

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development of a
Remedial Investigation and Feasibility Study
for an Inactive Hazardous Waste Site, by

TOWN OF BABYLON
(Babylon Landfill),

ORDER ON
CONSENT

FILE NO.1-1822

Respondent.

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites."

2. The Town of Babylon (the "Respondent") is a municipal corporation organized and existing under the laws of the State of New York.

3. Respondent owns the landfill located between Patton Avenue and Edison Avenue, Wyandanch, Town of Babylon, County of Suffolk, New York.

4. The Site is a municipal landfill covering approximately 80 acres, which accepts municipal refuse, and also accepted scavenger waste was until December, 1981.

5. Respondent now proposes a Resource Recovery Project to be constructed adjacent to this Site.

6. The Site is listed as an inactive hazardous waste disposal site, as that term is defined in ECL § 27-1301(2). The site has been designated as Site No. 152039 and has a Classification of 2. The Department believes that any investigation and/or cleanup to be done under this Order should be in accordance with the National Oil and Hazardous Substances Contingency Plan ("National Contingency Plan") 40 CFR § 300 et

seq., the Comprehensive Environmental Response and Liability Act ("CERCLA"), and the Superfund Amendments and Reauthorization Act of 1986 ("SARA") 42 USC § 9601 et seq., and Pub. L. No. 99-499, 100 Stat. 1613 (1986).

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 might be a potential 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 the Site, subject to the approval of the Department, and shall implement such program within the time limits specified hereinafter.

9. Based upon the Respondent's report entitled "Effect of Ashfill on Remediation Technologies: Town of Babylon" (Appendix A to this Order), the Department has determined that the development or completion of an RI/FS for the Site shall not be deemed a prerequisite to the acceptance, consideration or processing of Respondent's application for a permit to construct or to operate an ashfill at the south end of the Site unless Respondent fails to comply with the terms, provisions and conditions of this Order.

10. The Department, by executing this Order, in no way waives its rights, authority or obligations to require any other responsible party, to perform additional investigation and remediation.

11. 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,

I. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address off-Site contamination if any, caused by the disposal at the Site of hazardous and industrial wastes, 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 practice subject to the Department's approval, which (a) are technologically feasible, (b) are consistent with the National Contingency Plan, and (c) will most effectively identify any present or potential future threat to the environment posed by the disposal of hazardous and industrial wastes at the Site.

The failure of Respondent to submit or undertake a proposal, report, field investigation, or any supplement or revision thereof which is in accordance with this Order may be deemed by the Department to constitute a violation of this Order.

II. As used herein, "hazardous wastes" shall mean hazardous wastes, any hazardous constituents thereof, and any toxic degradation products of such wastes and such constituents.

III. Within 60 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 known or available, and 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. 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 copies 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.

<u>Submittal</u>	<u>Consent Order Paragraph</u>	<u>Days after Receipt For Department Review</u>	<u>Days to Prepare and Submit Revision</u>
Report	VII-IX	30 days	15 days
Feasibility Study	X-XI	30 days	90 days
Remedial Design	XII	60 days	60 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. The Department shall not institute any action against Respondent under the ECL or federal law with respect to investigation of hazardous wastes at the Site for as long as Respondent adheres to and fully complies with the terms, provisions and conditions of this Order. In addition, the Department will not issue or seek any administrative or judicial order requiring Respondent to undertake any remediation at the Site for as long as Respondent adheres to and fully complies with the terms, provisions and conditions of this Order.

VI. The Department hereby approves Respondent's RI/FS work plan ("Plan") outlining the nature and extent of the work to be undertaken.

The Plan is attached hereto and is incorporated into this Order as Appendix B.

VII. Within 500 days after the effective date of this Order, Respondent shall submit to the Department, a Remedial Investigation Report (the "Report"), founded upon its performance of the Remedial Investigation in accordance with the Plan. The Report shall include all data obtained during the Remedial Investigation and shall include, but not be limited to the following:

- a. All new data collected during the Remedial Investigation and used in preparing the Report, including, but not limited to: soil boring logs, well data, and the results of chemical analyses performed on samples obtained during the Remedial Investigation; said data presented in tabulated and/or graphic form where appropriate;
- b. An evaluation of the hydrogeologic conditions at and in the vicinity of the Site;
- c. A determination of the nature and extent of actual and potential release and migration of hazardous wastes from the Site through surface water, groundwater, air, soil and sediment;

- d. An assessment of the results of the Remedial Investigation and a determination of the current or potential impacts of any threat to the environment which exists, or reasonably may exist in the future, on surface water, groundwater, air, soil sediment and biota as a result of the hazardous wastes disposed of at the Site;
- e. A scope of the work for the preparation of a feasibility study of remedial alternatives. The scope of work shall include a list of various remedial programs which when implemented, would identify, mitigate and eliminate any threat to the environment on-Site or off-Site which is determined to exist as a result of the disposal of hazardous wastes at the Site. Said list shall be an outline of remedial programs to be assessed and evaluated in the feasibility study pursuant to Paragraph X herein;
- f. References to all scientific or technical literature used in the preparation of the Report; and
- g. Names, titles and disciplines of all professionals engaged in the preparation of the Report.

VIII. The Department reserves the right to request a modification and/or an amplification and expansion of the Remedial Investigation and Report by Respondent to address specific on-Site and off-Site areas not contemplated by the Plan if the Department determines that further investigation is necessary, as a result of reviewing data generated by the Remedial Investigation or as a result of reviewing other data or facts, copies of which shall be furnished to the Respondent. The parties intend that any such additional work shall be supplementary to the Remedial Investigation, and shall not be so extensive as to constitute another full Remedial Investigation. The parties may modify this Order as appropriate if such work is deemed necessary.

IX. Within thirty (30) days after receipt of the Report, the Department shall determine if the Remedial Investigation was conducted and the Report prepared in accordance with the

terms, provisions and conditions of this Order, and shall provide written notification to Respondent of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Within fifteen (15) days after this receipt of notice of disapproval, Respondent shall revise the Report and/or provide a schedule for collection of additional data required by the Department to reperform or supplement the Remedial Investigation in accordance with the terms, provisions and conditions of this Order and shall submit to the Department, a report which has been revised in accordance with the Department's objections (the "Revised Report").

Within fifteen (15) days after its receipt of the Revised Report, the Department shall determine if the Revised Report is in accordance with the terms, provisions and conditions of this Order and shall provide written notification to Respondent of its approval or disapproval of the Revised Report.

If the Department disapproves the Revised Report, the Department shall notify Respondent in writing of the Department's objections. The parties shall attempt to resolve disputes regarding the adequacy of the Revised Report according to the procedures outlined in Paragraph XVII of this Order.

The Report or the Revised Report, whichever is approved by the Department, shall become incorporated in and made a part of this Order, and shall be attached hereto as Appendix "C."

Following submittal of the Approved Report and the draft feasibility study, the Department will announce the availability of both the Approved Report and the draft feasibility study to the public for review and comment. Department policy and guidance in effect, if any, at the time the public comment period is initiated shall be followed, except to the extent that such policy and guidance is superseded by SARA. Following the public comment period (which may involve both written and oral comments), the Department will determine if the submitted documents should be modified or accepted as submitted and the Department will so notify the Respondent in writing. Within thirty (30) days of receipt of the Department's determination, Respondent shall modify either or both documents as directed by the Department and shall submit the modified documents to the Department.

X. Within 180 days after receipt of the Department's approval of the Report, Respondent shall submit to the Department, a feasibility study (the "Feasibility Study"), consistent in scope with the Plan contained in Appendix B, evaluating remedial actions to eliminate or mitigate all health and environmental hazards attributable to the Site.

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

The Feasibility Study shall include, but not be limited to the following:

- a. A summary of the health and environmental hazards attributable to the Site.
- b. As to each such hazard, a statement of the remedial actions necessary to eliminate the same, and a categorization into discrete elements of such remedial action.
- c. As to each such discrete element, a statement of the alternative technologies available to effectuate the same, and analyses thereof, including if applicable, but not limited to:
 1. Unit cost estimates.
 2. Operation and maintenance requirements and cost estimates.
 3. Long-term integrity.
 4. Timeliness of implementation.
 5. Conformity to applicable law.

XI. Within thirty (30) days after its receipt of the Feasibility Study, the Department shall determine if the Feasibility Study was prepared in accordance with the terms, provisions and conditions of this Order, and shall provide written notification of its approval or disapproval.

If the Department disapproves the Feasibility Study, the Department shall notify Respondent in writing of the Department's objections. Within ninety (90) days after its receipt of notice of disapproval, Respondent shall revise the Feasibility Study and shall submit to the Department a Feasibility Study which has been revised in accordance with the Department's objections (the "Revised Feasibility Study").

Within fifteen (15) days after its receipt of the Revised Feasibility Study, the Department shall determine if the Revised Feasibility Study is in accordance with the terms, provisions and conditions of this Order, and shall provide written notification to Respondent of its approval or disapproval of the Revised Feasibility Study.

If the Department disapproves the Revised Feasibility Study, the Department shall notify Respondent of the Department's objections. The parties shall attempt to resolve disputes regarding the adequacy of the Revised Feasibility Study according to the procedures outlined in Paragraph XVII of this Order.

XII. Within 120 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 remedial action(s) which have been selected from the alternatives by the approved Feasibility Study, and which therefore collectively constitutes the Remedial Program ("Remedial Program") to include, as appropriate based upon the approved Feasibility Study:

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.

7. Any such other actions or measures for effectuating the remedial action as may be called for by the approved Feasibility Study.

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 for a period of years reasonably necessary to determine the effectiveness of the remedy;

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.

XIII. Within such period as may be allowed by the approved Remedial Design and any modifications thereto which have been approved by the Department, 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.

XIV. 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 of a dispute regarding the adequacy of the quality and completeness of construction, the parties shall attempt to resolve the dispute according to the procedures outlined in Paragraph XVII of this Order.

If the Department acknowledges that the implementation is complete and in accordance with the approved Remedial Design, then, and except for the requirements of Paragraph XVI 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 as provided in paragraph V.

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

XVI. Respondent shall maintain and monitor the areas at which the elements of the Remedial Program were implemented as specified in, and for such period of time as is determined to be required under 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.

XVII. The Department shall have the Right to obtain for the purpose of comparative analysis "split samples" or "duplicate samples" at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order. As used herein: split 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.

XVIII. 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 five (5) working days in advance of the commencement of the investigation and reasonably thereafter if additional sampling is required.

XIX. 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 inspection purposes and for the purpose of making or causing to be made, such sampling and tests as the Department deems necessary and for ascertaining Respondent's compliance with the provisions of this Order.

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

XXI. Respondent 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 it cannot comply with any requirements of the provisions hereof because of an act of God, war, riot, or other conditions 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 appropriate extension or modification of the provisions hereof.

XXII. The Department finds and intends that the Investigation contemplated by this Order is consistent with the National Contingency Plan, CERCLA, and Article 27 of the ECL.

XXIII. The failure of Respondent to comply with any provision of this Order may be deemed by the Department to constitute a default and a failure to perform an obligation under this Order.

Nothing in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) 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; (2) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondent.

XXIV. 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 provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns, except such as which might arise out of or result from the grossly negligent or willful act of the Department, its representatives or employees.

XXV. The effective date of this Order shall be the date this Order is signed by the Commissioner or his designee.

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

XXVI. 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.

XXVII. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not less than thirty (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 the 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.

XXVIII. A. All communication required hereby 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 addresses as listed hereunder:

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

1. Two (2) copies to the Regional Attorney
Region One NYSDEC, Building 40 - SUNY, Stony
Brook, N.Y. 11794
2. Two (2) copies to the Regional Solid Waste
Engineer Region One NYSDEC,
Building 40- SUNY, Stony Brook, New York 11794

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

Mr. Dennis Lynch, Commissioner
Town of Babylon
Department of Environmental Control
190 Farmers Avenue
Lindenhurst, New York 11757

and

Steven M. Schapiro, Esq.
Town Attorney-Town of Babylon
200 East Sunrise Highway
Lindenhurst, New York 11757

and

Richard M. Cogen, Esq.
Nixon, Hargrave, Devans and Doyle
Suite 400, One Steuben Place
Albany, New York 12201

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

E. Communication, other than the Reports, made from the Respondent to the Department shall be as follows:

Joan B. Scherb, Esq.,
Regional Attorney
New York State Department of
Environmental Conservation
Region One-Building 40 - S.U.N.Y.
Stony Brook, New York 11794

XXIX. The provisions of this Order, shall be deemed to bind the Department and the Respondent, its officers, directors, agents, servants, employees, successors and assigns.

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

XXXI. The provisions 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 from its obligations to obtain such formal approvals as may be required by this Order.

Dated: Albany, New York
_____, 1987

THOMAS C. JORLING
Commissioner of Environmental Conservation

By _____
HAROLD D. BERGER
Regional Director

CONSENT BY RESPONDENT

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

TOWN OF BABYLON
By [Signature]
Title Supervisor

STATE OF NEW YORK)
: SS.
COUNTY OF SUFFOLK)

On the 31st day of Dec 1987, before me personally came Anthony Noto to me known, who being duly sworn, deposed and said that he resides at 20 Cadman Ave, Babylon that he is the Supervisor of the Town of Babylon, the municipal corporation described in and which executed the foregoing instrument, and that he signed his name for and on behalf of said corporation with full authority so to do.

[Signature]
(Notary Public)

NOTARY PUBLIC
STATE OF NEW YORK
Qualified in the County of Suffolk
Commission Expires March 30, 1988
Oct 31