

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Alleged Violations  
of Environmental Conservation Law ("ECL") ORDER  
Sections 27-0707, 17-0501, and 25-0401 ON  
and Title 6 of the Official Compilation  
of Codes, Rules and Regulations of the  
State of New York ("6NYCRR") Parts 360, CONSENT  
751 and 661 by:

THE CITY OF NEW YORK

(Department of Sanitation  
125 Worth Street  
New York, N.Y. 10013)

DEC  
File No.  
2-0953

Respondent.

-----X  
WHEREAS:

1. Pursuant to ECL Section 27-0703, the Department's rules and regulations, 6NYCRR Part 360, were promulgated governing the design and operations of solid waste management facilities within the State of New York; and

2. Pursuant to ECL Section 17-0804, the Department's rules and regulations, 6NYCRR Parts 750-757, were promulgated to implement the State Pollutant Discharge Elimination System; and

3. Pursuant to ECL Section 25-0302, the Department's rules and regulations, 6NYCRR Part 661, were promulgated governing the uses of areas designated as tidal wetlands; and

4. Respondent formerly operated a solid waste management facility known as the Pennsylvania Avenue Landfill (the "Landfill") on land owned by the National Park Service encompassing an area of approximately 110 acres in the County of Kings and City of New York and which became inactive in 1979; and

5. As a result of inspections conducted by the Department of Environmental Conservation of the State of New York (hereinafter referred to as the "Department"), the

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X  
In the Matter of Alleged Violations of the  
Environmental Conservation Law ("ECL") :  
Sections 27-0707, 17-0501, and 25-0401, the : ORDER  
Navigation Law, Section 173 and Title 6 of :  
the Official Compilation of Codes, Rules : ON  
and Regulations of the State of New York :  
("6NYCRR") Parts 751, and 661; : CONSENT  
: :  
-by- : DEC FILE NO.  
: 2-0953A  
THE CITY OF NEW YORK :  
(Department of Sanitation :  
125 Worth Street :  
New York, NY 10013) :  
Respondent. :  
-----X

WHEREAS:

1. The New York State Department of Environmental Conservation (the Department) is a Department of the State of New York empowered to administer and enforce the New York State Environmental Conservation Law (ECL), the New York State Navigation Law (Article 12), and Title 6 of the Official Compilation of Codes, Rules and Regulations, of the State of New York (6NYCRR); and

2. Among other portions of said laws, the Department is empowered to administer and enforce Article 27, Title 13 entitled "Inactive Hazardous Waste Disposal Sites" which specifically deals with the identification, investigation, assessment, management and control of inactive hazardous waste sites. Also, the Department is empowered to administer and enforce Article 17, which deals with prohibition of certain discharges into surface and groundwaters, and Article 25, which deals with regulating activities in State designated Tidal Wetland areas. In addition, the Department also has authority under Section 173 of the Navigation Law to prohibit discharges of petroleum materials into the waters of New York State; and

3. The Department of Sanitation of the City of New York (Respondent), operated a solid waste management facility known as the Pennsylvania Avenue Landfill (the Landfill) on land owned by the National Park Service encompassing an area of approximately 110 acres located in the Borough of Brooklyn, County of Kings, State of New York, which was formerly used for the deposit and land burial of a portion of the solid waste generated within the City of New York; and

Penn. Ave.

4. Testimony before the New York State Senate Select Committee on Crime indicated that hazardous waste had been illegally disposed of at the Landfill, and the Department has included the site on the registry of Inactive Hazardous Waste Sites; and

5. As a result of investigation, the Department has determined that oil and other material illegally disposed of at the Landfill has been leaching into the waters of Jamaica Bay, New York in contravention of State water quality standards and limitations. Such leachate is being discharged through an area designated as a Tidal Wetlands area, pursuant to maps promulgated by the Department under Article 25 of the Environmental Conservation Law. Furthermore, such discharge is in violation of the above referenced Section 173 of the Navigation Law; and

6. Both the Department and the Respondent are in agreement that the oil and associated materials must be removed and contained as soon as possible in order to resolve the violations of law and to limit further environmental damage; and

7. The proper closure of the Landfill, in accordance with the provisions of 6NYCRR Part 360, will be part of a separate consent order drawn up under this Part, and will discuss, inter alia, the study of surface and groundwater discharge problems that exist on the Landfill; and

8. The Respondent has initiated studies to investigate the oil and other associated material presently leaching from the Landfill and to contain the spillage thereof, and has met with the Department on numerous occasions in order to resolve the ongoing violations of law in an expeditious and reasonable manner. The Respondent believes this is the hazardous material illegally disposed of at the site; and

9. The Department has performed a preliminary review of the study and has provided Respondent with such preliminary review; and

10. The Respondent has entered into a contract with Malcolm Pirnie Engineers for an investigative study to develop a suitable strategy for remediation of the site and implementation of the study recommendations.

NOW having considered the matter and having been duly advised, it is ORDERED THAT:

A) Respondent shall continue to prepare and submit to the Department for approval prior to commencement of a remediation project, a complete and comprehensive "plan" which will include, without limitation, consideration of the following factors:

1) A determination of the exact extent, geographical area, depth and nature of the contaminated area.

2) A complete and detailed description of how the Respondent will maintain all appropriate wells drilled on or near the Landfill in such a way that samples may be extracted for a complete analysis of material contaminating the site at regular intervals.

3) A plan showing the proposed method of remediation including a complete series of milestone dates covering all significant time periods, included in such remediation process.

4) A complete and detailed description of how the remediation project will be implemented, including without limitation the persons or entities who will implement the plan, the methods and procedures which will be used, the measures which will be utilized to protect the site, the surrounding area including the waters of Jamaica Bay and the neighboring citizenry, animal, bird and plant life. Respondent shall manifest all shipments of hazardous waste to be removed from the site.

5) A complete and detailed description of all methods to be used in restoring the site after removal or neutralization of contaminants.

6) A complete and detailed description of all air and water monitoring programs, to be utilized in connection with the remediation project. The water monitoring program shall be designed so as to ascertain the extent of concentration of any constituent that contravenes both surface and groundwater quality. The Air monitoring program shall be designed so as to measure ambient air particulate content and organic vapors as indicators for all pollutants found in any investigation made of the site. As part of such monitoring programs, Respondent will submit for approval a contingency plan which will provide for the protection of both the public and its employees in the event of an emergency resulting from accidental exposure to buried pollutants. Such contingency plan shall include a roster of emergency response agencies that will be available to assist in protecting the public and workers on the Landfill.

7) A complete safety and health plan for protection of the site workers from exposure to hazardous materials during normal working conditions.

B). The Respondent shall submit in writing to the Department the material required by each of section 1) through 7) of item A within thirty (30) days of the completion of said sections. When all the sections of item A are submitted and approved by the Department, the Respondent shall initiate the recommendations

of these approved sections within sixty (60) days of the date that the Department approves in writing the Respondent's completion of section 1) through 7) of item A.

C). Should an emergency occur, the Respondent shall immediately stop all remediation work at the area of such emergency and shall at once undertake a detailed investigation and correction program approved by the Department to mitigate any potential environmental and health impacts. No work shall resume at such area until the Department has approved a plan for control of the source of any contamination caused by the incident.

D). Upon completion of the remediation project, and the acceptance by the Department, the Respondent shall then submit to the Department for approval within 30 days a post remediation project monitoring program. This monitoring program shall include a description of the procedures for sampling, a schedule for sampling, a listing of parameters to be sampled, and a contingency plan for the discovery of any of the constituents that are being sampled. Such post remediation project monitoring program shall continue for no less a period than thirty (30) years, unless it is determined by the Department that all traces of contaminants have been removed to the satisfaction of the Department.

E). Respondent agrees to maintain the boom and operate the oil recovery program previously instituted on the beach area surrounding the Landfill during the remediation process and for a period thereafter as may be provided in the plan approved by the Department.

F). The Respondent shall notify the Department regarding the following items:

- 1) Upon receipt of the final analysis of any required action (as per items A through E), supra, the Respondent shall convey a complete copy of said results to the Department within two weeks in writing.
- 2) The Respondent shall immediately notify the Department by the most expeditious means of any problems that may affect this remedial project.

G). In the event that the Department does not approve any material submitted by Respondent pursuant to this Order, the Department shall within 30 days respond in writing specifying its objections. Thereafter, the Respondent shall within 30 days revise and resubmit its proposed plans and schedules.

H). Wherever pursuant to this Order a submission is to be made to the Department said submission shall be made to the Regional Solid Waste Engineer, Region 2, New York State Department of Environmental Conservation, Suite 6126, 2 World Trade Center, New York, New York 10047 with a copy to the Director, Division of Solid and Hazardous Waste, 50 Wolf Road, Albany, New York 12233-0001.

I). If Respondent cannot meet one or more of the time limitations imposed by this Order on Consent due to an event or condition which was not caused by negligence or willful misconduct on the part of the Respondent, Respondent may apply in writing to the Department immediately upon obtaining knowledge of such condition and request an appropriate time extension, the granting of which shall not be unreasonably withheld. Should the Department not respond in writing within 30 days of such request, the extension will be deemed granted.

J). The Department will not prosecute or bring any enforcement action against the Respondent in any administrative or judicial forum on account of the violations which led to the entry of this Order.

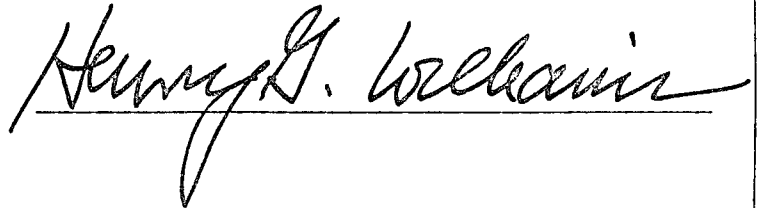
K). The provisions of this Order shall remain in effect until the Department certifies that the post-remediation requirements are satisfied.

L). The effective date of this Order shall be the date on which it is signed by the last signatory.

DATED: New York, New York

*December 16, 1985*

HENRY G. WILLIAMS, COMMISSIONER  
New York State Department of  
Environmental Conservation

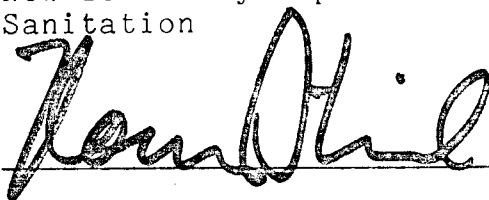
A handwritten signature in cursive script, reading "Henry G. Williams", written over a horizontal line.

TO: Hon. Norman Steisel  
Commissioner  
N.Y.C. Department of Sanitation  
125 Worth Street  
New York, NY 10013

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order (DEC File No. 2-0953A), waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

NORMAN STEISEL, Commissioner  
New York City Department of  
Sanitation



ACKNOWLEDGEMENT

State of New York )  
County of New York) ss.:

On this 4<sup>th</sup> day of *DECEMBER* 1985, before me personally came Norman Steisel to me known, who being by me duly sworn did depose and say that he maintains an office at 125 Worth Street, in the City of New York and that he is duly authorized to execute the foregoing instrument.

LESLIE BRUCE MARON  
Notary Public, State of New York  
No. 24-4657211  
Qualified in Kings County  
Commission Expires March 30, 1986



Notary Public

Department alleges that Respondent has not maintained the Landfill in conformity with the ECL in that:

- (a) Since the Landfill became inactive in 1979, Respondent has failed to properly close the Landfill in accordance with the provisions of 6NYCRR Part 360; and
- (b) Leachate was permitted to enter the surface and groundwaters of New York State in contravention of existing Federal and State standards; and
- (c) Respondent has previously operated the Landfill in contravention of 6 NYCRR Part 661.9, which deals with operations carried on in tidal wetlands; and

6. Testimony before the New York State Select Committee on Crime indicated that hazardous waste had been illegally disposed of at the Landfill during the time it was in active operation. Remediation for such activity and future investigations are the subject of a separate consent order between the Respondent and the Department; and

7. Since the Landfill was not closed in accordance with the criteria set forth in the provisions of 6NYCRR Part 360, violations may still exist at the site; and

8. The Respondent entered into contracts for consultation services with Gibbs and Hill and with Malcolm Pirnie to effectuate the proper closure of the Landfill in accordance with all applicable laws and regulations; and

9. The Respondent entered into a contract with Parsons Brinckerhoff-Cosulich to conduct testing in response to allegations of toxic waste dumping; and

10. The 1984 Budget for the State of New York, as passed by the Legislature contained an appropriation of \$350,000.00 based on Chapter 50 §1 of the Laws of 1984 as reappropriated by the Laws of 1985, which contains a direction that the Landfill be closed no later than December 31, 1985, but in the interests of fully and properly complying with the terms and provisions of Article 27 of the ECL and 6 NYCRR Part 360, the Department and the Respondent have agreed to extend such closure for an additional period not to extend beyond December 31, 1987.

11. Without admitting or denying liability for the alleged violations, Respondent waives its right to a hearing on this matter and consents to the issuance of this Order. In consenting to the terms and conditions of this Order, Respondent does not thereby waive any rights to defend against or institute any legal proceedings brought in any administrative or judicial forum arising under Part 360 or any provision of law.



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

#### I. GUARANTEE OF PERFORMANCE

As consideration for the dispositions set forth in this Order, it is hereby mutually agreed as follows: In the event the Respondent fails to comply with any term or requirement of this Order and, upon written notice of such failure of compliance by the Department to the Respondent and reasonable opportunity for the Respondent to correct such failure of compliance, the Respondent fails to take corrective action such that in order to protect the environment the Department must undertake performance of any of Respondent's obligations hereunder, the Respondent shall be liable to the Department for the full cost of all reasonable steps undertaken by the Department to correct Respondent's failure to comply, provided that the Respondent has not previously requested in writing from the Department and been granted a prior modification of such term or requirement, and provided further that no such corrective action shall be undertaken, contracted for or committed to by the Department without providing Respondent with reasonable written notice of the proposed corrective action.

#### II. CLOSURE PLAN

A. The Landfill shall be properly closed not later than December 31, 1987 ("Closure Date"), or such other date as may be provided in the Closure Plan approved by the Department.

B. Within 30 days after the effective date of this Order, Respondent shall submit to the Department for approval a complete and detailed schedule of activities for achieving closure. As and when approved by the Department, the schedule shall become part of this Order enforceable as such. The schedule shall insure that Respondent will submit a closure plan for Department approval not later than December 31, 1985. The closure plan shall include:

1. A cover management plan approvable by the Department that specifies the source and characteristics of the cover material, the quantities required and the date when final cover will be in place at the site.
2. A leachate management plan approvable by the Department addressing, as required, leachate collection, storage, treatment and disposal.
3. A gas venting plan approvable by the Department to insure that decomposition gases generated within the sanitary landfill shall be controlled.

The concentration of methane shall not exceed:  
(a) 25% of the lower explosive limit for the gases in facility structures (excluding gas control or recovery system components); and (b) the lower explosive limit for the gases at or beyond the property boundary.

4. A landscape plan approvable by the Department prepared by a landscape architect licensed to practice in New York State. Said plan shall show final site contours including proper grading, drainage and erosion control; specify and discuss seed mixtures, plant material lists and procedures to establish screening and vegetative cover; and illustrate a specific use for the completed site or alternate possible uses.
5. A plan for post-closure monitoring and remedial actions designed to ensure that the integrity is maintained of the soil cover, slopes, cover vegetation, drainage structures, groundwater monitoring facilities, leachate control facilities and gas venting structures for a period of thirty (30) years beyond the date that placement of the final cover material is completed.

As and when approved by the Department, this plan shall become part of this Order and enforceable as such.

C. During the period this Order is in force, Respondent shall not suffer anything to be done on the Landfill which would require a permit under the ECL without receiving prior written approval from the Department.

D. Respondent will submit monthly progress report not later than the 10th of each month, incorporating all progress made toward completing the Landfill Closure plan described in Section II B of the Order on Consent.

E. Within 30 days after the effective date of this Order, Respondent shall submit to the Department for approval a preliminary plan and anticipated schedule for implementing a security system for the Landfill capable of excluding dumping of solid or hazardous waste. As and when approved by the Department, this plan shall become part of this Order and enforceable as such.

### III. CONDITIONS

A. In the event that the Department does not approve any material submitted by Respondent pursuant to this Order, the Department shall within 30 days respond in writing specifying its objections. Thereafter, the Respondent shall within 30 days revise and resubmit its proposed plans and schedules.

B. Wherever pursuant to this Order a submission is to be made to the Department said submission shall be made to the Regional Solid Waste Engineer, Region 2, New York State Department of Environmental Conservation, Suite 6126, 2 World Trade Center, New York, New York 10047 with a copy to the Director, Division of Solid and Hazardous Waste, 50 Wolf Road, Albany, New York 12233-0001.

C. If Respondent cannot meet one or more of the time limitations imposed by this Order on Consent due to an event or condition which was not caused by negligence or willful misconduct on the part of the Respondent, Respondent may apply in writing to the Department immediately upon obtaining knowledge of such condition and request an appropriate time extension, the granting of which shall not be unreasonably withheld. Should the Department not respond in writing within 30 days of such request, the extension will be deemed granted.

D. The Department will not prosecute or bring any enforcement action against the Respondent in any administrative or judicial forum on account of the violations which led to the entry of this Order. The Department reserves its right to prosecute or bring an enforcement action against the Respondent in an appropriate administrative or judicial forum for violations of this Order.

E. Until such time as the Department has in effect an approved State Solid Waste Plan pursuant to Subtitle D of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et. seq.) and its implementing regulations and so long as the Respondent remains in compliance with the terms of this Order, then, in any lawsuit pursuant to 42 U.S.C. 7002 brought against the Respondent as to which the Department is not a party, the Department shall seek to intervene as a co-defendant or if such intervention is denied, as an amicus curiae in order to support this Order. Should the Department be named as an original party in such a lawsuit under the above circumstances, the Department agrees to support this Order.

F. In consenting to the terms and conditions of this Order on Consent, Respondent does not thereby waive any rights to defend against or institute any legal proceedings brought in any administrative or judicial forum arising under Part 360 or any other provision of law.

G. Nothing contained in this Order on Consent is or shall be deemed to be an admission by the Respondent or by the Department of any liability, wrongdoing or violation of any statute, rule or regulation.

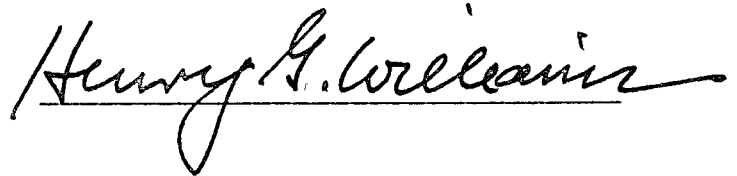
H. The provisions of this Order shall remain in effect until the Department certifies that the post-closure requirements are satisfied.

V. EFFECTIVE DATE

The effective date of this Order shall be the date on which it is signed by the last signatory.

DATED: New York, New York  
*December 16, 1985*

HENRY G. WILLIAMS, Commissioner  
New York State Department of  
Environmental Conservation

A handwritten signature in cursive script, reading "Henry G. Williams", written over a horizontal line.

TO: Hon. Norman Steisel  
Commissioner  
N.Y.C. Department of Sanitation  
125 Worth Street  
New York, N.Y. 10013

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order (DEC File No. 2-0953), waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

NORMAN STEISEL, Commissioner  
New York City Department of  
Sanitation

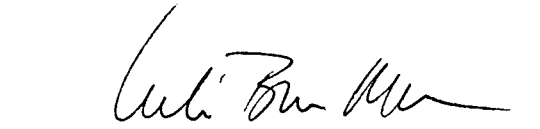


ACKNOWLEDGEMENT

State of New York)  
County of New York) ss:

On this 4<sup>th</sup> day of DECEMBER 1985, before me personally came Norman Steisel to me known, who being by me duly sworn did depose and say that he maintains an office at 125 Worth Street, in the City of New York and that he is duly authorized to execute the foregoing instrument.

LESLIE BRUCE MARON  
Notary Public, State of New York  
No. 24-4667211  
Qualified in Kings County  
Commission Expires March 30, 1986

  
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