

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Article 27 of the
Environmental Conservation Law ("ECL")

ORDER ON CONSENT

File No. R4-2009-0515-85

- by -

Waste Management of New York, Inc.

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department") is empowered to regulate the operation of solid waste management facilities pursuant to ECL Article 27.
2. Respondent, Waste Management of New York, Inc, 8 Binghampton Street, Albany, New York 12202 is a corporation that operates a permitted transfer station at 300 Church Street, Albany, New York ("transfer station").
3. The transfer station operates pursuant to permit # 4-0101-00185/00002 with an expiration date of September 30, 2011("permit").
4. Special condition 3 of the permit limits waste accepted at the transfer station to source separated recyclables, dry commercial waste, and construction and demolition debris.
5. On May 8, 2009, Department staff observed brownliquid pouring from a truck being off loaded at the transfer station. The load had a fresh municipal waste odor.
6. Respondent's acceptance of a load of municipal solid waste at the transfer station is a violation of Paragraph 3 of the permit.
7. ECL Section 71-2703(1) generally provides for a maximum civil penalty of \$7,500 for the initial day of violation of Article 27 and regulations, permits and orders issued thereunder and a maximum of \$1,500 per day for each day thereafter...and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.
8. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law, and has consented to the issuing and entering of this Order and it 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. Civil Penalty. In respect of the aforesaid, a civil penalty in the amount of FIVE THOUSAND DOLLARS (\$5,000) is assessed against the Respondent. The payment of civil penalty shall be made by bank, certified or company check, made payable to the NYS DEC and returned with the signed and notarized Order on Consent to the Department.

II. Schedule of Compliance. 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. Full settlement of Department Actions. This Order shall constitute full settlement of the violations in Paragraph 7.

IV. Submissions. All reports, requests and submissions herein required shall be made in triplicate to the Region 4 Headquarters, New York State Department of Environmental Conservation, 1130 North Westcott Ave. Schenectady, New York, 12306, Attention: Regional Solid Waste Engineer.

V. Access. For the purpose of insuring compliance with this Order and for purposes of summary abatement or any other remedial or removal activity initiated by the Department or state, duly authorized representatives of this Department shall at all reasonable times be permitted access to the facility and areas in the vicinity of the facility and relevant records in order to perform any activities related to compliance with this Order.

VI. Summary Abatement . This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

V. Indemnification. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the negligence of Respondent in the fulfillment or attempted fulfillment of the provisions hereof by Respondent, his employees, servants, agents, successors or assigns.

VI. Binding Effect and Effect on Non Signatories. The Respondent is liable for all the provisions of this Order and the provisions of this Order shall be deemed to bind Respondent, its agents, employees, successors and assigns, and all persons, firms and corporations acting under or for him. The existence of this Order and Respondent's consent hereto as well as Respondent's compliance herewith shall not give rise to any presumption of law or finding of fact that shall inure to the benefit of any third party; however, the State of New York shall not be deemed a third party under this provision of the consent order.

VII. Entire Agreement. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of his obligations to obtain such formal approvals as may be required by this Order.

IX. Effective Date. The effective date of this Order shall be the date it is executed by the Regional Director.

DATED: 2009
Rotterdam, New York

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

BY:

Eugene J. Kelly
Regional Director
Region IV

SCHEDULE OF COMPLIANCE

1. Respondent shall immediately cease the use of the transfer station for the transfer or storage of unpermitted solid waste.
2. Within 30 days of the effective date of this Order, Respondent shall provide the Department with a list of categories of waste and amount accepted for the past 365 days prior to the effective date of this Order.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department a plan to prevent the acceptance of unpermitted waste at the transfer station. The plan shall be implemented as of the date it is submitted to the Department.