

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Response Program
for Old Ghent (Talarico) Landfill by
The County of Columbia, New York,
Volunteer

ORDER
(INDEX NO: A4-0327-95-04)

CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.

2. The County of Columbia, New York ("Volunteer") seeks to cap the Old Ghent (Talarico) Landfill ("Site") which is located on Talarico Road in the Town of Ghent, County of Columbia, New York. The Site was used from 1958 to 1970 as a municipal landfill. It is a seven acre parcel bounded on the west by Talarico Road, on the east by a swamp and on both the north and south sides by private properties. Private residences abut and lie on the landfill. The Site was not properly closed and has surficial expression of chalky material which is white unless disturbed when purple and pink colors are seen. This material has been characterized as EP Toxic

for barium with levels ranging as high as 266 ppm. A copy of the Site map is attached as Exhibit A.

3. The Department determined that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment based upon the presence of barium. The Site is classified as a class 2, #411011. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

4. Volunteer has not taken title to the Site, has not previously owned or operated the Site, has not deposited, or caused to be deposited, any hazardous wastes on the site and is not otherwise responsible for the hazardous waste ("environmental conditions") at the Site that may exist as of the effective date of this Order. However, Volunteer, desirous of implementing a response program acceptable to the Department sufficient to protect the human health of the residents of Columbia County, consents to the terms and conditions of this Order.

5. The Department so orders and the Volunteer agrees that the goals of this Order are:

A. for the volunteer to implement a Department-approved Response Program for the Site ("Response Program"), and

B. for the Department and the Trustee of New York State's environmental resources, (the "Trustee") under the circumstances described within this Order, to release Volunteer and its successors and assigns, under the conditions set forth in this Order, from any and all claims, actions, suits and proceedings (including but not limited to any claims for State administrative costs) by the Department or by the Trustee, which may arise under any applicable present or future laws as a result of environmental conditions at the Site that exist as of the effective date of this Order.

6. Volunteer agrees to be bound by the terms of this Order. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

IT IS AGREED AND SO ORDERED THAT:

I. Performance and Reporting of the Response Program

A. The Volunteer has submitted and the Department has approved a Response Program Work Plan (annexed as Appendix A) describing how the landfill cover will be provided. The Response Program Work Plan includes the following:

(i) A landfill cover to eliminate the public health threat. The cover is designed to be on average eighteen (18) inches deep consisting of twelve (12) inches of clean fill plus an additional six (6) inches of topsoil which will be seeded with grass upon completion. Site drainage to the east (back of the site) is required. An estimated 16,940 yd³ of fill material will be required, one third of which is topsoil.

(ii) Coverage of approximately 7.4 acres.

(iii) A Site Safety Plan to assure compliance with applicable health and safety rules and regulations.

B. As soon as possible after the effective date of this Order, weather permitting, Volunteer shall commence the Response

Program in accordance with the Department-approved Response Program Work Plan.

C. Volunteer shall perform the Response Program in accordance with the Response Program Work Plan. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Response Program Work Plan and shall not modify any obligation unless first approved by the Department.

D. During implementation of all construction activities identified in the Response Program Work Plan, Volunteer shall have a full-time representative on the Site who is qualified to supervise the work done.

E. Within the schedule contained in the Response Program Work Plan, Volunteer shall submit to the Department a final engineering report. The final engineering report shall include "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that the Response Program was implemented and all construction activities were completed in full accordance with the Response Program Work Plan and this Order. The final engineering report, including the "as

built" drawings and certification must be prepared, signed, and sealed by a professional engineer.

F. Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied that the Response Action was completed in compliance with the Response Program Work Plan. Once the landfill cover has been completed in accordance with the Response Program Work Plan, the Department shall forebear from bringing any action, proceeding, or suit against Volunteer for the further investigation and remediation of the Site based upon the release or threatened release at the Site of any hazardous substance as defined by CERCLA or hazardous waste as defined by Article 27 of the New York State Environmental Conservation Law or future laws that could be construed to impose liability upon the County. Further, Volunteer did not itself place, or suffer to be placed, any hazardous substances or hazardous waste at the Site. In addition to notifying Volunteer in writing that it is satisfied, the Department shall provide Volunteer with a separate written release and covenant not to sue memorializing its forbearance once the landfill cover has been completed pursuant to the Response Program Work Plan.

II. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. (a) If the Department disapproves the final engineering report and certification, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 60 days after its receipt of the report and may request Volunteer to modify or expand the report; provided, however, that the matters to be addressed by such modification or expansion are in accordance with the Response Program Work Plan. Within 30 days after receiving written notice that Volunteer's final engineering report has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the report.

(b) After receipt of the revised report, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. If the Department disapproves the revised report, the Department and the Volunteer may pursue whatever remedies may be available at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same.

B. Within 30 days after the Department's approval of the final engineering report and certification, Volunteer shall submit to the Department copies of that report and all other Department-approved drawings and submittals, if any, as required by Paragraph I. Such submission shall be made to Thomas A. Reamon, P.E., at the address set forth in Subparagraph VII.A.1 of this Order.

III. Enforcement

A. Volunteer's failure to comply with any term of this Order constitutes a violation of this Order.

B. Volunteer shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement of this Order because of fire, lightning,

earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot obstruction or interference by the site landowners and/or adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("force majeure event"). Volunteer shall, within ten working days of when it obtains knowledge of any such force majeure event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Order pursuant to this Subparagraph III.B.

IV. Department Reservation of Rights

A. Except as provided herein, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any party other than Volunteer.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

V. OSHA Training

Volunteer shall provide "40 hour training" for Volunteer's employees that are required to have such training as set forth in the site Safety Plan in the Department approved Response Program Work Plan annexed as Appendix A.

VI. Deed Restriction

Volunteer shall request that the Site property owner(s) record an instrument(s) with the Columbia County Clerk, to run with the land, that shall prohibit the Site from ever being used for purposes other than those which do not disturb the integrity of the Remedial Program (landfill cover) without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department. Volunteer shall provide the Department with a copy of such instrument certified by the Columbia County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Columbia County Clerk, if the property owner(s) record such an instrument(s).

VII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Thomas A. Reamon, P.E., Chief
Western Investigation Section, Bureau of
Hazardous Site Control
Division of Hazardous Waste Remediation
New York State Department of Environmental
Conservation
50 Wolf Road
Albany, New York 12233

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

and

Michael J. Lesser, Central Field Unit
Division of Environmental Enforcement
New York State Department of Environmental
Conservation
1150 North Westcott Road
Schenectady, New York 12306-2014

Copies of the final engineering report shall be submitted as follows:

- Four copies (one unbound) to Thomas A. Reamon, P.E.
- Two copies to Dr. Carlson

- One copy to Michael J. Lesser, Central Field Unit

2. Communication to be made from the Department to

Volunteer shall be sent to:

William Better, Esq.
Columbia County Attorney
401 State Street
Hudson, New York 12534

with copies to: Whiteman Osterman & Hanna
One Commerce Plaza
Albany, New York 12260
Attn: Terresa M. Bakner

and Donna Menard Verna
Crawford & Associates
551 Warren Street, Suite 301
Hudson, New York 12534

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph VII.

VIII. Miscellaneous

A. Volunteer shall retain professional consultants and contractors, to perform the technical and engineering obligations required by this Order. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

B. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Order.

C. Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations, referenced, collectively as "authorizations," other than those set forth in paragraph J of this section, necessary to perform Volunteer's obligations under this Order excepting, however, that in the event Volunteer is unable to obtain any or all of the authorizations then Volunteer is no longer bound by this Order. Volunteer is under no obligation to pay or provide any consideration to Site property owner(s) for such access. The Department will use its best efforts to assist Volunteer in obtaining such authorizations.

D. Volunteer, Volunteer's officers, directors, agents, servants and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, successors, and assigns shall be bound by this Order. Volunteer's, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Volunteer. Excepting, however, that in the event Volunteer, who does not have any ownership or other

property right in the Site, is unable to obtain the permission of the Site's owner(s) to access the Site upon terms acceptable to the County for purposes of implementing the Response Program Work Plan then Volunteer is no longer bound by this Order. The Department will use its best efforts to assist Volunteer in obtaining access to the Site.

E. Volunteer shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Volunteer or Volunteer's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

F. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. However, if such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the

State of New York in accordance with Article 145 of the New York State Education Law.

G. All references to "days" in this Order are to calendar days unless otherwise specified.

H. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

I. (1) The terms of this Order shall constitute the complete and entire Order between the Department and Volunteer concerning the remediation of the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer or Volunteer's obligation to obtain such formal approvals as may be required by this Order.

(2) If Volunteer desires that any provision of this Order be changed, Volunteer shall make timely written application,

signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed in accordance with paragraph VII.

J. This Order constitutes an exercise of the Department's enforcement discretion and accordingly, the remedial activities required herein shall be exempt from the provisions of the State Environmental Quality Review Act. Volunteer is also exempt from any Department permitting requirement in the implementation of the Response Program and is authorized to undertake the foregoing programs under the authority of this Order.

K. The provisions of this Order do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC §9613 and any other applicable law, Volunteer shall not be liable for any claim, nor in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is the subject matter of this Order. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC §9613(f)(3) shall apply.

L. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

Dated: 8/10/95 , New York
 9/1/95 , 1995

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: Michael O'Toole
MICHAEL O'TOOLE, JR.
DIVISION DIRECTOR
DIVISION HAZARDOUS WASTE
REMEDICATION

CONSENT BY VOLUNTEER

Volunteer hereby consents to the issuing and entering of this Order, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Gerald Susans
Title: Chairman Bd. of Supervisors
Date: _____

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

On this 5th day of Sept, 1995, before me personally came Gerald Susans to me known, who being duly sworn, did depose and say that he resides in Chatham, N.Y.; that he is Chairman Bd. of Supervisors the Volunteer described in and which executed the foregoing instrument; and that he signed his name on behalf of the County of Columbia, New York, and was authorized to do so.

Barbara von der Oeten
Notary Public

BARBARA von der OETEN
Notary Public, State of New York
No. 1140022
Qualified in Columbia County, NY
Commission Expires July 1, 1996