

In the Matter of the Application of the  
**SULLIVAN COUNTY DIVISION OF SOLID WASTE**  
for permits for the Phase I (Cell 6)  
expansion of the County landfill in the  
Village of Monticello, Sullivan County.  
(Application No. 3-4846-00079/00021)

---

**SUPPLEMENTAL  
ISSUES  
RULING**

**SUMMARY**

This supplemental issues ruling addresses odor control, which was identified as a potential issue for adjudication. Based on the development of a new odor control plan by the County, as I directed in my rulings of July 20, 2004, and the incorporation of that plan, with an addendum, into the draft permit prepared by Staff of the Department of Environmental Conservation, I find that odor control does not require adjudication as an issue in this proceeding addressing the Phase I (Cell 6) expansion of the Sullivan County landfill.

**BACKGROUND**

On July 20, 2004, I issued rulings on party status and issues in this matter. Two issues were identified for possible adjudication: odor control and litter control. With regard to odor control, the County was directed to develop a new plan prior to any permitting decision, thus allowing affected parties an opportunity to raise issues with regard to the proposed control measures. Full party status was granted to the Town of Thompson and the Village of Monticello, as landfill host communities, and to Special Protection of the Environment of the County of Sullivan, Inc. (SPECS), whose membership includes people living near the landfill. Party status was denied to the Sullivan County Association of Supervisors, and the Supervisors Association has appealed that ruling to the Commissioner. To avoid any prejudice to that group while its appeal is pending, I have treated it as a party in proceedings addressing odor control, meaning it remains on the service list and has been included on conference calls addressing this issue.

In my rulings of July 20, 2004, I said that proceedings addressing odor control would continue when the County sent me a new odor control plan. On October 21, 2004, no plan having been received, I sent out a memorandum (Exhibit No. 1) inquiring about the plan's status and the County's preferred timetable for litigating the odor control issue. The County responded that it had completed a draft of the plan on August 6, 2004, and that it had received comments on the draft from SPECS (on August 27) and

Department Staff (on October 20). During a conference call I had with the parties on November 15, we agreed that the issues conference would reconvene on December 7, 2004, to entertain arguments about the need to adjudicate issues related to the County's plan. Also on November 15, the County released a "first revision" of its draft that included responses to the comments it had received from SPECS and Department Staff. (The revised draft of the odor control plan is Exhibit No. 4.)

In a memorandum to the parties dated November 16, 2004 (Exhibit No. 2), I confirmed that reconvening the issues conference would not be necessary if all the parties could agree on terms of the new odor control plan and the manner in which that plan would be incorporated as part of a permit authorizing the Phase I (Cell 6) expansion. I directed that the parties copy me on all future plan-related correspondence, to the extent they circulated it to others on the service list. Finally, I directed that by 5 p.m. on December 2, 2004, Department Staff, SPECS, the Town and the Village, and the Supervisors Association provide me, the County, and each other statements of position identifying all remaining objections they had to the plan as it then existed. Proposed plan amendments, issues for adjudication, and witnesses any party would call to testify were to be identified, and a short description provided of the testimony each proposed witness would offer. If any party was fully satisfied with the plan and had no objections to it, I said a short letter confirming that would suffice.

I received only one submission on December 2, that being from Department Staff, indicating its conditional approval of the County's new odor control plan. [Staff's submission is Exhibit No. 3.] Submissions of the other parties, also dated December 2, were sent to each other and the County, but not to me, contrary to the instruction in my November 16 memorandum. On December 3, I asked Department Staff counsel whether he had received submissions from SPECS, the Town and the Village, and the Supervisors Association. He said that he had, and I directed him to fax copies to me, which he did.

As announced in my November 16 memorandum, I had a conference call with all parties' counsel at 10:30 a.m. on December 6, 2004. The purpose of the call was to review the December 2 submissions and determine whether it would be necessary to reconvene the issues conference the next day. The call involved a brief discussion of the County's plan, as well as the other parties' concerns about the plan and its implementation. At the end of the call, the County requested that the issues conference go forward the next day, following a

second call on the afternoon of December 6 in which the parties would discuss their concerns with the County directly, without my involvement. I granted the County's request, and indicated that the conference would take up any matters which the parties could not resolve among themselves, leaving each of the intervenors the option whether to attend the conference or not.

The conference went forward on December 7 with only the County and Department Staff participating. The County was represented by its attorney, Samuel Yasgur, John Kehlenbeck, director of the County's solid waste division, and Peter F. Kuniholm, vice president of SCS Engineers, PC, which prepared the County's new odor control plan. Department Staff was represented by Jonah Triebwasser, deputy Region 3 attorney, Michael Merriman, deputy Region 3 permit administrator, Kenneth Grzyb, Region 3 solid and hazardous materials engineer, David Pollock, Region 3 environmental engineer, and William Myers, the Staff environmental monitor for the County landfill.

At the start of the conference, Mr. Yasgur indicated that at the end of the December 6 call the parties had among themselves, counsel for the Town and the Village, and counsel for the Supervisors Association, had indicated they saw no need to attend the issues conference. Mr. Yasgur also addressed the concerns raised in the December 2 letter that was filed by Gary Abraham, Esq., on behalf of SPECS.

The SPECS letter (Exhibit No. 9) included two proposals, both of which Mr. Abraham acknowledged related to the ability to enforce the new odor control plan, rather than the plan's substance. SPECS' first proposal was that the final Part 360 permit for the Phase I expansion provide enforceable milestones for the plan's implementation. Addressing this point, Mr. Yasgur said that the County was already operating under a Department-approved odor control plan established through a consent order a year ago, and would not agree to implement the new plan except under terms of a permit for the Phase I landfill expansion.

SPECS' second proposal was that copies of completed odor logs, based on calls to an odor complaint hotline, be submitted by the County to a public repository, to enhance access to the logs by concerned citizens. In response, the County said it was willing to provide copies of the logs on a monthly basis separately to SPECS, the Town, the Village, and the Supervisors Association, provided that they each supply a name and address of a person to whom the materials should be sent.

Most of the conference was devoted to a discussion of the conditions attached to Department Staff's approval of the new odor control plan. The County and Department Staff negotiated directly with each other over these conditions, resulting in an addendum to the odor control plan (Exhibit No. 5) and language that would incorporate that plan to the Phase I expansion permit. [See special condition No. 6(A) to the draft Part 360 permit, as proposed on March 29, 2004 (in Exhibit No. 6) and then revised on December 7, 2004 (Exhibit No. 7).]

At the end of the issues conference, I said I was prepared to issue a written ruling finding that odor control would not require adjudication as an issue in this proceeding, given that the County's revised odor control plan of November 15, with the addendum of December 7, had been accepted by Department Staff, and given that the County had accepted Staff's revised permit condition that would incorporate that plan in a final Phase I expansion permit.

#### **DISCUSSION**

In my rulings of July 20, 2004, I identified odor control as a possible issue for adjudication. This ruling was based on a number of factors, including problems the County had encountered maintaining its landfill in compliance with the Department's odor control requirement for solid waste management facilities. That requirement, at 6 NYCRR 360-1.14(m), states that odors "must be effectively controlled so that they do not constitute nuisances or hazards to health, safety or property." Department Staff inspection reports for the period between October 2003 and May 2004 revealed a continuing pattern of violations of this requirement, and the County itself acknowledged that odors presented a problem for people living near the landfill, many of whom complained about the odors at a legislative hearing I conducted in February, 2004. In my July 20 rulings, I said that the odor problems raised significant doubt about the County's ability to restore and maintain compliance with the regulatory operating requirement, at least in the absence of a new odor control plan for the Phase I expansion.

In its draft permit, Department Staff had proposed that the County submit a new odor control plan after approval of the expansion. However, under terms of that permit, there was no understanding of what that plan would entail, a deficiency I said should be corrected by requiring the new plan as part of the pending application. This would allow the plan to be reviewed as part of this hearing, with the possibility that odor control issues could still require adjudication.

I said the need to adjudicate odor control issues would depend on whether the parties to the hearing could agree on the measures to be employed. I added that adjudication would be required to the extent that Department Staff objected to the County's plan or, if Staff did not object, to the extent that other parties, with adequate offers of proof, could raise issues about the plan.

My ruling on odor control was not appealed to the Commissioner, and, as noted above, the County submitted an initial draft of its new odor control plan in August 2004, followed by a revision on November 15, 2004, which responded to comments on the first draft that had been received from Department Staff and SPECS. As I directed, the scope of the odor control plan was consistent with that requested by Department Staff in the permit it had drafted.

The plan was developed by SCS Engineers, a solid waste consulting and construction firm with headquarters in Long Beach, California, and a long standing New York office in Valley Cottage, Rockland County, whose practice involves extensive specialized work in all aspects of landfill gas and odor control. The County hired SCS Engineers as an independent consultant in February 2004, initially to provide rental flare equipment on an expedited basis in response to odor issues, and subsequently to review, provide independent advice and assist with enhancements to the landfill gas system. After its initial review, SCS Engineers recommended that a number of intermediate and short-term steps be taken, and it began to assist the County in reducing odors as quickly as possible. When the issues conference reconvened on December 7, Department Staff said that odor control had improved at the landfill since May, though inspection reports for the period between May and November (received collectively as Exhibit No. 11) indicated that some odors were still being detected off-site both by neighbors and the Department's own environmental monitor. [See also Exhibit No. 12, a November 30, 2004, newspaper article addressing the odor situation, which was provided by the County.]

In a response to comments which is part of the November 15 plan revision, SCS Engineers provided an overview of recent efforts to reduce odors, efforts that were acknowledged by Mr. Myers, Department Staff's landfill monitor, at the issues conference. These efforts include:

- (1) Stopping the receipt of construction and demolition (C&D) debris fines as daily cover, effective June 2004, to remove a source of compounds that produce hydrogen sulfide odors;

(2) Keeping the working face to a minimum size and placing daily cover more than once a day, if any working face odors are apparent;

(3) Properly adjusting and balancing the landfill gas collection system on a weekly basis, and keeping all areas of the landfill under vacuum, so that substantially all gas is being collected;

(4) Constructing four new horizontal gas collectors in Cell 4 in September, 2004;

(5) Installing a new larger replacement flare No. 2 and adjusting the flow rate and orifice to allow more reliable operation;

(6) Installing two new shallow vertical gas wells on the east side of Cells 4 and 5 in response to surface emissions monitoring, and connecting them to the gas collection system;

(7) Adjusting the landfill gas system to put higher vacuum than normal on the landfill to remove all possible landfill gas for odor control;

(8) Adjusting and "tuning" the gas collection system on a weekly basis to optimize collection, promote condensate drainage and assure proper operation of the system; and

(9) Installing automatic restart and alarm auto-dialers on all flares, to improve the reliability of the system in the event of an outage, provide redundancy and allow staff to troubleshoot any malfunctions more quickly.

Apart from these efforts, SCS Engineers reported that a new landfill gas blower and west side gas header pipe had been designed, with the header pipe to be constructed by the end of the year, and that three additional shallow vertical gas wells were being installed in selected areas where surface emissions were suspected or could potentially become an odor source.

As described in Part B of the November 15, 2004, submission, the County's future odor control plans include the following:

(1) Ceasing the receipt of any further high-sulfate-containing alternate daily cover, and finding substitutes for that material;

(2) Implementing an effective landfill gas control and monitoring plan;

(3) Making an additional attempt to use an odor masking spray, with an evaluation of the effort after a two-month trial;

(4) Making every practical effort to minimize the size of the open working face;

(5) Placing cover material in a timely manner, daily or more often if needed for excessively odorous loads;

(6) Continuing monthly well field balancing, with daily flare and blower checks by County staff, until the planned new west side header is installed;

(7) Providing perimeter monitoring that involves use by trained individuals of an olfactometer (also known as a Nasal Ranger, a hand-held device with a carbon filter) to identify types, strength, number and duration of odors on a regular basis, with the aim of confirming odors and their nature in more detail, so that they are related to specific events, which can then be rectified;

(8) Providing perimeter monitoring that involves County or SCS Engineers staff checking selected locations several times a day on weekdays, and continuing to respond to odor hotline complaints at other times; and

(9) Taking specified steps to control odors during landfill gas systems repairs and construction.

The addendum to the odor control plan, which the County developed during discussions with Department Staff at the issues conference, addresses the concerns raised in Staff's letter of December 2, 2004, which had conditionally approved the plan.

These concerns and the manner in which they have been addressed are discussed briefly below.

#### A. Threshold Odor Event

The County's plan defines a threshold odor event (one that would require a remedial response) as the detection of an odor verified to be from the landfill at a street location on or beyond the perimeter of the County property, and not merely an odor detected on or around the perimeter of the landfill itself. The plan addendum notes that irrespective of what the plan states, Department Staff considers a threshold odor event - - one that may be considered a violation by the Department - - to be either a significant odor within the facility boundary or any landfill odor emanating from the facility found at or distant from the boundary line.

#### B. Alteration of Plan Requirements

The plan addendum states that if it is determined to be necessary by either the County or the Department, the County shall propose and implement appropriate changes to its plan to improve the odor/gas situation at the facility. It also states that the County cannot decrease any of the plan requirements without the Department's written approval.

C. Timetable for Perimeter Monitoring

The plan addendum states that on Saturdays when the landfill is open for business, the County will monitor the perimeter at least once each morning and once each afternoon. Perimeter monitoring must occur, at a minimum, during all days the facility is in operation and during other days as deemed necessary by the Department and/or the County.

D. Approval to Reduce Monitoring Frequency

The plan addendum states that perimeter monitoring shall continue at the frequency proposed in the plan until such time as the County receives written approval from the Department to reduce the frequency.

E. Maintenance of Odor Control Hotline

The plan addendum outlines procedures for how calls to the odor control hotline will be answered and followed up. The County has agreed that, whether or not the Phase I (Cell 6) expansion permit is issued, it will implement these procedures by March 15, 2005, and provide a progress report by January 14, 2005.

F. Placement of Intermediate Cover

The County has acknowledged a correlation between past odor citations and issues bearing on the placement of intermediate cover. The plan addendum confirms that the County must comply with specified special permit conditions and Part 360 requirements concerning intermediate cover placement.

G. Timing of Intermediate Cover Placement

The County's plan had said that since surface waste odors are mitigated primarily by daily cover placement, the placement of intermediate cover within 30 days of waste placement is sufficient. However, the plan addendum states that intermediate cover shall be placed within 15 days of waste placement, until otherwise authorized by the Department.

H. Gas Collection

Addressing Staff's concerns about the County's proposed use of solid pipe in the topmost section of the waste mass, the plan addendum confirms that adherence to standard Part 360 closure requirements for the gas collection system shall be followed

until an application is made for a variance and that variance is approved by the Department.

I. Alternative Daily Cover

Addressing Staff's concerns about non-soil materials the County could propose as alternative daily cover, the plan addendum confirms that alternative daily cover must comply with the requirements of Part 360 and not contribute to odor or other problems.

J. Monitoring of Gas Wells

Addressing Staff's concern that any reduction in gas well monitoring be justified, the plan addendum states that the County shall monitor older wells in the Phase I landfill at the minimum monthly frequency until written approval is obtained from the Department.

K and L. Use of Olfactometer

Department Staff states that it has limited knowledge of the olfactometer and its use in odor evaluation. Therefore, the plan addendum confirms the Department's agreement to the County's use of the olfactometer on a trial basis only. Furthermore, the addendum confirms that the Department is willing to work with the County and SCS Engineers to determine if the olfactometer is considered effective and reliable for its intended use, though its permanent use and any resultant numbers and thresholds are to be considered experimental until accepted in writing by the Department. Finally, the addendum states that until an alternative perimeter monitoring plan is proposed by the County and accepted by the Department, the approved perimeter monitoring plan shall continue.

In conjunction with the County's development of the plan addendum, Department Staff developed permit condition language making the plan and addendum part of the final permit for the Phase I (Cell 6) landfill expansion. As adjusted in discussions I subsequently had with these parties' counsel, new special condition 6(A) would read as follows:

"In addition to the requirements in the Order on Consent executed on October 10, 2003 (R3-20030417-37), the permittee shall comply with and implement the "Odor Control Plan for Sullivan County Landfill", Revision #1 dated November 15, 2004. Notwithstanding any provision of this plan, the permittee shall

also comply with all of the terms and conditions of the "Addendum to the County's Odor Control Plan" dated December 7, 2004."

New special condition 6(A) replaces language from the permit as drafted at the time of the original issues conference, which had deferred submission of the new odor control plan until 15 days after permit issuance. [The remaining parts of special condition 6 remain unchanged from the earlier draft.] The County accepts this new condition, and Staff would include it in any final permit that is issued.

According to the Department's permit hearing procedures, an issue is adjudicable if it relates to a dispute between Department Staff and an applicant over a substantial term or condition of the draft permit [6 NYCRR 624.4(c)(1)(i)]. As there is no dispute between Department Staff and the County over the draft permit's odor control conditions, there is no basis for an adjudicatory hearing pursuant to this provision.

Even if there is no dispute between Department Staff and a permit applicant, an adjudicatory hearing may still be required when an intervening party raises a substantive and significant issue. [6 NYCRR 624.4(c)(1)(iii)]. No such issues have been raised by SPECS, the Town and the Village, or the Supervisors Association. They each submitted comments on the plan, but proposed no issues for adjudication. Their comment letters were not submitted to me by the December 2 filing deadline, contrary to the instruction in my November 16 memorandum. Even if this failure is excused, they did not appear at the issues conference, effectively waiving the opportunity to have their concerns considered as potential hearing issues.

Addressing each of their comments in turn, SPECS claims that the revised plan needs enforceable milestones for its implementation. Though SPECS expressed an interest in commenting on these milestones, it did not appear at the issues conference when the plan addendum and revised permit condition were negotiated, thereby relinquishing its opportunity to participate. SPECS, the Town and the Village, and the Supervisors Association have all expressed an interest that the new odor control plan be implemented as soon as possible. But in the context of this permit proceeding, that can be done only by incorporating the plan in a final permit that is issued by the Department. A new odor control plan could also be required in the context of a consent order resolving an enforcement action against the County for odor violations. However, no such action has been initiated by Department Staff.

SPECS also claims that public access to copies of the odor logbook should be enhanced. The County had previously said that odor logbook forms could be made available on written request or for viewing at the landfill or the County's Department of Public Works at the Government Center in Monticello. The County went a step further at the issues conference, stating that, in settlement of the odor control issue, it would provide copies of the logbooks on a monthly basis to each of the intervenors' designated representatives, as a standing practice, eliminating the need for periodic requests or inspections at County offices. Department Staff must assure that this pledge becomes part of the County's plan, or an element of the odor control permit condition, prior to issuance of a final permit.

The Town and the Village wrote a letter (Exhibit No. 8) stating that they did not object to the County's new odor control plan provided its implementation adequately addresses comments on the August 2004 plan draft which were made in a letter prepared on their behalf by an engineering firm, Blasland, Bouck & Lee, on November 17, 2004. That letter acknowledges that SCS Engineers "does a very good job in identifying the sources of the odor issues and describing the steps to be taken to minimize future odors," and that the odor control plan "presents a clear understanding of the activities undertaken by Sullivan County to date and procedures for future implementation." Though the letter includes various comments, suggestions, observations and questions, no issues are framed for adjudication.

The Town and the Village propose that the odor control plan be implemented subject to a condition that requires its modification as experience, and comments and objections by the parties, dictate. Even after a permit is issued, the Department Staff retains the ability by law to modify the permit (and thus the plan) based on newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations [6 NYCRR 621.14(a)(4)]. As the parties are aware, Department Staff has recently referred to me the County's application for a much larger Phase II landfill expansion. That proceeding shall include another issues conference in which interested persons may seek party status, and may result in an odor control plan with features different from those in the plan reviewed as part of this hearing.

Finally, the Supervisors Association indicates that it has no comments or objections to the technical content of the County's new odor control plan. According to the Supervisors Association, it should be recognized that the plan is necessarily experimental in nature, and, as a prescription for dealing with

problems as understood at the present time, may require changes if the prescribed approaches prove to be insufficient.

The Supervisors Association argues that further discussion and comments on the plan will be less productive in abating odor problems at the landfill than will be implementation of the plan and the experience obtained therefrom. I agree.

#### **RULING**

Odor control does not require adjudication as an issue in this proceeding addressing the Phase I (Cell 6) expansion of the Sullivan County landfill.

#### **APPEALS**

A ruling of the administrative law judge to include or exclude any issue for adjudication may be appealed to the Commissioner on an expedited basis [6 NYCRR 624.8(d)(2)(i)]. Expedited appeals must be filed to the Commissioner in writing within five days of the disputed ruling [6 NYCRR 624.6(e)(1)]. In the interest of moving this hearing to a conclusion, I am limiting the time frame for appeals to be consistent with the regulatory deadline. Any appeals of this ruling must be received at the Office of Commissioner Erin M. Crotty, 625 Broadway, Albany, New York, 12233, no later than 4 p.m. on December 23, 2004. Any responses to appeals must be received before 4 p.m. on December 30, 2004. Any submission to the Commissioner's office must include an original and two copies. In addition, one copy must be sent to me and all others on the service list at the same time and in the same manner as the submission is sent to the Commissioner. Service of papers by facsimile transmission (FAX) is not permitted, and any such service will not be accepted.

Appeals should address my ruling directly, rather than merely restate a party's contentions. A list of issues conference exhibits is attached to this ruling.

#### **ORDER OF DISPOSITION**

This hearing shall resume once the Commissioner issues her decision addressing appeals to my rulings of July 20, 2004. In the event that decision identifies no new issues for adjudication, litter control will be the sole potential issue. As discussed in my July 20, 2004, rulings, litter control shall require adjudication only if the County maintains its objection to revised special condition 10 of the draft permit. If the County writes to me withdrawing its objection, no adjudicatory

hearing shall be required, and I will direct that Department Staff complete processing of the Phase I (Cell 6) application so that its draft permit may be issued.

Albany, New York  
December 15, 2004

/s/  
Edward Buhrmaster  
Administrative Law Judge

cc: Service List

## EXHIBIT LIST

### SULLIVAN COUNTY LANDFILL (PHASE I EXPANSION: CELL NO. 6)

Project Application No. 3-4846-00079/00021

Issues Conference on Odor Control (December 7, 2004)

1. ALJ's memorandum to the service list (10/21/04).
2. ALJ's memorandum to the service list (11/16/04).
3. Memorandum from David Pollock to Jonah Triebwasser (12/2/04), addressing odor control plan, with attached conditions for plan approval.
4. Revision No. 1 to Sullivan County landfill odor control plan, prepared by SCS Engineers (11/15/04).
5. Addendum to County's revised odor control plan (12/7/04)
6. Draft Part 360 Permit Modifications (3/29/04), under cover letter of Lawrence Biegel. [This is Exhibit No. 18 from the initial issues conference.]
7. New special condition No. 6(A), as negotiated at the issues conference by Department Staff and the County. [The language of this condition subsequently was amended based on discussions with the ALJ.]
8. Letter of Benjamin Gailey, attorney for the Town of Thompson and Village of Monticello, addressing the odor control plan (12/2/04), including as an attachment a letter of Blasland, Bouck & Lee (11/17/04).
9. Letter of Gary Abraham, attorney for Special Protection of the Environment of Sullivan (SPECS), addressing the odor control plan (12/2/04).
10. Letter of David Engel, attorney for Sullivan County Association of Supervisors, addressing the odor control plan (12/2/04).
11. DEC inspection reports for the County landfill (5/5/04 to 11/5/04), under a cover letter of Jonah Triebwasser (12/6/04)
12. "Odors down at landfill, foes admit," article from Middletown Times Herald-Record (11/30/04).