

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
HUNTINGTON/ EAST NORTHPORT LANDFILL SITE
Huntington, New York

ORDER ON CONSENT
Index # A1-0511-1104
Site # 1-52-040

Waste Management of New York LLC; Waste Management of New York, Inc. now known as
Waste Management of New Jersey, Inc.,

Respondents

WHEREAS, the State of New York (State) alleges that the Respondents, Waste Management of New York LLC and Waste Management of New York, Inc. now known as Waste Management of New Jersey, Inc. (Settling Respondent), transported hazardous substances to the Huntington/East Northport Landfill (Site) located on Town Line Road, Suffolk County, State of New York;

WHEREAS, the Settling Respondent denies the State's allegations;

WHEREAS, the Town operated the Site as a municipal landfill from 1935 to 1989 and, during that time, received municipal solid waste, commercial waste, and industrial waste;

WHEREAS, the Site is listed in the New York State Registry of Inactive Hazardous Waste Disposal Sites as No. 152040, pursuant to ECL § 27-1305;

WHEREAS, the Town and the New York State Department of Environmental Conservation (NYSDEC) entered into an Administrative Order on Consent (Index No. W1-254-88-06), requiring investigative, removal, remedial and response measures at the Site, as those terms are defined or used in Sections 101(23), 101(24), 101(25), 104(d) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601(23), 9601(24), 9601(25), 9604(d) and 9607(a) (Response Measures), which

Response Measures were undertaken in accordance with the National Contingency Plan for the Removal of Oil and Hazardous Substances, 40 CFR Part 300 (NCP);

WHEREAS, NYSDEC and the Town entered into a State Assistance Contract (No. C300259), pursuant to the Environmental Quality Bond Act of 1986, whereby the State agreed to reimburse the Town for 75% of the eligible costs for investigation, remedial design, construction of the remedial action and construction oversight to be incurred by the Town at the Site;

WHEREAS, NYSDEC has made reimbursements to the Town pursuant to such agreement in an amount in excess of \$18,000,000, and the State alleges that it has incurred other response costs, including interest and enforcement costs at the Site;

WHEREAS, the Town implemented Response Measures at the Site to remedy the alleged release and/or threatened release of hazardous substances into the environment, and incurred response costs, including but not limited to, costs of investigation, removal, remedial activity, and operation and maintenance, as those terms are defined or used in Sections 101(23), 101(24), 101(25), 104(d), 107(a) and 113 of CERCLA, 42 U.S.C. §§ 9601(23), 9601(24), 9601(25), 9604(d), 9607, and 9613, in relation to the Site;

WHEREAS, the Parties have agreed to forego any claims which they may or could have asserted against each other, subject to the provisions of this Order on Consent;

WHEREAS, the New York State Department of Law (DOL) is empowered to take legal action through the Attorney General for the State of New York (Attorney General) to protect the health and safety of the residents of the State and to protect and preserve the environment and to abate a public nuisance;

WHEREAS, by signing this Order on Consent, the Attorney General binds the State of New York and its Departments and Agencies by the terms hereof, and the Commissioner of the New York State Department of Environmental Conservation specifically acknowledges that NYSDEC is bound by the terms hereof;

NOW, THEREFORE, it is ORDERED that:

1. This Order on Consent shall apply to and be binding upon the State and the Settling Respondent. Each signatory to this Order represents that she or he is fully authorized to enter into the terms and conditions of this Order and to bind the party represented by her or him. Any change in governance, ownership or corporate status of Settling Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Settling Respondent's responsibilities under this Order.

2. Neither this Order on Consent, nor any terms thereof, nor the entry into this Order, nor performance of the terms thereof, by the Settling Respondent shall constitute or be construed as an admission or acknowledgment by the Settling Respondent of the factual or legal assertions contained in this Order, and the Settling Respondent retains the right to controvert in any subsequent proceedings, other than proceedings for the purpose of implementing or enforcing this Order, the validity of the facts, allegations or determinations contained in this Order. Neither this Order, nor the terms thereof, nor the entry into this Order, nor performance of the terms thereof, by the Settling Respondent shall constitute or be construed as an admission or acknowledgment by the Settling Respondent of any liability, responsibility or fault with respect to the conditions at or arising from past or future conditions, activities or operations at the Site,

or an admission of violation of any law, by Settling Respondent.

3. Within ten (10) business days of the date on which notice of the Effective Date of this Order on Consent is given (as provided in paragraphs 12 and 15 hereof), Settling Respondent shall remit to the State the amount of \$12,500, by wire transfer or by certified or cashier's check made payable to the State of New York and delivered to:

Robert Emmet Hernan, Esq.
Assistant Attorney General
New York State Department of Law
Environmental Protection Bureau
120 Broadway - 26 Floor
New York, New York 10271

4. Failure to make the payment required in Paragraph 3 in a timely fashion shall constitute a default. If Settling Respondent so defaults under this Order on Consent, the State shall be entitled to a penalty of \$1,000 per day, and Settling Respondent shall pay attorneys' fees and costs incurred by the State to enforce these provisions, in addition to the \$12,500 payment and any interest.

COVENANT NOT TO SUE

5. In consideration of, and contingent upon, the payment to be made by the Settling Respondent pursuant to this Order on Consent, and subject to the provisions of this Order, the State covenants not to sue, execute judgment, or take any civil, judicial or administrative action under any federal, state, local or common law (other than enforcement of this Order) against the Settling Respondent, or its affiliates, subsidiaries, related entities, predecessors, successors and assigns, and their employees, officers and directors, for any matter arising out of or relating to

the Matters Addressed by this Order, including without limitation, any claims or causes of action for costs, damages, contribution or attorneys' fees.

6. Settling Respondent agrees not to assert any claims or causes of action under any federal, state, local or common law against the State, or its employees, agencies or departments, arising out of any Matters Addressed by this Order on Consent; provided, however that if the State, pursuant to the Reopener or the Reservation of Rights of this Order, asserts a claim or commences or continues a cause of action against Settling Respondent with respect to the Site, this Paragraph 6 shall not preclude the assertion by such Settling Respondent of any claims, counterclaims, or other causes of action against the State, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claims or causes of action of the State.

REOPENERS

7. Notwithstanding any other provision of this Order on Consent, the State reserves, and this Order is without prejudice to, the right to institute proceedings, or to issue an administrative order seeking to compel Settling Respondent: (a) to perform further response actions relating to the Site, or (b) to reimburse the State for additional costs of response, in either case only if:

(i) conditions at the Site previously unknown to the State, are discovered after the

Effective Date, or

(ii) information existing in whole or in part previously unknown to the State, is

received after the Effective Date,

and these previously unknown conditions or information together with any other relevant

information indicates that the Response Measures selected for the Site are not protective of human health or the environment. For purposes of this Reopener, previously known conditions at the Site and previously known information include all conditions and information known to the State as of the Effective Date including, but not limited to, all conditions indentified and information contained or submitted for inclusion in the DEC Administrative Record, attached as Exhibit A to the Record of Decision (ROD) for the Site, or in the files and records of the NYSDEC. Settling Respondent reserves all its rights and defenses to liability and to any Reopener.

MATTERS ADDRESSED AND RESERVATION OF RIGHTS

8. Except as specifically reserved in Paragraphs 7, and 10 of this Order on Consent, the State is settling all claims against Settling Respondent for the Matters Addressed by this Order which include (a) claims for all response costs, past and future, that have been incurred or will be incurred for the investigation and remediation of the Site, no matter when or by whom incurred, including any and all response costs incurred by any party to this action or by any other responsible party, (b) any natural resource damages at or associated with the Site, and (c) any other claims or causes of action under any federal, state, local or common law relating to the disposal or alleged disposal of hazardous substances at the Site.

9. The payment being made by the Settling Respondent represents a reasonable contribution by Settling Respondent toward the total past response costs that have been incurred by the State and the total anticipated future response costs that will be incurred by the State for the implementation of the remedial program set forth in the State Record of Decision for the

Site, including post-construction, operation and maintenance, and monitoring response costs. Settling Respondent believes that the amount paid pursuant to this Order on Consent constitutes more than its fair share of the total past response costs that have been incurred by the State.

10. The "Matters Addressed" do not include, and the State reserves all of its rights with regard to:

- (a) the State's right to bring any action or proceeding against any person, firm, corporation, or other entity other than Settling Respondent; and,
- (b) the State's right to enforce the provisions of this Order on Consent against Settling Respondent in the event Settling Respondent fails to satisfy any of the terms of this Order.

CONTRIBUTION PROTECTION

11. The Parties agree that by entering into this Order on Consent the Settling Respondent, and its affiliates, subsidiaries, related entities, predecessors, successors and assigns, and its officers, directors, agents, and employees, are entitled to the full extent of protection from contribution actions or claims provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law, for the Matters Addressed by this Order on Consent.

EFFECTIVE DATE

12. This Order on Consent shall be effective upon the date that the Respondent and the State of New York, through both the Attorney General and Commissioner of the New York State

Department of Environmental Conservation, have signed below (the Effective Date). Notice of the Effective Date shall be sent by electronic mail to the Settling Respondent as provided in Paragraph 15 hereof, and all times for performance of activities under this Order shall be calculated from the date of such notice.

MISCELLANEOUS PROVISIONS

13. Nothing in this Order on Consent shall inure to the benefit of any other person or entity not a party to this Order.

14. This Order on Consent may not be modified except by express written agreement of all the Parties.

15. Any notification to the Settling Respondent shall be in writing and shall be deemed properly given on receipt thereof if sent to the following, or to such other person as Settling Respondent may designate by written notice to the State:

Peter J. Kelly, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601-9703
(312) 558-7929

Dated: Albany, New York
December 2, 2004

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: 

DALE A. DESNOYERS
Division Director
Division of Environmental Remediation

Edms 82593

Dated: *December 14, 2004*

ELIOT SPITZER
Attorney General of the State of New York

By: *Robert Emmet Hernan*

ROBERT EMMET HERNAN
Assistant Attorney General
Environmental Protection Bureau
120 Broadway
New York, New York 10271

Dated: December 7, 2004

WASTE MANAGEMENT OF NEW YORK, LLC
WASTE MANAGEMENT OF NEW JERSEY,
INC.

By: *Stephen T. Joyce*

STEPHEN T. JOYCE
Director, Closed Site Management Group

CHI:1451911.1