

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation,
Feasibility Study and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
of the Environmental Conservation
Law of the State of New York (the
"ECL") by

ORDER
ON
CONSENT

INDEX #

TOWN OF ISLIP and
THE ISLIP RESOURCE RECOVERY AGENCY

Respondents.

WHEREAS,

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".

2. Town of Islip ("Respondent") is a municipal corporation as that term is defined by Section 2 of the New York State Town Law and a person as that term is defined by Section 27-1301(4) of the New York State Environmental Conservation Law. The Islip Resource Recovery Agency is a public authority organized and existing under the laws of the State of New York. The Town and Agency are collectively referred to as the "Respondent" herein.

3. Respondent owns and operates an 87 acre landfill known as the Blydenburgh Landfill located at Blydenburgh Road, Hauppauge, Town of Islip, County of Suffolk (the "Site"). A map of the Site is attached to this Order as Appendix "A".

4. Beginning from approximately 1927 and continuing to date, the site has been an active municipal landfill. Periodically hazardous waste was disposed of at the Site. A leachate plume has been defined as originating from the landfill.

5. The Site is an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2), and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 152002.

6. The Department has identified and classified the site pursuant to ECL Section 27-1305, under classification 2, a "significant threat to the public health or environment."

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the Environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified

in the order."

8. The Department and Respondent acknowledge that the goals of this Order are that Respondent shall develop and implement a remedial investigation, feasibility study, and remedial program for an inactive hazardous waste disposal site, subject to the approval of the Department, and shall implement such program within the time limits specified hereinafter. The program shall be developed and implemented to abate and eliminate the significant threat to the public health or environment.

9. This Order is executed pursuant to the terms of a prior Consent Order between the Parties dated May 12, 1987.

10. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by terms hereof.

NOW, having considered this matter and being duly advised,
IT IS ORDERED THAT:

1. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination and impacts caused by the disposal of hazardous wastes at the Site, and shall be prepared, designed and executed in accordance with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and

practices subject to the Department's approval, which (a) are technologically feasible, and (b) will most effectively abate and eliminate any significant threat to the environment posed by the disposal of hazardous wastes at the Site.

The failure of Respondent to submit or undertake a required Proposal, Report, Field Investigation, Construction Program Plan or any supplement or revision thereof which is in accordance with Requisite Technology shall constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall mean hazardous wastes, as defined at 6 NYCRR 371, and any constituents or degradation products of such wastes.

III. Within 15 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site, to the extent that such data have not heretofore been provided to the Department. At a minimum this information shall include:

a. A brief history and description of the Site, including the types, quantities, physical state and location of hazardous wastes disposed of, including spills and the dates and methods of disposal and spillage of such wastes;

b. A concise summary of information held by Respondents and their attorneys with respect to all "persons responsible" for such disposal of hazardous wastes, as that term is defined in

6 NYCRR Part 375, including but not limited to names, addresses, dates of disposal and proof linking each such person responsible with hazardous wastes identified in Paragraph III(a) herein;

c. A description of the results of all previous investigations of the Site and of investigations known by Respondent to have been conducted of areas in the vicinity of the Site, including an inventory of all topographic and property surveys and engineering studies of the Site and areas in the vicinity of the Site;

d. A historical inventory of all aerial photography available for the Site, including date of flight, area of coverage, scale of reprints, and present owner of photography.

IV. All submittals made by Respondent pursuant to this Order shall be subject to Departmental review. Within the time limits set forth by Table No. 1 herein, the Department shall approve or disapprove each submittal in writing.

If the Department approves a submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the terms of the approval and under the Department's supervision. The submittal once approved by the Department shall be appended to and made a part of this Order.

If the Department disapproves a submittal, the Department shall notify Respondent in writing of the reasons for such disapproval. Within the time limits set forth by Table No. 1

herein, the Respondent shall revise and resubmit the submittal, addressing each of the Department's objections. Within 15 days of receipt of the revised submittal, the Department shall approve or disapprove the revised submittal in writing. If the Department approves the revised submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the terms of the approval and under the Department's supervision.

If the Department disapproves the revised submittal, Respondent shall be in violation of this Order, not having submitted an approvable document in accordance with the terms of this Order.

Table No. 1
Submittals

| Submittal | Consent Order Paragraph | Days after Receipt for Department Review | Days to Prepare and Submit Revision |
|-------------------|-------------------------|--|-------------------------------------|
| Proposal | V | 30 Days | 30 Days |
| Report | VI | 60 Days | 30 Days |
| Feasibility Study | VII | 60 Days | 30 Days |
| Remedial Design | VIII | 60 Days | 30 Days |

In the event that the approved Remedial Design requires modification during implementation, such modification must receive the prior written approval of the Department before incorporation of such modification into the approved Remedial Design.

V. Within 30 days after the effective date of this Order, Respondent shall submit to the Department a proposed written scope of work (the "Proposal") to investigate the field environmental conditions on-Site and off-Site (the "Remedial Investigation"). Such Proposal shall address all elements of a Remedial Investigation as set forth in the most current National Contingency Plan, the Superfund Amendments and Reauthorization Act ("SARA") of 1986 and the USEPA Guidance Document entitled, "Guidance on Remedial Investigations Under CERCLA," dated June 1985.

VI. Upon approval of the Proposal, Respondent shall perform the Remedial Investigation and shall submit to the Department a Remedial Investigation Report (the "Report") founded upon its performance of the Remedial Investigation in accordance with the approved Proposal. The Report shall include all data generated and all other information obtained during the Remedial Investigation and shall provide all assessments and evaluations as set forth in the most current National Contingency Plan, and consistent with SARA.

VII. Within 90 days after receipt of the Department's

approval of the Report, Respondent shall submit to the Department a study evaluating the feasibility of on-Site and off-Site remedial options to abate and eliminate the significant threat to the environment or public health (the "Feasibility Study").

The Feasibility Study shall be performed consistent with SARA and the USEPA guidance document entitled, "Guidance on Feasibility Studies under CERCLA, June 1985".

VIII. Within 90 days after receipt of the Department's approval of the Feasibility Study, Respondent shall submit to the Department an engineering report, plans and specifications for a remedial program (the "Remedial Design").

The Remedial Design shall include, but not be limited to, the following:

a. A description of the means of effectuating the combination of technologies which has been selected from the alternatives by the approved Feasibility Study, and which therefore collectively constitutes the Remedial Program ("Remedial Program") to include but not be limited to:

1. the disposition of hazardous wastes, constituents and degradation products, and any soil or other materials contaminated thereby;
2. the collection, treatment, and disposition of contaminated groundwater, leachate and air;
3. physical security and posting of the Site;
4. health and safety of persons living and/or

working at or in the vicinity of the areas being remediated;

5. quality control and quality assurance procedures and protocols to be applied to Remedial Program construction operations;

6. integrated air monitoring on and off-Site during implementation of the Remedial Program.

b. "Contract-ready" documents for the construction of the elements of the Remedial Program, including plans and specifications prepared and certified by a licensed professional engineer registered in the State of New York, which plans shall satisfy all applicable state and federal laws, rules and regulations;

c. A time schedule for construction of the elements of the Remedial Program and provisions for periodic work-in-progress reports during the implementation of the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of existing and planned groundwater monitoring wells on-Site and off-Site;

e. A description of the maintenance and monitoring activities, procedures and protocols to be undertaken during the period commencing upon completion of the construction of the elements of the Remedial Program, including a provision for submission to the Department of periodic monitoring reports (post-closure monitoring);

f. A contingency plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design prior to the date 30 years after satisfactory completion of construction pursuant thereto (Supplemental Remedial Program); and

g. An evaluation of the need to take measures to provide for the health and safety of human beings working or residing at and in the vicinity of the Site during a 30 year period following completion of the implementation of the Remedial Program, and a plan for the implementation of such measures.

IX. Within such period as may be allowed by the approved Remedial Design and any modifications thereto which have been approved by the Department or any Supplemental Remedial Program which may be required, Respondent shall complete construction pursuant to the approved Remedial Design and any modifications to the Remedial Design which have been approved by the Department. Within 45 days of completion of construction, Respondent shall submit to the Department as-built drawings and a certification that construction was completed in accordance with the approved Remedial Design and any approved modifications. Such certification shall be by a licensed professional engineer registered in the State of New York.

X. Within 45 days after receipt of the as-built drawings and certification, the Department shall review the same and provide comments to Respondent. In the event that the Department

is not satisfied with the quality and completeness of construction, the Department may take any action and pursue any remedy to which it may be entitled by law.

If the Department acknowledges that the implementation is complete and in accordance with the approved Remedial Design, then, unless a Supplementary Remedial Program is required hereof, and except for the requirements of Paragraph XII hereof, and the conditions set forth in Paragraph XXXI hereof, such acknowledgment shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13, of the ECL relative to or arising from the disposal of hazardous waste at the Site.

This release shall inure only to the benefit of Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, agents, successors and assigns.

XI. The right of the Department to enforce the terms of this Order shall not be affected by any release contained herein.

XII. Notwithstanding any provision contained in this Order to the contrary, for a period of 30 years from the date of the Department's written acknowledgement that Respondent has completed the implementation of the construction and other elements in accordance with the approved Remedial Design, or for a longer period of time commensurate with Respondent's obligations pursuant to this Order, Respondent shall maintain and monitor the areas at which the elements of the Remedial Program were implemented in accordance with the approved Remedial Design ("Post-Closure Period"). During such Post-Closure Period, Respondent shall provide the Department with the periodic monitoring reports, as set forth in the Approved Remedial Design and shall provide immediate notice to the Department of any failure of the Remedial Program.

XIII. The Department shall have the right to obtain "split samples" for the purpose of comparative analysis of all substances and materials sampled by Respondent pursuant to this Order.

XIV. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least 5 working days in advance of such activities.

XV. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the Remedial Investigation and all

of Respondent's other obligations pursuant to this Order.

XVI. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for purposes of inspection and of making or causing to be made such sampling and tests as the Department deems necessary, and for assurance of Respondent's compliance with the terms of this Order.

XVII. Respondent shall retain a third-party professional consultant, contractor and/or technically acceptable laboratory to perform the technical, engineering and analytical obligations required by this Order.

XVIII. Respondent shall not suffer any penalty under any of the terms of this order, or be subject to any proceeding or actions for any remedy or relief if it cannot comply with any requirements hereof because of an act of God, war, riot, or other condition as to which negligence or willful misconduct on the part of Respondent was not a proximate cause, provided however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an extension or modification of the terms of this order.

XIX. The failure of Respondent to comply with any term of this Order shall constitute a default and a failure to perform an

obligation under this Order and under the ECL.

XX. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

a. any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action at law or in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the release or migration of hazardous or industrial wastes from the Site or from areas in the vicinity of the Site; and

d. action or proceeding to which it may be entitled in connection with, relating to, or arising out of Respondent's disposal of hazardous wastes at the Site.

XXI. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law

or as granted pursuant to statute or regulation.

XXII. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the terms of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XXIII. The effective date of this Order shall be the date it is signed by the Commissioner.

XXIV. If Respondent desires that any terms of this Order be changed, Respondent shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought.

XXV. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Suffolk County Clerk's Office for the purpose of providing notice of this Order to all potential future purchasers of any portion or all of the Site. This Declaration must indicate that any successor in title to any portion or all of the Site shall be responsible for implementing the provisions of this Order. A certified copy of this filing shall be provided to the Department.

XXVI. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXVII. A. All communication required by this Order to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service Return Receipt Requested, or hand delivered to the address listed below.

B. Communication to be made from Respondent to the Department shall be made as follows:

1. Two copies to the Division of Solid and Hazardous Waste, Room 212, 50 Wolf Road, Albany, New York 12233-4010
Attn: Norman H. Nosenchuck, P.E., Director.
2. Two copies to the Division of Environmental Enforcement, 202 Mamaroneck Avenue, Room 304 White Plains, New York 10601-5381
3. Two copies to the NYS Department of Environmental Conservation, Region I Building # 40 SUNY Stony Brook, New York 11794
Attn: Harold Berger, Regional Director.
4. Two copies to the NYS Department of Health Empire State Plaza, Corning Tower Albany, New York 12237
Attn: Ronald Tramontano.

C. Communication to be made from the Department to Respondent shall be made as follows:

Guy Germano, Esq.
Office of Town Attorney
Town Hall
Islip, N.Y. 11751

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

XXVIII. The terms of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

XXIX. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XXX. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

XXXI. Notwithstanding any other provision in the Order, the

Department reserves the right to institute proceedings in this action or in a new action (1) seeking to compel the Respondent and/or third parties to perform additional response work at the Site or (2) seeking reimbursement of the Department's response costs if:

a) for proceedings prior to Department certification of completion of the Remedial Action:

(1) conditions at the Site, previously unknown to the Department are discovered after execution of this Order, or

(11) information is received in whole or in part, after execution of this Order


and these previously unknown conditions or this information indicates that the Remedial Action is not protective of human health or the environment.

b) for proceedings subsequent to Department certification of completion of the Remedial Action:

(1) conditions at the Site, previously unknown to the Department, are discovered after the certification of completion by the Department, or

(11) information received, in whole or in part, after the certification of completion by the Department

XXXII. The work performed and approved pursuant to this Order shall satisfy the requirements for EQBA and 6 NYCRR Part 375 funding.

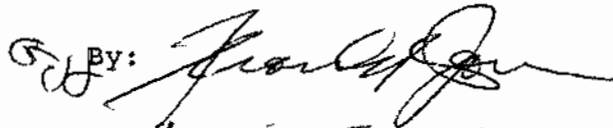

THOMAS O. JORLING
Commissioner
New York State Department of
Environmental Conservation

19

CONSENT BY RESPONDENT

TOWN OF ISLIP

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

BY: 

Title: Supervisor, Town of Islip and Chairman, Board of Directors, Islip Resource Recovery Agency

Date: August 8, 1987

STATE OF NEW YORK

)
) S.S.:
)

COUNTY OF

On this 8th day of August, 1987,
before me personally came Frank R. Jones, to me
known, who being duly sworn, did depose and say that he resides in
Sayville New York; that he is the
Supervisor of the Town of Islip and Chairman of the Board of Directors of the
Islip Resource Recovery Agency corporations described in and which
executed the foregoing instrument; that he knew the seal of said
corporation; that the seal affixed to said instrument was such
corporate seal; that it was so affixed by the order of the Board
of Directors of said corporation, and that he signed his name
thereto by like order.



Notary Public

MARY A. PETERS
Notary Public, State of New York
No. 52-472851, Suffolk County
Term Expires June 30 1988