

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Articles
19 and 27
of the Environmental
Conservation Law

ORDER ON CONSENT
File No. R4-2009-0505-79

- by -

City of Albany

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department") is empowered to regulate the operation of solid waste management facilities and safeguard the air resources of the state pursuant to ECL Articles 19 and Article 27 of the Environmental Conservation Law "ECL", respectively.

2. Respondent, City of Albany, owns and operates a solid waste landfill at Rapp Road that is subject to Title V and solid waste management facility ("landfill") permits. The Title V permit also covers the landfill's gas recovery facility operated by another entity.

3. Regulations at 6 NYCRR 360-1.14(m) provide that:
"Odors must be effectively controlled so that they do not constitute nuisances or hazards to health, safety or property."

4. Regulations at 6 NYCRR 211.2 provide that: "No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others."

5. On April 6, 2009 and April 17, 2009, Department staff detected strong odors off-site from the landfill. The odors were attributed to problems in the operation of the gas recovery plant.

6. The odors documented by Department staff that emanated from the landfill are violations of 6 NYCRR 360-1.14(m) and 6 NYCRR 211.2.

7. Respondent has affirmatively waived its rights to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and agrees to be bound by the terms, provisions and conditions contained herein.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. In respect of the aforesaid violations, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) is assessed against the Respondent for the above violations. The payment of the civil penalty shall returned with the signed and notarized Order.

II. Respondent shall comply with the attached Schedule of Compliance. The Schedule of Compliance is incorporated and made part of the provisions, terms, and conditions of this Order.

III. Settlement

Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described herein against Respondent.

IV. Summary Abatement

Pursuant to ECL Section 71-0301, the Commissioner specifically reserves the right to exercise summary abatement authority.

V. Schedule of Compliance

The attached Schedule of Compliance is incorporated into the Order on Consent.

VI. Communications

All communications required herein shall be made to: Department -- DEC Region 4 , 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Engineer.

VII. Access

Respondents shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

VIII. Indemnification

Respondents shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondents, their directors, officers, employees, servants, agents, successors or assigns.

IX. Binding Effect

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

X. Modification

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

XI. Entire Order

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph X of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondents shall be construed as relieving Respondents of their obligations to obtain such formal approvals as may be required by this Order.

XII. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

DATED: June 2099
Rotterdam, New York

Alexander P. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region IV

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

BY: _____

TITLE: _____

DATE: _____

STATE OF NEW YORK)
)ss.:
COUNTY OF)

On the ___ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for the State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
Qualified in the County of:
My Commission Expires:

SCHEDULE OF COMPLIANCE

1. Respondent or its agent shall conduct an inspection of all gas recovery plant components (including leak checks) within one hour of receiving a report from the Department or other person regarding off-site landfill gas odors. The inspection shall determine whether off-site gas odors are attributable to the gas recovery plant. If the off-site odors are attributable to the gas recovery plant, Respondent or its agent shall determine the source of the odors and the necessary repairs and corrective action needed. Respondent shall record notification and inspection information in a bound log kept available on site for a period of no less than two years and made available to the Department upon notice.

2. Respondent or its agents shall undertake either of the following actions for off-site odors attributable to the gas recovery plant:
 - A. abate and control off-site landfill odors by repairing landfill gas engine(s) and/or related components within three hours of receiving notice of the off-site gas odors; or

 - B. cease operation of the gas recovery plant and divert landfill gas to flare(s) until repairs or corrective actions to control and abate off-site landfill odors attributed to the gas recovery plant are completed.

3. Respondent shall record date and time of detection of engine or related component problems causing off site odors and date and time for either completing the repairs and corrective actions, or the cessation of gas recovery plant and diversion of landfill gas to the flare(s).

4. Respondent or its agent shall ensure that Fortistar's maintenance programs titled - 'Routine Maintenance Procedure for the Crankcase Ventilation System (CVS)' and 'Quarterly Flange Check Program' - are fully implemented. Maintenance records shall be kept in a bound book on site for a period of no less than two years and made available to the Department upon notice.

5. Respondent agrees to the incorporation of Paragraphs 1-4 above into its Title V permit by a Department initiated modification. This Order shall terminate upon the effective date of the Title V modification incorporating Paragraphs 1-4 above.