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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

File No.: ACOP-NE-05-4006
FMF No.: 39969
G. Mello Transfer Station

| | | |
|--------------------------------------|---|------------------------------|
| In the Matter of: |) | ADMINISTRATIVE CONSENT ORDER |
| |) | WITH PENALTY AND |
| G. Mello Disposal Corporation |) | NOTICE OF NONCOMPLIANCE |
| Georgetown, Massachusetts |) | |
| |) | |
| |) | |

I. THE PARTIES

1. The Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, §7, with its principal and Metropolitan/Northeast Regional offices located at One Winter Street, Boston, Massachusetts 02108.

2. G. Mello Disposal Corporation ("Mello") is a Massachusetts corporation duly organized under the laws of the Commonwealth of Massachusetts, that operates a solid waste transfer station located at 203 East Main Street, Georgetown, Massachusetts 01833.

II. STATEMENT OF FACTS AND LAW

3. The Department is responsible for the implementation and enforcement of M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000.

4. The Department's authority to issue this Consent Order is conferred by M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000, and M.G.L. c. 21A, §16, and the regulations promulgated thereunder at 310 CMR 5.00. The Department has authority under M.G.L. c. 21A, §16, and the regulations promulgated thereunder at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with its regulations.

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5. For purposes of M.G.L. c. 21A, §16, and 310 CMR 5.00, this Consent Order shall serve as a Notice of Noncompliance for Mello's noncompliance with the requirements cited in Part II. Future violations of those requirements or of this Consent Order may result, without limitation, in the assessment of additional civil administrative penalties for each day, or portion thereof, each such violation occurs or continues.

6. Mello operates the G. Mello Transfer Station, 203 East Main Street, Georgetown, Massachusetts (the "Facility"). The Town of Georgetown owns the property at which the Facility is located. On September 10, 1993, the Department issued to Mello a permit to operate the Facility as a solid waste transfer station (Permit Number NESW-TS-012; the "permit"). The permit limits the amount of waste that can be accepted at the Facility to not more than fifty (50) tons on any given day. The Operation and Maintenance Plan for the Facility dated June 17, 1992 (including supplemental information) was also approved with the permit.

7. The following facts have led the Department to issue this Consent Order:

- a. On July 26, 2004, Department personnel completed an inspection of the Facility and observed the following conditions:
 - i. the Facility was receiving and handling solid waste in excess of the permitted tonnage limit;
 - ii. operations at the Facility were inconsistent with the existing Operation and Maintenance Plan. More specifically, expansion of the Facility's hours of operation, placement of an additional container for the collection of solid waste from residents, installation of a vehicle scale, and unloading of waste outside the enclosed tipping area.
- b. Solid Waste Annual Reports for the Facility indicate the receipt of solid waste in excess of the permitted tonnage limit during the calendar years 2001, 2002 and 2003.

8. The Department has found that Mello has violated the following requirements:

- a. 310 CMR 19.015 – Compliance, which reads in part:

"No person shall construct, modify, operate or maintain a facility except in compliance with a site assignment, permit or plan approved by the board of health or the Department, as applicable, and any authorizations issued by the Department and all conditions included in a permit, approval or authorization for said facility."

- b. 310 CMR 19.043(5)(a) – Conditions for Permits and Authorizations, which reads in part:

"The permittee shall comply at all times with the conditions of the permit or approval, 310 CMR 19.000, M.G.L. c. 111 § 150A and all other applicable state and federal statutes and regulations."

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- c. 310 CMR 19.039(1) – Applicant's Request to Modify a Permit, which reads in part:

“An owner or operator seeking to alter or change a permit of the Department approved design, operation and maintenance procedures or closure/post-closure design of a facility, including any conditions imposed in the permit, shall apply to the Department for approval to modify the permit in accordance with 310 CMR 19.039.”

9. On August 25, 2004, Mello submitted to the Department an action plan to reduce the tonnage of solid waste received and handled at the Facility and return to compliance with the Facility permit.

10. The Department and Mello 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 expend additional time and resources litigating the allegations set forth above. This Consent Order shall not constitute, be construed as, or operate as an admission by Mello of any fact or violation of any law or regulation. However, Mello agrees not to contest the facts and violations set forth herein for purposes of the issuance and enforcement of this Consent Order.

III. DISPOSITION AND ORDER

For the reasons set forth above, the Department hereby issues, and Mello hereby consents to, the following Order.

11. The Department hereby determines, and Mello hereby agrees, that the deadlines set forth below constitute reasonable times to perform the actions agreed to in this Consent Order.

12. This Consent Order shall be binding on Mello and on its officers, employees, agents, successors and assignees. Mello shall not violate this Consent Order and shall not allow or suffer its officers, employees, agents, successors, consultants, assignees or contractors to violate this Consent Order. Violation of this Consent Order by any of the foregoing shall constitute a violation of this Consent Order by Mello. Mello shall provide a copy of this Consent Order to each successor or assignee concurrent with establishing any succession or assignment.

13. 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 the Department 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 the Department to pursue any other claim, action, suit, cause of action, or demand which the Department 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.

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14. Mello hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review.

15. Mello shall perform the following actions:

- a. Immediately take the necessary actions to return to compliance with the Facility permit.
- b. Within thirty (30) days of the effective date of this Consent Order, Mello shall submit to the Department, a written report describing the steps Mello has taken, and will continue to take to comply with the requirements of this Consent Order, and the provisions of 310 CMR 16.00 and 310 CMR 19.000 (the "Report"). The Report shall be signed and certified by a responsible corporate officer of Mello, in accordance with the requirements of 310 CMR 19.011.
- c. Within sixty (60) days of the effective date of this Consent Order, Mello shall submit to the Department for review and approval, an Operation and Maintenance Plan (the "O&M Plan") for the Facility that complies with 310 CMR 19.000, including, without limitation, the requirements of 310 CMR 19.017, 310 CMR 19.030(3)(c)(4), 310 CMR 19.200 through 19.221, and the following:
 - i. The O&M Plan shall include "as-built" site plans that adequately depict the site features.
 - ii. The O&M Plan shall be certified by a responsible corporate officer of Mello, in accordance with the requirements of 310 CMR 19.011.
 - iii. Mello shall implement the O&M Plan, as approved by the Department.
- d. Within thirty (30) days of the receipt of the Department's comments, if any, on the Report and/or the O&M Plan, Mello shall submit to the Department additional information and/or documentation that corrects any deficiencies reasonably identified by the Department and makes any changes that the Department reasonably requires.

16. The actions required by this Consent Order shall be performed in accordance with all applicable laws, regulations and approvals including, without limitation, M.G.L. c. 111, §150A and M.G.L. c. 111, §150A1/2, and the regulations promulgated thereunder at 310 CMR 16.00 and 310 CMR 19.000.

17. Mello will have fulfilled the requirements set forth in paragraph 15 and Part V. ("Supplemental Environmental Project") of this Consent Order upon the Department's written approval of the O&M Plan and written approval of the Report described above, and upon issuance by the Department of a return-to-compliance letter regarding the violations cited in Part II. of this Consent Order.

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IV. PENALTIES

18. For the violations described in Part II. above, the Department assesses a civil administrative penalty of forty thousand dollars (\$40,000), as set forth below:

- a. Within thirty (30) days of the effective date of this Consent Order, Mello shall pay to the Commonwealth of Massachusetts the sum of ten thousand dollars (\$10,000) as a civil administrative penalty for the violations listed in Part II. above. Payment of such penalty shall be made in the manner set forth in paragraph 20 below.
- b. In the event Mello violates any provision of this Consent Order, or if Mello violates any of the requirements cited in Part II above within one year of the effective date of this Consent Order, Mello shall pay to the Commonwealth of Massachusetts as a civil administrative penalty the sum of thirty thousand dollars (\$30,000). Payment of such penalty shall be made within thirty (30) days of receipt of written notice from the Department, and shall be made in the manner set forth in paragraph 20 below.

19. In addition to the penalties and expenditures described in paragraph 18 and Part V. of this Consent Order, if Mello violates this Consent Order, Mello shall pay to the Commonwealth a stipulated civil administrative penalty in accordance with the following schedule. For each day, or portion thereof, each violation continues, Mello shall pay stipulated civil administrative penalties as follows:

| <u>Period of Violation</u> | <u>Penalty per day</u> |
|--------------------------------|------------------------|
| <u>1st through 15th day</u> | \$1,000 per day |
| <u>16th through 30th day</u> | \$2,000 per day |
| <u>31st day and thereafter</u> | \$4,000 per day |

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Mello corrects the violation or completes performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Consent Order. Stipulated civil administrative penalties shall accrue regardless of whether the Department has notified Mello of a violation or act of noncompliance. The payment of stipulated civil administrative penalties shall not alter in any way Mello's obligation to complete performance as required by this Consent Order.

All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date the Department sends a written demand therefor. The stipulated civil administrative penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of Mello's failure to comply with the requirements of this Consent Order. In the event the Department collects alternative civil administrative penalties, Mello shall not be required to pay such stipulated penalties pursuant to this Consent Order for the same violations.

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20. Mello shall pay all civil administrative penalties due under this Consent Order by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. Mello shall clearly print the name "G. Mello Disposal Corporation – G. Mello Transfer Station," file number ACOP-NE-05-4006, and Mello's Federal Employer Identification Number on the face of the payment, and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, Massachusetts 02241-3982

Mello shall deliver a copy of the payment to:

John A. Carrigan, Section Chief
Solid Waste Management Section
Department of Environmental Protection
Northeast Regional Office
One Winter Street – 3rd Floor
Boston, Massachusetts 02108

In the event Mello fails to pay in full any civil administrative penalty on or before the date due under this Consent Order, and in the manner and form required by this Consent Order, Mello shall pay to the Commonwealth three (3) times the amount of the civil administrative penalty, together with costs, plus interest on the balance due from the time the civil administrative 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.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

21. The Department has determined that it is appropriate to include a Supplemental Environmental Project ("SEP") in the resolution of this matter. Such SEP is included for the purpose of mitigating the administrative penalty and not in lieu thereof. Therefore, Mello agrees to perform the SEP as set forth below:

- a. In coordination with the Town of Georgetown (the "Town"), Mello shall expend a total of five thousand dollars (\$5,000) on a project (the "SEP") to provide a total of two hundred (200) collections of solid waste and recyclable materials generated by the Town of Georgetown School District (comprised of three (3) schools, each with a separate pick-up) on school days. Such collections shall include the transportation and delivery of such materials to the Facility, or other approved facility as appropriate, for proper handling. Mello shall perform the SEP by January 1, 2006, unless Mello requests in writing, and the Department, at its sole discretion, approves in writing an alternative schedule for the SEP.

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- b. Mello hereby certifies that, as of the effective date of this Consent Order, it is not required to perform the actions of the SEP by (1) any contractual or other legal obligation; (2) any federal, state or local law or regulation; and (3) any agreement, grant or as injunctive relief. Mello further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Mello agrees that the funds expended in the performance of the SEP shall not be deductible as a business expense for the purposes of federal, state or local taxes, and that it shall seek no tax advantage, deduction, credit, or benefit as a result of its undertaking the SEP.
 - c. Within thirty (30) days of the completion date set forth in paragraph 21.a. above, Mello shall submit to the Department a SEP Completion Report as set forth below, which shall document completion of the SEP and include, without limitation: (1) the actual cost of the SEP; (2) verification that the required expenditures were made and the dates the expenditures were made; and the tonnage of waste collected during the SEP (the "SEP Completion Report").
 - i. The SEP Completion Report shall be signed and certified by a responsible corporate officer of Mello, in accordance with the requirements of 310 CMR 19.011.
 - ii. Within thirty (30) days of the receipt of the Department's comments, if any, on the SEP Completion Report, Mello shall submit to the Department for its review and approval a final SEP Completion Report that corrects any deficiencies reasonably identified by the Department in the draft document and provides any additional information that the Department reasonably requires.
22. Failure to perform and complete the SEP in accordance with this Consent Order shall subject Mello to the suspended penalty set forth in paragraph 18.b. above, and the Stipulated Penalties provisions set forth in paragraph 19 above.
23. In the event the cost of performing and completing the SEP in accordance with the provisions of this paragraph is less than \$5,000, Mello shall pay to the Commonwealth of Massachusetts as a civil administrative penalty the difference between \$5,000 and the actual amount expended. Such penalty shall be paid within thirty (30) days of the completion date of the SEP described in paragraph 21.a. above, and payment shall be made in the manner set forth in paragraph 20 above.
24. Mello shall state in a prominent manner whenever it publicizes the SEP, or the results thereof, that the SEP was undertaken, or is being undertaken, as part of the resolution of an environmental enforcement action by the Department.
25. Mello will have fulfilled the requirements set forth in paragraph 21 of this Consent Order upon the Department's written approval of the SEP Completion Report described above.

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VI. ACCESS

26. Mello agrees to provide the Department, and the Department's employees, representatives and contractors, access at all reasonable times to the Facility for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provisions of this Consent Order, the Department retains all of its access authorities and rights under applicable state and federal law.

VII. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

27. This Consent Order shall not be construed as, or operate as, relieving Mello or any other person of the necessity of complying with all applicable federal, state and local laws and regulations.

VIII. MODIFICATIONS

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

IX. SUBMISSIONS

29. Submissions required by this Consent Order shall be considered delivered upon receipt by the Department. All submissions required by this Consent Order, other than those made pursuant to paragraph 20 above, shall be submitted to:

John A. Carrigan, Section Chief
Solid Waste Management Section
Department of Environmental Protection
Northeast Regional Office
One Winter Street – 3rd Floor
Boston, MA 02108

30. All submissions made to the Department by Mello under this Consent Order shall be certified in accordance with the applicable provisions of 310 CMR 19.000, including but not limited to the requirements of sections 310 CMR 19.011, 19.031(11), and 19.043.

X. SEVERABILITY

31. The provisions of this Consent Order are severable and if any provision of this Consent Order or the application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity of any other provision of this Consent Order, or the application of such other provisions, which shall be given full effect without the invalid or unenforceable provision or application provided, however, that the Department may, in its sole discretion, elect to void the entire Consent Order in the event of any such invalidity or unenforceability.

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XI. RATIFICATION

32. This Consent Order shall become effective on the date of the last signature set forth below.

33. Each undersigned representative hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf such representative is signing to this Consent Order.

G. MELLO DISPOSAL CORPORATION

*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: _____
Gregory J. Mello, President
G. Mello Disposal Corporation
95 Tenney Street
Georgetown, MA 01833
Federal Employer Identification No. 042674496

Date: _____ [04/29/2005] _____

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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By: _____
Edward Kunce, Deputy Commissioner
Metropolitan Boston/Northeast Regional Office
1 Winter Street – 5th Floor
Boston, Massachusetts 02108
Telephone: (617) 654-6500

Date: _____ [05/02/2005] _____