

In the Matter of the Application of

KARTA CORP.

RULING ON ISSUES AND
PARTY STATUS

to modify a Solid Waste Management Facility pursuant to Part 360 of Title 6 of the Official Compilation of New York Codes, Rules and Regulations for a facility in the City of Peekskill, Westchester County.

June 21, 2004

DEC #3-5512-00054/00004

SUMMARY

This matter involves the application by Karta Corp. ("Permittee") to modify its existing permit for its solid waste management facility ("facility") located in the City of Peekskill, Westchester County. The Permittee objects to a number of conditions set forth in the draft permit released by the staff of the Department of Environmental Conservation ("DEC Staff") and has provided a list of its objections as proposed issues for adjudication. DEC Staff have stipulated that the issues on the list are adjudicable. One petition for full party status was received on behalf of the City of Peekskill (the "City"), and there were no objections to granting the City party status. Accordingly, this ruling memorializes the agreement of the parties as to the issues to be adjudicated and confers full party status on the City. This matter will proceed to adjudication directly and the parties may continue to negotiate and attempt to resolve their differences.

PROCEEDINGS ON THE PERMIT MODIFICATION

This permit modification application was originally prepared in August 2001 and has been revised a total of five times. The Planning Commission, City of Peekskill is lead agency for purposes of the State Environmental Quality Review Act ("SEQRA") and has determined that this modification will not have a significant effect on the environment and issued a negative declaration in April 1998. On September 8, 2003, DEC Staff issued a Notice of Complete Application. The Notice appeared in the Department's electronic *Environmental News Bulletin* on

September 17, 2003, the local *Pennysaver* on September 17, 2003 and *The Journal News* on September 13, 2003.

By letter dated September 23, 2003, the City informed DEC Staff that it opposed the Permittee's request to operate 24 hours a day. The letter also informed DEC Staff that the City's Special Use Permit, which authorized operation of the facility, had been revoked and that the City had been enjoined from enforcing revocation by a bankruptcy court.

By letter dated November 7, 2003, DEC Staff notified the Permittee that the permit modification application was being referred for an administrative hearing because there was a reasonable likelihood that the permit applied for will be denied or could be granted only with major modifications (see 6 NYCRR 621.7(b)).

On December 24, 2003, the referral was received in the Office of Hearings and Mediation Services ("OHMS") and Administrative Law Judge ("ALJ") P. Nicholas Garlick was assigned to the matter.

On December 29, 2003, during a conference call regarding this matter, a request for a five week delay was granted to allow for negotiations. A second conference call took place on February 2, 2004. By letter dated February 5, 2004, the ALJ informed the parties that the Notice of Hearing would not be published until after DEC Staff produced a draft permit. By letter dated February 10, 2004, DEC Staff sought to have the Chief ALJ direct publication of the Notice, before a draft permit was available. By letter dated February 17, 2004, the Permittee wrote in opposition to DEC Staff's request. By letter dated February 25, 2004, Chief ALJ McClymonds informed the parties that he would not interfere with the ALJ's decision.

By letter dated March 15, 2004, DEC Staff informed the ALJ that it would oppose permit issuance for the pending application and that in this case no draft permit was needed before Notice would be published.

On April 7, 2004, the Notice of Legislative Public Hearing and Notice of Issues Conference was published in the *Environmental Notice Bulletin*. The Notice was published in the *Journal News* on April 8, 2004. The ALJ also required supplemental publication of the Notice in the *Pennysaver* on April 21, 2004, and in the Spanish language *Pennysaver* on the same date.

A legislative hearing was held on April 29, 2004, in the Council Chambers, Peekskill City Hall, 840 Main Street, Peekskill, NY. The first speaker was a representative of the Permittee who described the proposed permit modification. Second, the Regional Attorney for DEC Region 3 spoke regarding DEC Staff's concerns and opposition to the Permittee's request. Third, the City's Acting General Counsel related the City's concerns with the proposed modification, including the hours of operation, the quantity of waste handled at the site, noise, and the need to enclose the facility. Two members of the public then spoke: Mr. Alex Lamas spoke in opposition to the garbage dump on South Street and discussed the fact that the Charles Point neighborhood was becoming more desirable; and Ms. Joanne Rizzo, a neighbor of the facility, spoke in opposition to the permit modification and detailed her experience with dust and smells from the facility interfering with her enjoyment of her property.

By letter dated April 30, 2004, the City petitioned for full party status and proposed five issues for adjudication, including concerns with respect to: hours of operation; intensity of use of the site; requiring the facility to be enclosed; activities conducted within structures at the facility; and noise, smells and dust.

By letter dated May 7, 2004, DEC Staff informed the ALJ that DEC Staff was in the process of developing a draft permit and that such document may not be ready before the issues conference. On May 12, 2004, DEC Staff produced a draft permit.

An issues conference was held on May 13, 2004 in the Council Chambers, Peekskill City Hall, 840 Main Street, Peekskill, New York. By operation of law, the Permittee and DEC Staff are automatically full parties to the proceeding (see 6 NYCRR 624.5(a)).

DEC Staff appeared through Vincent Altieri, Esq., Regional Attorney, DEC Region 3. Also in attendance were: Jonah Triebwasser, Esq., Deputy Regional Attorney; Michael Merriman, Permit Analyst; Ken Grzyb, Region 3 Solid Waste Engineer; David Pollock, Solid Waste Engineer; Jennifer Hesse, Assistant Regional Attorney; Larry Ricci, Environmental Monitor; Will Myers, Environmental Monitor; and Don Weiss, Environmental Monitor.

The Permittee appeared through Paul D. Casowitz, Esq., of the law firm Sive, Paget & Riesel, P.C. Also in attendance were: Kenneth Cartalemi of Karta Corp.; and Ken Gelte, an engineer for Karta Corp.

A single petition for party status was filed by the City of Peekskill. The City appeared through its acting general counsel, William J. Florence, Esq. Also in attendance was David Greener, the Director of City Services.

At the issues conference, both the Permittee and the City indicated that they were unable to respond to the draft permit because they had only received the permit the day before. The ALJ then ruled that an additional notice was necessary to announce the availability of the draft permit, allowing public comment on the draft permit, and reconvening the issues conference.

Following the May 13, 2004, issues conference, a site visit occurred. Representatives of DEC Staff, the Permittee and the City accompanied the ALJ during the site visit.

A Notice of Availability of Draft Permit and Notice of Continued Issues Conference, scheduled for June 17, 2004, was published in the *Environmental Notice Bulletin* on May 17, 2004, and in the *Journal News*, on May 19, 2004.

On June 15, 2004, a conference call took place among the parties, the ALJ and the City. The City reported that nearly all issues between the City and the Permittee had been resolved, except for the issue of hours of operation, but that the City continued to have an interest in the outcome of the DEC administrative hearing process.

On June 16, 2004, the Permittee provided a detailed issues list which included all disputes with DEC Staff regarding substantial terms and conditions of the draft permit. DEC Staff stipulated that all the identified issues met the standards for adjudication.

By letter dated June 16, 2004, the ALJ cancelled the continuation of the issues conference, since all issues had been either resolved or previously identified.

The record closed with the receipt of the issues list from the Permittee on June 16, 2004.

On June 17, 2004, another conference call took place, which established the weeks of August 9 and August 16, 2004, as the dates for the adjudicatory hearing. The parties continue to negotiate to narrow and resolve outstanding issues.

ISSUES PROPOSED FOR ADJUDICATION

As stated above, the Permittee provided a list of 36 issues it proposes for adjudication in a letter dated June 16, 2004. DEC Staff has stipulated that these issues meet the standards for adjudication. The text of the Permittee's letter is attached to this ruling as an appendix. Since there is no controversy regarding the issues for adjudication, all issues identified by the Permittee are advanced to adjudication. It is recognized that some, if not many, of these issues are relatively minor and should be resolved during negotiations.

PARTY STATUS

As stated above, only the City of Peekskill has petitioned for party status in this matter. At the issues conference, both DEC Staff and the Permittee stated that they did not oppose granting party status to the City. While it is reported that the City and the Permittee have resolved almost all of their differences, the issues identified by the City in its petition are similar to those identified by the Permittee and advanced to adjudication. Accordingly, the City is granted full party status in this matter to participate as it deems necessary to develop a full record on all issues to aid the Commissioner in making a final decision on the pending permit modification application.

APPEALS

Pursuant to 6 NYCRR 624.6(e) and 624.8(d), these rulings on party status and issues may be appealed in writing to the Commissioner and such appeals are to be filed with the Commissioner in writing within five days of the disputed ruling.

The parties are to transmit copies of any appeals and replies to all persons on the service list at the same time and in the same manner as they are sent to the Commissioner, with two copies being sent to my address. Service by fax is not authorized.

Albany, New York
June 21, 2004

_____/s/_____
P. Nicholas Garlick
Administrative Law Judge

Attachment: Applicant's letter dated June 16, 2004.

To: Paul Casowitz, Esq.
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June 16, 2004

VIA FIRST CLASS MAIL

P. Nicholas Garlick
Administrative Law Judge
NYS Department of Environmental Conservation
625 Broadway, 1st Floor
Albany, New York 12233-1550

**Re: In the Matter of Karta Corp.
DEC Permit No. 3-5512-0005-0004**

Dear Judge Garlick:

Pursuant to the Department's Uniform Rules of Procedure, 6 NYCRR PART 621, this letter presents the issues that Karta Corp., the permittee, proposes for adjudication concerning the above captioned permit.

The comments are keyed to the paragraph numbers of the May 12, 2004, draft permit prepared by the DEC staff.

1. Required Submittals and Submittal Procedures

The draft permit calls for five copies of every permit submittal: three copies to Region 3; one copy to the Division of Solid and Hazardous Materials; and one copy to the Westchester County Department of Environmental Facilities. This requirement applies to each and every submittal, including those made on a weekly basis. Karta objects to the requirement as unnecessary, not required by the regulations, and serving no useful purpose other than to contribute to wasteful proliferation of paper. Moreover, Karta questions whether all of the recipients need or even want to receive these reports. It appears that this requirement may be boiler plate language copied from a permit for a different type of facility.

4. Sewer Discharge

Karta discharges sanitary waste water to the sewer system of the City of Peekskill. Karta's site plan approval, issued by the City of Peekskill, authorizes the facility to discharge wastewater into its sewer system. The Peekskill sewer system utilizes a POTW operated by the Westchester County Department of Environmental Facilities ("WCEF"). The WCEF inspected the Karta

facility in November of 2003, and reviewed the Pretreatment Program Industrial Survey Questionnaire, submitted by Karta in January 2004, and has confirmed that no permit issued by the WCEF is required for the discharge from the Karta facility. This information has been previously communicated to Mr. Merriman in connection with the permit application by Karta's consulting engineer. The WCEF has declined request to issue a letter confirming that no permit is required; however, the DEC may confirm this fact by calling Mr. Robert Cea of the WCEF at (914) 813-5406.

7. Equipment Location

Certain materials handling equipment, such as excavators and other mobile equipment are used in all locations. Karta will comply and identify such equipment in its response. Other processing equipment may be used in more than one location in which case Karta shall identify such locations.

8. Construction Certification

A PE will certify that construction is in conformance with approved plans and applicable NYS Building Codes, including ventilation requirements. It is not reasonable to require a PE to certify that all buildings "have proper ventilation and the air quality within the building will be safe for all employees." This is not an objective standard, is outside the scope of a PE's qualifications, nor is it consistent with the Part 360 regulations.

11. Reporting

Weekly reporting is burdensome, not required by the Part 360 regulations and duplicative of the requirements of paragraph 10 of the draft permit. In addition, the presence of an on-site monitor, funded by Karta, provides for contemporaneous review of all Karta operations and operating records.

12. Tracking Form

Karta is primarily a recycling facility that primarily accepts C&D debris with a high recyclable content, materials constituting clean fill, and MSW with a high recyclable content. Karta does not object to the Tracking form for materials, other than substitute aggregate which is authorized to enter into the stream of commerce. Karta also maintains that recyclables not intended for fill purposes, such as paper, metals, cardboard, glass, and shredded tires should be exempt from this requirement. Imposing a tracking form requirement on these commodities would interfere with the marketing of such materials, some of which are destined for overseas markets and thereby frustrating the recycling objective of the Department's own policy.

13. Ultimate Disposal of Solid Waste

Marketable recyclables recovered from solid waste should not be treated as solid waste, including, glass, metal, uncontaminated wood or wood products, substitute aggregate or material authorized under a generic (non-site specific BUD pursuant to the Part 360 regulations (360-1.15(b))).

15. End User Form

Karta objects to the requirement for an End User Form with respect to materials meeting the requirements of Part 360-1.15(b)-(d) which are no longer be classified as solid waste.

NOTIFICATION

16. Notification with respect to damage should only apply to substantial damage adversely affecting compliance with the permit, creating a hazard to property or a risk of bodily injury, or nuisance.

17. The language of the proposed permit would prevent the permittee from taking action consistent with its permit, responding to equipment breakdowns or facility damage in a timely manner. The permittee proposes the following revision:

“Notice of the commencement of any on-site activities other than maintenance and activities consistent with its permit and operations manual must be made in writing to the Regional Solid & Hazardous Materials Engineer at least five (5) working days in advance of the activity, or if immediate action is necessary to address an equipment malfunction, as soon as is practicable.”

CONSTRUCTION

Preconstruction Reviews of Design Plans

18. The Permittee agrees that any construction shall be in compliance with its permit, applicable building codes and required authorizations, and that as built drawings and a PE certification shall be provided to the Department. The requirement for preconstruction review is not appropriate, not required by the Part 360 regulations for this type of facility, and is burdensome and oppressive.

20. Storm Water

The facility's drainage system is fully recognized and authorized by the City of Peekskill Site Plan Approval actions. Further, the facility's drainage system is specifically authorized by the DEC via coverage under the DEC's SPDES General Permit for Storm Water Discharges Associated with Industrial Activity except Construction Activity (Permit No. GP-98-03), including specific DEC review and approval of the facility's Storm Water Pollution Prevention

Plan (SWPPP) and Storm Water Management Plan (SWMP). Drainage collected within the facility buildings conducting solid waste operations is appropriately directed to the sanitary sewer. The permittee is unaware of any regulations prohibiting the infiltration of storm water into buildings. Accordingly, the permittee objects to a requirement that storm water be prevented from infiltrating into any or all buildings. This appears to be boilerplate language taken from another permit which fails to recognize the approved drainage system at this facility.

21. Conveyor System

The covering of the conveyor system is part of the permit submission; Karta objects to a provision requiring pre-construction review of its design drawings. Certification by a PE after construction that the covering has been completed in accordance with the permit and in compliance with applicable building codes will be provided to the Department.

22. Repairs to Buildings 1, 2, 3 and 6

Thirty days to complete repairs is not a reasonable time; the permittee proposes 120 days.

OPERATION AND MAINTENANCE

New Paragraph Proposed By Permittee – Enclose Building 3

Within 120 days permittee shall replace proposed fabric doors at Building 3 with metal doors so as to completely enclose building 3. As built drawings, certified by a PE will be provided to the Department.

24. & 25. Outside Storage of Material

The permittee objects to the prohibition of the outside storage of BUD material, aggregate, and recyclables recovered from waste.

26. Tipping in the Area between Building 3 and Building 6

The Permittee requests that the language be modified to prohibit tipping until the covered roof is in place.

27. Fines

Fines associated with clean fill, the recovery of rock, stone, brick, asphalt, concrete, and other materials meeting the requirements of 360-1.15(b) (Generic Bud) are acceptable aggregate and should not be required to be disposed in a landfill. Such a requirement would frustrate the objectives of recycling such material and unnecessarily increase the volume of material required to be landfilled.

28. Bud Material

The permittee objects to a blanket prohibition of producing generic BUD material or any condition which purports to revoke specific BUD determinations issued by the Department.

29. Receipt of Material

The permittee requests that the location of materials in Building 3 be modified to allow it flexibility to respond to variations in the composition of incoming material.

[DOORS 12,13,14, C&D; 16, 17 RECYCLABLES INCLUDING MATERIAL RECOVERED FROM MSW RECEIVED AT BUILDING 6; DOOR 15 MAY EITHER BE USED FOR PAPER OR CARDBOARD OR RECYCLABLES (INCLUDING MATERIAL FROM BUILDING 6); 2, PAPER & CARDBOARD]

30. Tonnage Limits

The permittee proposes a substantial reduction in its permitted tonnage and will accept a cumulative limit of 800 tpd (based on a seven day moving average) with no more than 1000 tpd on any single day. The permittee will demonstrate that the facility can process 800 tpd of each category of material with the exception of source separated and commingled recyclables for which the permittee proposes a limit of 400 tpd. In addition the permittee has a tire shredder and objects to a prohibition on the receipt of tires and proposes to accept tires such that no more than 1000 tires shall be stored at the facility.

31. Storage Limits

The permittee objects to a pile height limit within buildings of 15 feet and the proposed storage limitations.

32. Operation with Doors Closed

The permittee objects to a requirement that operations be conducted with doors closed. The Part 360 regulations do not require closed doors. Trucks regularly enter and exit buildings making it impractical to open and close doors. The facility has traditionally operated without closed doors and the only historic odor complaints were associated with composting operations which are no longer authorized at the facility. In the case of Building 6, there is insufficient space to allow a truck to dump with the bay doors closed. Karta would not object to a requirement to keep doors closed when trucks are not entering or exiting during the nighttime hours as a means of minimizing noise impacts from ongoing operations.

33. Storm water

The permittee is unaware of any regulations prohibiting storm water to run onto the site. The DEC's purported definition of leachate is inconsistent with Part 360.1.2(b)(98). The facility's drainage system is fully recognized and authorized by the City of Peekskill Site Plan Approval actions. Further, the facility's drainage system is specifically authorized by the DEC via coverage under the DEC's SPDES General Permit for Storm Water Discharges Associated with Industrial Activity except Construction Activity (Permit No. GP-98-03), including specific DEC review and approval of the facility's Storm Water Pollution Prevention Plan (SWPPP) and Storm Water Management Plan (SWMP). Drainage collected within the facility buildings conducting solid waste operations is appropriately directed to the sanitary sewer. The facility's drainage to the sanitary sewer is properly authorized (see response to draft condition 5).

34. Floors

It is not practical to sweep and wash tipping floors at the end of each day, since the permittee has proposed 24 hour receipt of material. Tipping floors used for MSW shall be marked so that one half of the floor area is cleaned every 48 hours. The permit provides for an on-site monitor---the permittee shall provide for quarterly inspection of all floor areas, in accordance with a schedule worked out with the Department and its monitor. However, requiring an inspection of the entire building would severely impact operations. Instead each building floor shall be inspected in segments---one half or one third in accordance with the quarterly schedule.

35. See, comment regarding floors in connection with paragraph 34.

36. Loading of MSW

To comply with this requirement, permittee will require authorization to build an enclosed loading dock.

37. 1070 Property

The 1070 Property is not part of the permitted facility. Aggregate meeting the requirements of a BUD may be stored anywhere. Waste shall not be stored in other than areas authorized by the permit, other than incidental storage incidental to transportation, authorized by the Part 360 regulations.

39. Acceptable Waste

Tires should be added to the category of acceptable waste. The facility is currently authorized to accept tires subject to a maximum storage limitation and has the capability to shred tires on site. Street sweepings containing less than 2 percent trash or putrescible material shall not be considered contaminated.

41. Tires

The facility currently authorized to accept tires and the permittee objects to a prohibition of accepting bulk loads of tires.

42. Storage of Recyclables

Permittee proposal:

“Recyclables recovered from the C&D debris may not be stored onsite for more than sixty (60) days, without the written approval of the Department, except that rock, mulch, clean fill, and other manufactured products intended to be used may be stored for 180 days.”

The purpose of this change is to allow the facility to accommodate market conditions for recyclables and to stockpile materials used in construction to meet variations in seasonal demand.

43. Recyclables

Strike paragraph as duplicative of paragraph 42, not required by Part 360, overly burdensome, and inconsistent with the objective of maximizing recycling.

44. Hours of Operation

Permittee’s proposed hours of operation:

The facility shall receive waste only between 6:00 AM to 7:00 PM Monday through Friday and from 6:00 AM to 5:00 PM on Saturdays at the 1011 Lower South Street parcel and from Monday 4:00 AM to Saturday 6 PM at the 1017 Lower South Street parcel. **All outside processing** operations shall end by 7:00 P.M. daily (5:00 PM Saturday), except facility maintenance. All facility maintenance activities shall be limited to those of a nature that do not constitute an off site nuisance, as determined in the Department’s sole discretion. No Sunday operations are allowed. The facility shall not operate on the following Legal Holidays: New Year’s Day, Memorial Day, Independence Day (July)

49. Storage Limitations

Paragraph is duplicative other conditions.

58. Office Space for Monitor

Permittee objects to this open ended requirement but will consider reasonable accommodation for on-site monitor consistent with available space at the facility.

59. Funding for Monitor

Permittee requests clarification as to the meaning of this paragraph and is unable to respond.

Without limiting the permittee's objections stated herein the particular issues may be grouped into the following major categories:

- Hours of Operations
- Tonnage & Storage Limitations at the Facility
- Requirement to Keep Doors Closed
- Definition of BUD and Recyclables which Cease to be Categorized As Solid Waste
- Restrictions on the Receipt of Bulk Tire Loads
- Storm Water Management Requirements
- Required -Pre-Approval of Construction Drawings
- Requirements related to notice, reporting and the on-site monitor

On behalf of our client, we are hopeful that discussions with the DEC attorneys and staff will allow us to consolidate and narrow this list before the commencement of the adjudicatory hearings, now scheduled for August, 2004.

Respectfully Submitted,

Paul Casowitz
Sive, Paget & Riesel, P.C.
Attorneys for Permittee, Karta Corp.

PDC:so

cc: William Florence, Esq.
Vincent Altieri, Esq.
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