

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
DIVISION OF AIR AND HAZARDOUS MATERIALS

IN RE: APPLICATION OF THE RHODE ISLAND SOLID WASTE
MANAGEMENT CORPORATION -- CENTRAL LANDFILL

DECISION AND ORDER

This matter is again before this Hearing Officer on the Rhode Island Solid Waste Management Corporations' (hereinafter "Corporation") Motion to Modify the Decision and Order (hereinafter "Order") dated March 23, 1988 concerning the above entitled proceeding.

On April 11, 1988 the Corporation filed a Motion to Modify the Order issued by the Director with respect to five (5) specific conditions. Under the Department of Environmental Management's Administrative Rules of Practice and Procedure (hereinafter "Rules"), Rule 14, a party to an administrative proceeding may request that the Order be reconsidered. I have treated the instant Motion filed by the Corporation as one for reconsideration under the Rules.

I will address each of the modifications sought by the Corporation separately. Quoting from its Motion, the Corporation first seeks to

"Revise Order Number 4 to permit the Corporation to file a proposed buffer zone plan within the same time frames as stated, and at that time, to propose its suggested funding level and mechanism rather than the present mandate of an arbitrary level of funding which has no defined relationship to anticipated costs."

With due consideration of the request made by the Corporation, I find insufficient grounds upon which to alter the requirements of Condition 4 of the Order. Testimony by witnesses as outlined in the Order clearly established that present environmental conditions at the facility as well as the size of the landfill mandate an increased buffer zone.

The funding level set forth in the Order is a minimum amount which the Corporation is free to increase at its discretion. The funding level is not arbitrary but rather is a practical initial sum when one considers the size of the landfill and its environmental impacts. To the extent that the Corporation wishes to determine appropriate funding levels for buffer zone acquisition in excess of those required in the Order they are encouraged to do so.

The Order requires that the Corporation segregate these funds for the purpose of expanding the buffer zone surrounding the Central Landfill. The initial segregation of six hundred thousand dollars, pursuant to the Order, must be accomplished by May 23, 1988. Additionally, the Corporation is required to add to this fund one hundred thousand dollars (\$100,000.00) per month for each month that the facility accepts waste beginning with May of 1988. The Corporation may choose to deposit this amount each month or may accomplish it up front via a lump sum payment by way of its regular budgetary process.

Secondly, the Corporation seeks to

"Revise Order Number 6 to require the Corporation to provide funds for testing to be performed by or under the direction of the Department of Environmental Management to determine compliance with applicable air quality standards. This would be in lieu of the present Order to fund a position for a full-time inspector which is not supported by any provision in the law creating the Department of Environmental Management. Staffing levels are a function of the Executive and Legislative branches of government and not subject to unilateral expansion by punitive measures against licenses."

I have considered this request and conclude that based upon the evidence of record, it must be denied. I refer the parties back to the findings of fact and testimony discussed in the Order. The purpose and intent of condition six (6) is to ensure continuous monitoring of and compliance with all applicable solid waste regulations, air regulations and all permit conditions. The modification requested by the Corporation would not fulfill the purpose, intent nor spirit of condition six (6).

Next, the Corporation requests that condition fifteen (15) of the Order be amended to allow a shorter chain link fence than required in the Order. I have considered this request and conclude that condition fifteen (15) of the Order may be modified to permit a five foot chain link fence to control vehicular access to the facility. I agree with the Corporation that a five foot chain link fence is equally effective in restricting vehicular access to the site and fulfills the purpose and intent of the Order.

Fourth the Corporation seeks revision of Condition sixteen to allow the Corporation to:

"... submit a plan within 30 days outlining its proposal to provide enhanced litter control services to include additional personnel and/or equipment. The present mandate is totally arbitrary and appears even to require employment of personnel on days when there may be no work for them."

As is the case with all other conditions of the Order, the testimony as discussed in the Order and in the findings of fact illustrated the insufficiency of litter control at the facility. Condition sixteen establishes a minimum commitment of personnel on weekend days for a specified period of time. The Corporation may, and is encouraged to, present a plan that at a minimum meets the requirements of Condition Sixteen, to the Hearing Officer and Division of Air and Hazardous Materials for review and approval.

The Corporation's main concern appears to be the employment of personnel on "days when there may be no work for them." This condition is imposed to insure compliance with regulations mandating proper litter control. Surely, if after the additional personnel are hired pursuant to this condition, and after a sufficient time period has elapsed, there is evidence that litter control has improved so markedly that the requirements of condition sixteen are no longer necessary to

comply with the regulations, the Hearing Officer would entertain a request by the Corporation to amend the mandates of this condition.

Finally the Corporation seeks amendment to Condition eighteen of the Order which requires that it identify three alternative disposal sites to the Central Landfill.

This condition requires that the Corporation identify, by December of 1988, a minimum of three landfill sites suitable to serve the needs of the state as already established by the Corporation in its Statewide Recovery Resource System Development Plan (Joint Exhibit 10). By means of clarification, this condition does not require new landfill sites to accomodate a capacity in excess of that already determined in the Corporation's own Resource System Development Plan. The three additional sites to be identified by the Corporation are intended to accomodate only the need serviced by the Cental Landfill by providing additional sites and by more equitably apportioning the inevitable environmental impacts associated with such facilities. For purposes of clarification, the Corporation must identify three (3) additional sites, which may be Corporation-owned or privately owned and operated licensed facilities available for use by the Corporation on a long term basis. These additional

sites shall, in combination, service the need presently met by the Central Landfill and the need contemplated beyond the year 2000 as outlined in Joint Exhibit 10. This requirement does not in any way extend to any need determination made by the Corporation nor any matter pending before the Department of Environmental Management.

The Corporation may seek the assistance of or work in conjunction with other state agencies in accomplishing the identification of the alternative sites. The hearing officer will certainly ensure that purchase offers or other information which demonstrably requires confidentiality will remain confidential upon request of the parties in order to effect the aquisition of property and the requirements of condition eighteen.

Based upon all the evidence of record, condition eighteen is an integral part of the Order and cannot be separated from the other permit conditions. This condition is grounded in the evidence of record and is aimed toward ameliorating uncontradicted environmental impacts present at the Central Landfill. The foregoing is a clarification of condition eighteen of the Order and is not a modification. Accordingly, the request to modify condition eighteen of the order is denied.

Therefore it is

ORDERED

The Corporation's request to revise condition fifteen of the permit is granted and condition 15 is amended to read as follows:

15. In order to provide limited access to the facility, the Corporation is ordered to fence the vehicular access area in its entirety with a minimum five (5) foot chain link fence which will be locked during the hours when the facility is closed. This would provide a more secure facility and would serve to restrict access by vehicles during the hours in which the facility is not in operation.

The remainder of the Corporation's request to modify the Order is denied.

Entered as an Administrative Order this 26th day of May, 1988.

5/26/88

Date

Kathleen M. Lanphear

Kathleen M. Lanphear
in her capacity as
Hearing Officer

5/26/88

Date

Robert L. Bendick, Jr.

Robert L. Bendick, Jr.
Director
Department of Environmental
Management

0037Y

CERTIFICATION

I hereby certify that a true and accurate copy of the within Decision and Order has been sent first class mail, postage prepaid to Albert West, Esq. and George West, Esq., 711 Fleet Bank Building, Providence, R. I. 02903 and by interoffice mail to Claude A. Cote, Esq., 9 Hayes Street, Providence, R.I. 02908 on this 21st day of May, 1988.

Elizabeth Wilson