and volumes of materials are needed to provide final cover;
(C) a plan describing the manner in which the rate of acceptable waste disposal will be optimized through cooperation with other regional associations, municipalities and private businesses; and
(D) evidence of the establishment of an escrow account to meet the purposes described in paragraph 19(B) of the Agreement.
8. Within eighteen months of the Department's approval of the hydrogeologic investigation plan described in paragraph 19(C) of the Agreement, submit to the Department for review and approval a report on the hydrogeologic investigation.
9. Submit monthly progress reports to the Department by the fifteenth day of the following month until such time as all work items specified in paragraphs 19(C) through 19(H) of the Agreement have been completed.
10. By February 1 of each year, submit an annual report to the Department which includes the type, quantity and origin of waste received, the equipment, personnel and cover used, the portion of the landfill used, any deviations made from the approved plans and specifications, data from the monitoring program, fiscal information, accident reports, equipment breakdowns, inspection records, fires and the accounting described in paragraph 19(B) of the Agreement.
11. Within two years of the Department's approval of the hydrogeologic investigation plan, submit to the Department for review and approval either a complete application for licensing operation of the landfill or a closure plan in conformity with all applicable provisions of the Maine Solid Waste Management Regulations. If the Towns elect to submit

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a closure plan, disposal of solid waste at Jacob's Quarry shall cease immediately upon submission of the closing plan. If the Towns elect to submit a licensing application, the Towns may continue to deposit solid waste in the quarry as described in paragraph 19(A) of the Agreement pending Departmental action on the application.

- 12. Unless otherwise agreed to in writing by the parties, the Towns shall, within 30 days from request, provide the Department's Landfill Closure and Remediation Program with all documentation and authorization necessary for grants or remuneration.
13. In lieu of a civil monetary penalty, immediately place a sum of twenty-five thousand dollars (\$25,000.00) into an escrow account which shall be used for Lily Pond restoration activities which have been previously reviewed and approved by the Department's Bureau of Water Quality Control.

IN WITNESS THEREOF, the parties hereto have executed this agreement consisting of thirteen (13) pages.

THE TOWNS

BY:

Town of Camden, Town Manager

Date

Town of Rockport, Town Manager

Date

Town of Lincolnville, Selectman

Date

Town of Hope, Selectman

Date

BOARD OF ENVIRONMENTAL PROTECTION

BY:

Owen R. Stevens, Chairman

Date

SEEN AND AGREED TO BY:

DEPARTMENT OF THE ATTORNEY GENERAL

By:

Janet M. McClintock
Assistant Attorney General

Date