

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of Alleged Violations
of Environmental Conservation Law ("ECL") ORDER
Sections 27-0707, 17-0501, and 25-0401 ON
and Title 6 of the Official Compilation
of Codes, Rules and Regulations of the
State of New York ("6NYCRR") Parts 360, CONSENT
751, and 661 by:

THE CITY OF NEW YORK

(Department of Sanitation
125 Worth Street
New York, NY 10013)

DEC
File No.
2-0954

Respondent.

-----X
WHEREAS:

1. Pursuant to ECL Section 27-0703, the Department's rules and regulations, 6NYCRR Part 360, were promulgated governing the design and operations of solid waste management facilities within the State of New York; and

2. Pursuant to ECL Section 17-0804, the Department's rules and regulations, 6NYCRR Parts 750-757, were promulgated to implement the State Pollutant Discharge Elimination System; and

3. Pursuant to ECL Section 25-0302, the Department's rules and regulations, 6NYCRR Part 661, were promulgated governing the uses of areas designated as tidal wetlands; and

4. Respondent operates a solid waste management facility known as the Fountain Avenue Landfill (the "Landfill") on land owned by the National Park Service encompassing an area of approximately 297 acres in the County of Kings and City of New York, which currently accepts, for handling and land burial, approximately 37% of the solid waste generated within the City of New York; and

5. As a result of information received and inspections conducted by the Department of Environmental Conservation of the State of New York (hereinafter referred to as the "Department"), the Department alleges that Respondent has not maintained the Landfill in a manner in conformity with the Environmental Conservation Law, to wit.:

Fountain Ave.

(a) Since March 1, 1978, Respondent has operated and at the present time continues to operate the Landfill in violation of Part 360.8 without a valid operation permit obtained from the Department as required by 6 NYCRR Part 360.2(b), and

(b) Since the inception of the Landfill operation, Respondent has permitted leachate therefrom to enter the waters of the State of New York in contravention of State and Federal water quality standards, and effluent standards and limitations, and

(c) Since September 10, 1977, Respondent has been conducting a regulated activity on a designated tidal wetland and an area adjacent to a designated tidal wetland without a permit from the Department as required by 6 NYCRR 661.9, and

(d) Testimony before the New York State Senate Select Committee on Crime indicated that hazardous waste had been illegally disposed of at the Landfill; and

6. The Landfill was also found to be in noncompliance with federal "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR 257) during the open dump inventory conducted by the Department. The Landfill was listed as an open dump in the Federal Register (46 FR 29064 - 29149) published on May 29, 1981 and is required to be upgraded or closed; and

7. The Department acknowledges that the Respondent has entered into a contract for consultative services with Gibbs and Hill, Inc. for comprehensive testing and completion of permit applications for the Landfill; and

8. The Department further acknowledges that the Respondent voluntarily and at their own initiative, entered into a contract with Parsons Brinckerhoff-Cosulich to conduct testing in response to allegations of toxic waste dumping; and

9. The Respondent has on its own initiative purchased additional equipment, namely compactors, to improve and modernize its operations at the Landfill; and

10. The Respondent has entered into a Memorandum of Understanding with the National Park Service dated March 1, 1974 which was amended June 1, 1980 in which the Respondent

has agreed to cease receiving solid waste at the Landfill by December 31, 1985; and

11. Without admitting or denying liability for the alleged violations, Respondent waives its right to a hearing on this matter and consents to the issuance of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. GUARANTEE OF PERFORMANCE

As consideration for the dispositions set forth in this Order, it is hereby mutually agreed as follows: In the event the Respondent fails to comply with any term or requirement of this Order and upon written notice of such failure of compliance by the Department to the Respondent and reasonable opportunity for the Respondent to correct such failure of compliance, the Respondent fails to take corrective action such that in order to protect the environment the Department must undertake performance of any of Respondent's obligations hereunder, the Respondent shall be liable to the Department for the full costs of all reasonable steps undertaken by the Department to correct Respondent's failure to comply, provided that the Respondent has not previously requested in writing from the Department and been granted a prior modification of such term or requirement, and provided further that no such corrective action shall be undertaken, contracted for or committed to by the Department without providing Respondent with reasonable written notice of the proposed corrective action.

II. CLOSURE PLAN

A. Respondent shall stop receiving solid waste at the Landfill not later than December 31, 1985 or such later date that may be permitted by the National Park Service, provided however that after December 31, 1985 or such later date as may be permitted by the National Park Service, the Landfill may be utilized for raw garbage disposal upon written certification by the Respondent and written concurrence by the Department that an emergency exists.

Any such emergency use of the Landfill must be accomplished in a manner which does not interfere with any ongoing hazardous waste investigative, monitoring, tracking, or remedial or removal program instituted under §III B hereof or any ongoing work in connection with said program being carried out at the site. All rights or privileges of the Respondent to use the Landfill for the disposal of solid waste under this paragraph shall expire three years after the effective date of this Order or at the close of the implementation of any plan for hazardous waste remediation set forth in §III B hereof, or final closure of the site, whichever occurs first.

B. Within 60 days after the Effective Date of this Order, Respondent shall submit to the Department for approval a detailed schedule of activities constituting a management plan for achieving closure. As and when approved by the Department, the Schedule shall become part of this Order enforceable as such. The Schedule shall insure that Respondent will submit for Department approval, not later than December 31, 1985, a closure plan to consist of:

1. A landfill operations plan in conformance with 6 NYCRR Part 360 leading to cessation of operation by December 31, 1985 and final closure no later than December 31, 1987. Such operations plan shall include a progression of fill specifying the order in which various portions of the Landfill are properly closed.
2. A cover management plan that specifies to the extent possible, the source, characteristics of the cover material, the quantities required and the date when final cover will be in place at the site.
3. A leachate management plan addressing, as required, leachate collection, storage, treatment, and disposal.
4. A landscape plan prepared by a landscape architect licensed to practice in New York State. Said plan shall show final site contours including proper grading, drainage and erosion control; specify and discuss seed mixtures, plant material lists and procedures to establish screening and vegetative cover; and illustrate a specific use for the completed site or alternate possible uses.

5. A plan for post-closure monitoring and remedial actions designed to ensure that the integrity is maintained of the soil cover, slopes, cover vegetation, drainage structures, groundwater monitoring facilities, leachate control facilities and gas venting structures for a period of five (5) years beyond the date that placement of the final cover material is completed. Should testing carried out pursuant to Section III B of this Order indicate a need for further post-closure care, the Respondent shall extend such period for post-closure care for a period up to and not to exceed thirty (30) years.

As and when approved by the Department, this plan shall become part of this Order enforceable as such.

C. Nothing in this Order shall be construed in such a way as to diminish Respondent's obligation to obtain or seek any necessary permits for other than landfill activities.

During the period this Order is in force, Respondent shall make no alteration in its operating procedures or the equipment or structures at the Landfill or do anything or suffer anything to be done on the Landfill which would require a permit under the ECL or an amendment to an existing permit without receiving prior written approval from the Department. Upon request by the Respondent pursuant to this paragraph, the Department must act within 30 days and if denied state all reasons for denying the Respondent's request.

D. Respondent will submit monthly progress reports not later than the 10th of each month, incorporating all progress made on the closure plan.

III. INTERIM MEASURES

A. Effective from the date of this Order, Respondent shall ensure that daily operations comply with the following remedial measures:

1. Respondent shall take all reasonable steps to prevent solid waste from being deposited in or entering surface waters and shall remove all solid waste which does enter or is deposited in surface waters.

2. Salvaging, if permitted at the Landfill, shall be controlled by the Respondent within a designated salvage area and shall not interfere with Landfill operation nor create hazards or nuisances.
3. Access to the Landfill shall be permitted only when an attendant is on duty.
4. Respondent shall take all reasonable steps to assure that blowing papers and litter shall be confined to solid waste holding and operating areas by fencing or other suitable means. Solid waste shall be appropriately covered or confined in the vehicle transporting waste to prevent blowing papers and litter.
5. On-site roads used to transport solid wastes shall be maintained passable at all times.
6. Safety hazards to all persons at the Landfill shall be minimized.
7. Adequate numbers, types and sizes of properly maintained equipment shall be available at the Landfill during all hours of operations.
8. Open burning shall be prohibited except pursuant to a permit issued by the Department pursuant to 6NYCRR Part 215. Measures shall be taken immediately to extinguish any non-permitted open burning.
9. Except for the rakings, grit and scum that the Respondent has been accepting from municipal water pollution control facilities, solid waste resulting from sludge and sewage treatment shall not be disposed of at the Landfill without the specific approval of the Department pursuant to 6 NYCRR Part 360.
10. Decomposition gases generated within the Landfill shall be controlled. The concentration of explosive gases (methane) generated by the Landfill shall not exceed: (a) 25% of the lower explosive limit for the gases in landfill structures (excluding gas control or recovery system components); and (b) the lower explosive limit for the gases at or beyond the property boundary.

11. Cover material and drainage control structures shall be designed, graded, and maintained to prevent ponding and erosion and to minimize infiltration of water into the solid waste cells.
12. A grass or ground cover crop shall be established and maintained on all exposed final cover material within four months after placement or, season not permitting, as otherwise prescribed by the Department.
13. All fill areas or excavations shall terminate no closer than fifty feet from the boundary lines of the property on which the Landfill is operated.
14. Benchmarks shall be established and maintained on the site and shall be used by the Respondent to control elevations.
15. Solid waste other than construction waste and household bulk shall be compacted with compactors upon deposit at the working face.
16. Six inches of compacted daily cover shall be placed in all areas in which no additional waste will be deposited within 24 hours.
17. An additional six inches of compacted cover shall be placed on all surfaces of the Landfill where no additional solid waste will be deposited within thirty days.
18. A compacted layer of eighteen inches of appropriate cover material and six inches of soil suitable for the establishment and maintenance of a permanent grass or ground cover crop will be placed on top of all areas reaching final elevation.
19. Pursuant to periodic (at least quarterly) inspections undertaken jointly by the Respondent and the Department, the Respondent shall undertake remedial steps including the replacement of final cover, if necessary, to maintain the cover integrity and support vegetation on side slopes.
20. The working faces shall be confined to an area no larger than 20 feet high and 200 feet wide.

B. A plan for systematic investigation, monitoring, tracking and remediation of hazardous materials alleged to have been illegally disposed of at the Landfill during its operation shall be submitted to the Department. Such plan and protocol shall include sampling for sanitary parameters including but not limited to total dissolved solids and chemical and oxygen demand; chemical parameters including but not limited to the USEPA Priority Pollutants (as listed on pages 33573-33579 in Volume 45 of the Federal Register dated May 19, 1980), alkyl phenols, xylenes, barium, manganese, iron, chloride, sulfate, and NH₃-N. Such work shall be performed in conjunction and consistent with the findings, conclusions and recommendations set forth in the USEPA National Contingency Plan.

The first part of this plan which shall be submitted for approval within 120 days after the Effective Date of this Order shall detail an investigation program to determine if hazardous materials are present in the Landfill by systematically sampling groundwater and, if required, the ambient air.

If hazardous materials are detected, then a second part of the plan shall be submitted for approval which will propose a strategy for remediation of the materials with an implementation schedule for accomplishing the remediation. This second part of the plan shall be submitted within 60 days of establishing that hazardous materials are present. Within 30 days of Department approval of the remedial plan, Respondent shall implement the plan.

If during the period of post closure monitoring of the site, as required in paragraph II, B (5) of this Order, hazardous materials are detected again, a plan specifically addressing the newly discovered hazardous materials shall be submitted for approval which will propose a strategy for remediation of the site and include an implementation schedule for the remediation. This plan must be submitted within six months of discovery of the material and implementation of the plan must begin within 30 days of notification by the Department that the plan is acceptable.

C. Within 30 days after the Effective Date of this Order, Respondent shall submit to the Department for approval a preliminary plan and anticipated schedule for implementing a security system for the Landfill capable of excluding unauthorized dumping of solid and hazardous waste. As and when approved by the Department, this plan shall become part of this Order enforceable as such.

D. Within 30 days after the Effective Date of this Order, Respondent shall submit to the Department for approval a fire prevention control plan which will include procedures to be implemented to prevent and control fires, a fire training program for Landfill personnel, and a method for recording fire incidents. As and when approved by the Department, this plan shall become part of this Order enforceable as such.

E. Within 60 days after the Effective Date of this Order, Respondent will prepare and present to the Department for approval a plan and implementation schedule, including dates and a format for progress reporting, to reduce the seagull population at the Landfill. As and when approved by the Department, this plan shall become part of this Order enforceable as such.

IV. RESTRICTED ACTIVITY

The Respondent shall not engage in the following activities at the Landfill:

1. Fill in designated wetland areas;
2. Fill in areas where there is less than the required five-foot (5') separation between new refuse and groundwater;
3. Knowingly accept any unauthorized or hazardous waste as defined by Title 6 NYCRR Part 360 or 366.

V. CONDITIONS

A. In the event that the Department does not approve any material submitted by Respondent pursuant to this Order, the Department shall within 30 days respond in writing specifying its objections. Thereafter, the Respondent shall within 30 days revise and resubmit its proposed plans and schedules.

B. Wherever pursuant to this Order a submission is to be made to the Department said submission shall be made to the Regional Solid Waste Engineer, Region 2, New York State Department of Environmental Conservation, Suite 6126, 2 World Trade Center, New York, New York 10047 with a copy to the Director, Division of Solid and Hazardous Waste, 50 Wolf Road, Albany, New York 12233-0001.

C. If Respondent cannot meet one or more of the time limitations imposed by this Order on Consent due to an event or condition which was not caused by negligence or willful misconduct on the part of the Respondent, Respondent may apply in writing to the Department immediately upon obtaining knowledge of such condition and request an appropriate time extension. Approval of any such request shall be at the absolute discretion of the Department but the granting thereof shall not be unreasonably withheld. In the event that Respondent alleges that circumstances require the continuation of active use of the Landfill due to the unavailability of acceptable alternative disposal areas or disposal systems, Respondent may request an appropriate time extension not to exceed one year. Such request shall include certification by the United States Department of Interior, National Park Service that it is in concurrence with such extension. Approval of any such requests shall be at the absolute discretion of the Department, but shall not be unreasonably withheld.

D. The Department will not prosecute or bring any enforcement action against the Respondent in any administrative or judicial forum on account of the violations which led to the entry of this Order. The Department reserves its right to prosecute or initiate an enforcement action including a summary abatement order against the Respondent in an appropriate administrative or judicial forum for violations of this Order.

E. In consenting to the terms and conditions of this Order on Consent, Respondent does not thereby waive any rights to defend against or institute any legal proceedings brought in any administrative or judicial forum arising under Part 360 or any other provision of law.

F. Nothing contained in this Order on Consent is or shall be deemed to be an admission by the Respondent or by the Department of any liability, wrongdoing or violation of any statute, rule or regulation.

G. Until such time as the Department has in effect an approved Solid Waste Plan pursuant to Subtitle D of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) and its implementing regulations and so long as the Respondent remains in compliance with the terms of this Order, then, in any lawsuit pursuant to 42 U.S.C. 7002 brought against the Respondent as to which the Department is not a party, the Department shall seek to intervene as a co-defendant or if such intervention is denied, as an amicus curiae in order to support this Order. Should the Department be named as an original party in such a lawsuit under the above circumstances, the Department agrees to support this Order.

H. The provisions of this Order shall remain in effect until the Department certifies that the post-closure requirements are satisfied.

I. The Effective Date of this Order shall be the date on which it is signed by the last signatory thereto.

DATED: New York, New York

D Dec 16, 1985

New York State Department of
Environmental Conservation

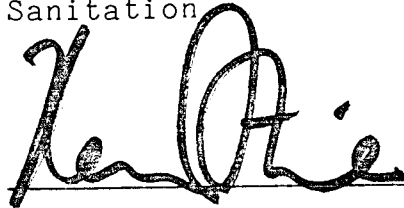
BY: *Henry G. Williams*
HENRY G. WILLIAMS
Commissioner

To: Hon. Norman Steisel
Commissioner
N.Y.C. Department of Sanitation
125 Worth Street
New York, N.Y. 10013

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, File No. 2-0954, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

NORMAN STEISEL, Commissioner
New York City Department of
Sanitation

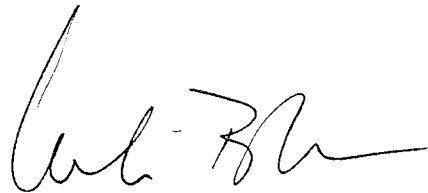


ACKNOWLEDGEMENT

State of New York)
County of New York) ss:

On this 4th day of DECEMBER 1985, before me personally came Norman Steisel to me known, who being by me duly sworn did depose and say that he maintains an office at 125 Worth Street, in the City of New York and that he is duly authorized to execute the foregoing instrument.

LESLIE BRUCE MARON
Notary Public, State of New York
No. 24-4667211
Qualified in Kings County
Commission Expires March 30, 1986



NOTARY PUBLIC