ORIGINAL

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Articles 27 and 71 of the New York State Environmental Conservation Law & Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), by

TOWN OF ISLIP AND THE ISLIP RESOURCE RECOVERY AGENCY

(Suffolk County) Respondents

ORIGINAL
EXECUTED

ORDER ON CONSENT

FILE NO.1-4421-90-12

WHEREAS, Article 27, Title 7 of the New York State Environmental Conservation Law (ECL) gives the New York State Department of Environmental Conservation (the "Department" or "DEC") the power to promulgate regulations governing the operation of solid waste management facilities; and

WHEREAS, Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), contains regulations promulgated pursuant to ECL Article 27, Title 7 governing the construction and operation of solid waste management facilities; and

WHEREAS, the Town of Islip is a municipal corporation organized and existing under the laws of the State of New York and the Islip Resource Recovery Agency is a public authority organized and existing under the laws of the State of New York, hereinafter collectively referred to as "Respondents"; and

WHEREAS, Respondents own and operate a solid waste landfill, including disposal areas for residential municipal solid waste and for incinerator ash, located at Blydenburgh Road, north of Motor Parkway, Hauppauge, Town of Islip, New York (the "landfill", "facility" or "site"). The landfill has been operated since 1927; and

WHEREAS, ECL 27-0704.5 requires that no person shall operate a landfill existing on the effective date of that section (December 18, 1983) in the counties of Nassau and Suffolk after December 18, 1990 unless the requirements of ECL 27-0704.5 are met; and

WHEREAS, Respondents owned and operated the landfill before December 18, 1983, the effective date of ECL 27-0704, continuously through the present date; and

WHEREAS, Respondents' landfill is not underlain by two or more natural and/or synthetic liners, each with provisions for leachate collection, nor does the landfill have a leachate treatment and disposal system approved by the Commissioner, in accordance with ECL 27-0704.5(b); and

WHEREAS, the Respondents' landfill accepts material other than the product of resource recovery, incineration or composting [see ECL 27-0704.5(e)]; and accepts materials other than only clean fill [see ECL 27-0704.6], in that the landfill accepts untreated residential municipal solid waste; and

WHEREAS, the landfill is located within the deep flow recharge area as defined in ECL 27-0704.1; and

WHEREAS, pursuant to ECL 27-0704.5, Respondents' landfill may not accept solid waste or other prohibited materials after December 18, 1990 and therefor must close in accordance with the ECL Article 27 and 6 NYCRR Part 360; and

WHEREAS, the landfill is an inactive hazardous waste disposal site as that term is defined in ECL 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site No. 152002; and

WHEREAS, Respondents executed Orders on Consent with the Department, effective on May 12, 1987 and September 1, 1987, whereby the Respondents agreed to perform certain tasks to attain compliance with the ECL Article 27 and 6 NYCRR Part 360; and

WHEREAS, on March 30, 1989, the landfill was listed on the federal National Priority List under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 USCA 9605; and

WHEREAS, Respondents have constructed and operated a municipal recycling facility at the Sayville landfill site on Lincoln Avenue in Sayville, New York without first obtaining required permits in violation of ECL 27-0707 and 6 NYCRR 360-1 and 12.

WHEREAS, Respondents have failed to maintain and pump collected leachate from three leachate collection wells constructed at the landfill, in violation 6 NYCRR 360-2.17(h). [6 NYCRR 360.8(a)(3) prior to December 31, 1988]; and

WHEREAS, the Department has documented that, as listed in Appendix L, which is attached to and incorporated into this Order, Respondents have operated the landfill in violation of ECL 27-0703

and 6 NYCRR Part 360 as follows:

(1) Respondent disposed of waste in lifts having a height in excess of ten feet in violation of 6 NYCRR 360-2.17(b)(2), [6 NYCRR 360.8(b) prior to December 31, 1988]; and

(2) Respondent failed to apply sufficient daily and intermediate cover in violation of 6 NYCRR 360-2.17(c) and (d), [6 NYCRR 360.8(c) and (d) prior to December 31, 1988]; and

(3) Respondent failed to control odors in violation of 6 NYCRR 360-1.14(l), [6 NYCRR 360.8(a)(8) prior to December 31, 1988]; and

(4) Respondent failed to control litter in violation of 6 NYCRR 360-1.14(l), [6 NYCRR 360.8(a)(8) prior to December 31, 1988]; and

(5) Respondent failed to control vectors in violation of 6 NYCRR 360-1.14(l), [6 NYCRR 360.8(a)(8) prior to December 31, 1988]; and

(6) Respondent has been responsible for open burning in violation of 6 NYCRR 360-1.14(q), [6 NYCRR 360.8(a)(15) prior to December 31, 1988]; and

(7) Respondent failed to adequately confine waste in violation of 6 NYCRR 360-1.14(k), [6 NYCRR 360.8(a)(7) prior to December 31, 1988]; and

(8) Respondent has failed to adequately control leachate in violation of 6 NYCRR 360-2.17(h), [6 NYCRR 360.8(a)(3) prior to December 31, 1988]; and

(9) Respondent deposited waste in contact with surface water in violation of 6 NYCRR 360-2.13(a)(2), [6 NYCRR 360.8(b)(1)(ii) prior to December 31, 1988]; and

(10) Respondent failed to maintains roads at the landfill site in violation of 6 NYCRR 360-1.14(m), [6 NYCRR 360.8(a)(9)]; and

(11) Respondent failed to adequately control landfill composition gases in violation of 6 NYCRR 3360-22.17(f), [6 NYCRR 360.8(b)(1)(vi)]; and

(12) Respondent recirculated leachate without Department approval, in violation of 6 NYCRR 360-2.17(j); and

WHEREAS, remedial investigations performed by Respondents at the landfill site have revealed that the leaching of pollutants and hazardous substances from the landfill has caused and continues to cause groundwater contamination in contravention of groundwater quality standards. Investigation has revealed the presence of a plume of leachate and hazardous substance contamination emanating from the landfill, extending over 5000 feet down gradient from the site, to a depth of at least 535 feet. The plume has contaminated the Magothy ground water aquifer, which is the sole source of drinking water of the residents of Long Island; and

WHEREAS, Respondent has requested authorization to implement a demonstration project for beneficial use of incinerator ash presently being disposed in the landfill, pursuant to 6 NYCRR 360-1.13 and 1.2(a)(5). The project encompasses, among other things, use innovative technology (called Rolite) to treat the ash and to utilize such treated ash as the landfill gas venting layer of the landfill's final cover, as part of its Closure Plan requirements in the Appendices to this Order; and

WHEREAS, Respondent has further requested that the Department classify Rolite treated ash as "clean fill" under the Long Island Landfill Law. The definition of clean fill under ECL 27-0704.1 includes "materials consisting of concrete, steel, wood, sand, dirt, soil, glass, or other inert material designated by the Commissioner." Pursuant to 6 NYCRR 360-1.2(b)22, the Department expanded the definition of clean fill to include construction and demolition debris. Pursuant to ECL 27-0704.1 and 6 NYCRR 360-8.6(a), the Commissioner may designate other materials as clean fill, in response to a petition; and

WHEREAS, Respondents, desiring to undertake all necessary activities which may be required to protect and preserve the natural resources of the State, have cooperated with the Department in addressing the matters herein; and

WHEREAS, Respondents have affirmatively waived their rights to a public hearing or judicial review in this matter in the manner provided by law, and having consented to the entering and issuing of this Order, agree to be bound by the terms and conditions contained herein.

NOW, having considered this matter and being duly advised, it is

ORDERED, that there is hereby imposed upon Respondents, Town of Islip and the Islip Resource Recovery Agency, a penalty in the

sum of two hundred thousand dollars ($250,000), fifty thousand dollars ($50,000) of said sum to be paid to the Department within thirty (30) calendar days after the execution date of this Order. The remaining two hundred thousand dollars ($200,000) is to be expended by the Town for an Environmental Benefit Project, developed by the Town and approved by the Department in accordance with the requirements of Appendix A, attached hereto and made a part hereof; and it is further

ORDERED, that Respondents shall be liable for a stipulated penalty in the amount of One Thousand Dollars ($1,000) per day, which shall become payable in the event that Respondents fail to comply with any provision of this Order. Respondents shall submit payment of said stipulated penalty(ies) within ten (10) days of written notification by the Department of the noncompliance and the penalty due; and it is further

ORDERED, that any penalty assessed under the above subparagraphs shall become due and owing on the 15th calendar day after receipt of written notice from the Department that Respondents were or are in violation of this Order. If payment is not received by the Department within fifteen (15) calendar days after such notice, Respondents shall pay interest on the penalty at the annual rate of nine percent on the overdue amount from the day on which it was due through, and including, the date of payment; and it is further

ORDERED, that any penalties shall be paid by certified check or money order, made payable to the "New York State Department of Environmental Conservation" and delivered personally or by certified mail, return receipt requested: c/o Lori Riley, Esq., Regional Attorney, Department of Environmental Protection, Building #40, S.U.N.Y. Campus, Stony Brook, New York 11790-2356; and it is further

ORDERED, that Respondents shall not suffer any penalty under any of the provisions, terms and conditions hereof, or be subject to any proceedings or actions for any remedy or relief if they cannot comply with any requirements of the provisions hereof because of an Act of God, war, riot or other catastrophe as to which negligence or willful misconduct on the part of Respondents was not a proximate cause, provided however, that Respondents shall immediately notify the Department in writing when they obtain knowledge of any such condition and request an appropriate extension or modification of the provisions hereof; and it is further

ORDERED, that, in its evaluation of whether Rolite-treated incinerator ash may be considered "clean fill" under the Long Island Landfill Law, and whether use of Rolite-treated incinerator

sh as part of the gas-venting layer of the final cap of the landfill is a beneficial use under 6 NYCRR 360-1.2(a)5, the Department has considered (1) data concerning the potential contaminants that may emanate from the treated ash; (2) specific characteristics of Respondent's landfill, including the existence of a lined area, and leachate collection and ground water monitoring systems; and (3) the method of utilization proposed by Respondent, as modified by imposed conditions. Based upon these factors, the Department has determined that Rolite treated incinerator ash, as proposed to be utilized by Respondent pursuant to its demonstration project and Closure Plan, may qualify as clean fill under ECL 27-0704. A final determination of whether Rolite treated ash is clean fill will be made after review of all information and data to be submitted by Respondent pursuant to its approved Closure Plan submitted under the compliance schedule in Appendix A to this Order. The Department has further tentatively determined that use of Rolite-treated incinerator ash as part of the gas-venting layer of the final cap of the landfill, pursuant to the demonstration project and Closure Plan required pursuant to this Order, is a beneficial use of such ash pursuant to 6 NYCRR 360-1.2(a)(5), conditioned upon satisfactory performance of the treated ash, as evaluated under the terms of this Order.

ORDERED, Respondent shall undertake all responsibilities identified in this Order, any Appendices attached or to be attached hereto and made a part hereof and any Department-approved work plan required pursuant to any Appendix in accordance with the approved schedules set forth therein. Failure of Respondents to strictly comply with any provision of this Order and any Appendices, including the compliance schedules, scopes of work, plans and reports, attached and to be attached hereto and made a part hereof, unless excused by Force majeure as discussed in the immediately preceeding paragraph, shall constitute a default and a failure to perform an obligation under this Order and under the ECL, such that the suspended penalty shall be immediately due and payable and shall constitute a violation pursuant to ECL 71-2703; and it is further

ORDERED, that within thirty (30) days after receipt of Department comments on any plan or report, required pursuant to any of the Appendices attached hereto and made a part hereof, Respondents shall submit a modified plan or report that shall address and incorporate DEC's comments. Determination of the sufficiency of any submission shall be made solely by the Department; and it is further

ORDERED, that within thirty (30) days after receipt of written comments concerning any permit application to a Federal, State or

local agency required to comply with this Order, or sooner if required by the permitting agency, Respondents shall modify the permit application to address and incorporate such comments and resubmit the application to the agency. Determination of the sufficiency of any permit application as resubmitted shall be made solely by the permitting agency; and it is further

ORDERED, that Respondents shall be in violation of this Order upon written determination by DEC that Respondents have failed to revise any submission made pursuant to this Order to the satisfaction of Department; and it is further

ORDERED, that all existing and future Appendices to this Order, including all compliance schedules, Department-approved scopes of work, plans and associated submissions of documents and other information constitute parts of and shall be enforceable in accordance with the terms and conditions of this Order. Failure to comply with any requirement set forth in any Appendix constitutes a violation of this Order; and it is further

ORDERED, that this Order shall have the same force and effect as an Order after hearing pursuant to 6 NYCRR 622.11(b) and shall be admissible to provide the basis for a finding of fact in any subsequent proceeding brought by or on behalf of the Department against the Respondents involving the same or similar violations; and it is further

ORDERED, that Respondents shall at all times, allow any designated employee, consultant, contractor or agent of the Department or of any other State agency to immediately enter the landfill or areas in the vicinity of the landfill which may be under the control of Respondents, for purposes of sampling and testing and to ensure Respondents' compliance with this Order and with applicable laws and regulations; and it is further

ORDERED, that Respondents shall provide written notice to the Department of any field activities, including excavating, drilling or sampling, to be conducted pursuant to the terms of this Order, at least five days in advance of such activities; and it is further

ORDERED, the Department may, at its option, obtain for the purpose of comparative analysis, "split samples" or "duplicate samples" of all substances and materials sampled by Respondents pursuant to this Order. As used herein, "split samples" shall mean whole samples divided into aliquots, and "duplicate samples" shall mean multiple samples, collected at the same time from exactly the same location, using the same sampling apparatus, collected into identical containers prepared identically, filled to the same

volume, and thereafter, identically handled and preserved; and it is further

ORDERED, that all references to 6 NYCRR Part 360 contained in this Order and the Appendices, including the compliance schedules, scopes of work, plans and reports, attached and to be attached hereto and made a part hereof are hereby understood and agreed to mean 6 NYCRR Part 360 as effective December 31, 1988; and it is further

ORDERED, that all references to violation of 6 NYCRR Part 360 contained in this Order which have occurred prior to the effective date(s) of the present Part 360 are hereby understood and agreed to mean 6 NYCRR Part 360 as effective December 31, 1988 and all substantively equivalent provisions in prior Department rules if applicable at the time of the violation; and it is further

ORDERED, that the "execution", "execution date" and "effective date" of this Order as referred to herein, are agreed to be the date upon which the Regional Director executes this Order on behalf of the Commissioner and this Order shall not be effective until that date; and it is further

ORDERED, that nothing contained herein shall relieve Respondents from obtaining all necessary permits, approvals or authorizations in order to perform the obligations pursuant to this Order, and it is further

ORDERED, that this Order shall bind Respondents, their officers, employees, agents, successors and assigns; and it is further

ORDERED, that nothing contained herein shall be construed as preventing the Department from collecting regulatory fees where applicable; and it is further

ORDERED, that nothing contained herein shall be construed as barring, affecting, or diminishing any of the Department's or the Commissioner's rights to pursue Respondents or any other person, or take any action whatsoever with respect to the landfill, including, but not limited to, the right of the Commissioner, at any time, to make a determination pursuant to Title 13 of Article 27 of the ECL that the landfill constitutes a significant threat to the environment and that Respondents must undertake an inactive hazardous waste disposal site remedial program. Any such determination shall be provided to Respondents by the Department in writing. If such determination is made, the Department shall have the right to take such enforcement or other action as may be

authorized by law, and require appropriate modifications to any requirement pertaining to the landfill; and it is further

ORDERED, that obligations of Respondents created pursuant to any other Order, permit or agreement with the Department shall remain in full force and effect unless expressly modified herein; and it is further

ORDERED, that any change in this Order shall not be made or become effective except as specifically set forth by written order of the Commissioner, after notice to the Respondents, such written order being made either upon written application of the Respondents or upon the Commissioner's own findings. Any such written order by the Commissioner or his/her designee changing this Consent Order shall be a final administrative determination subject to review pursuant to CPLR Article 78; and it is further

ORDERED, that nothing in this Consent Order shall be construed as precluding Respondents from applying to the Department or any other agency for a reimbursement of costs and related expenses for compliance with this Order conducted by the Town to the extent otherwise permitted by law, provided however that Respondents' obligations under this Order shall not be affected by making or processing of such application; and it is further

ORDERED, that Respondents 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 this Order by Respondents or Respondents' directors, officers, employees, servants, agents, successors, or assigns; and it is further

ORDERED, that upon written notification by the Department that all of the terms and conditions of this Order and the Appendices, including the compliance schedules, scopes of work, plans and reports, attached and to be attached hereto and made a part hereof have been complied with, Respondents' financial obligations under this Order shall immediately terminate; and it is further

ORDERED, the provisions hereof shall constitute the complete and entire Order between the Respondents and the Department concerning the landfill. No terms, conditions, understandings or agreements purporting to modify the terms of this Order shall be binding unless approved in writing by the Commissioner or Regional Director of the Department. No informal advice, guidance, suggestions or comments by the Department regarding any report, proposal, plan, specification, schedule, or any other writing

ubmitted by Respondents shall be construed as relieving Respondents of Respondents' obligation to obtain such formal approvals as may be required by this Order. In those instances in which Respondents desire that any of provision, term or condition of this Order be changed, it shall make written application, setting forth the grounds for the relief sought, to the Commissioner, c/o Lori J. Riley, Regional Attorney, New York State Department of Environmental Conservation, Building 40, S.U.N.Y. Campus, Stony Brook, New York 11790-2356.

Dated: Stony Brook, New York
Dec. 18 1990

THOMAS C. JORLING
Commissioner of Environmental Conservation

By _____
HAROLD D. BERGER
Regional Director

To: Robert J. Cimino, Esq.
Town of Islip Attorney
655 Main Street
Islip, New York 11751