

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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In the Matter of the  
Development 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 by

ORDER  
ON  
CONSENT

INDEX 2-43-006

The City of New York

Respondent.  
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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. From 1966 to 1980, Respondent, City of New York ("Respondent" of "City") owned and operated a solid waste management facility in Richmond County, located on Richmond Creek, known as the **BROOKFIELD AVENUE LANDFILL** ("The Site"). The Site encompasses an area of approximately 180 acres. A map of the Site is attached to this Order as Appendix A.

3. In addressing the investigation and remediation of the Site (which is an inactive hazardous waste disposal site listed in the Registry of Inactive Hazardous Waste Disposal Site in New York as Site number 2-43-006 and classified as Class "2" pursuant to ECL 27-1305.4.b), the Department issued orders dated December 16, 1985 ("1985 order") and April 17, 1990, ("1990 order") by which Respondent became obligated to develop and implement a remedial program for the Site, which program may include an interim remedial measure and shall include a remedial investigation/feasibility study and design and construction of the selected remedial program.

4. The Department alleges that Respondent failed to comply with the terms of the 1985 and 1990 Order.

5. As a result of inspections conducted by the Department after December 16, 1985, the Department alleges that the Site has not been, and is not, in conformity with 6 NYCRR Parts 360, 703, and 750-758. The maximum daily civil penalties attributable to these violations is \$51,000. ECL 71-2703, 71-1929. Criminal sanctions are set forth in ECL 71-1933 and 71-2703.

6. The maximum civil penalty for violating the 1985 order is \$25,000 and an additional penalty of not more than \$25,000 for each day during which such violation continues. ECL 71-2705.1.

7. The maximum civil penalty for violating the 1990 order is \$25,000 and an additional penalty of not more than \$25,000 for each day during which such violation continues. ECL 71-2705.1.

8. Respondent has entered into this Order to fulfill one of the requirements for submitting an application for a grant for financial assistance pursuant to ECL Article 52, Title 3. Respondent has brought and vigorously prosecuted a case pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., ("CERCLA") against the generators of wastes containing hazardous substances illegally dumped at the Site, seeking response costs and natural resources damages at five of the Respondent's landfills including the Site. See City of New York v. Exxon Corp., et al., 85 Civ. 1939 (KC) (SDNY). The prosecution of this case fulfills Respondent's duty under Article 52, Title 3 to assist the Department to compel other responsible persons to bear a share of the total cost for the development and implementation of an inactive hazardous waste disposal site remedial program at the Site.

9. Respondent has represented that despite past problems, it will meet its obligations in the future. As proof of its commitment, Respondent has agreed, inter alia,

to (1) pay stipulated penalties for any non-compliance with milestone dates in this Order, and (2) fund environmental monitors who will oversee the work to be performed under this Order.

10. The goals of this Order are to return Respondent to a status of compliance, to provide for a revised schedule for compliance, to require environmental monitors to oversee implementation of the City's obligations under this Order, and to provide for stipulated penalties.

11. The terms of this Order supersede the 1985 and 1990 orders.

12. Without waiving its right to defend against any legal proceedings against it, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, Respondent agrees to be bound by its terms.

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

I. RI/FS Work Plan Contents and Submittals

A. No later than June 1, 1993, Respondent shall submit to the Department a detailed draft work plan describing the methods and procedures to be implemented in performing an RI/FS for the Site ("RI/FS Work Plan").

B. (1) The RI/FS Work Plan shall include the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data

quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional. Respondent shall add supplemental items to this plan as necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

(2) In addition to the items discussed above, the RI/FS Work Plan shall incorporate all elements of a RI/FS as set forth in CERCLA, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

C. DEC shall provide its comments to the City on the draft work plan by July 15, 1993.

D. Respondent shall submit a final approvable work plan that addresses all of DEC's comments by no later than August 15, 1993.

E. After the Department approves the work plan, Respondent shall cooperate with and assist the Department in holding a public meeting to present the work plan no later than September 15, 1993.

II. Performance and Reporting of Remedial Investigation

A. Within 75 days after the public meeting, Respondent shall commence the Remedial Investigation.

B. Respondent shall perform the Remedial Investigation in accordance with the Department-approved RI/FS Work Plan.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report that shall:

(1) include all data generated and all other information obtained during the Remedial Investigation:

(2) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph I.B(2) of this Order;

(3) identify any additional data that must be collected; and

(4) include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan.

E. Respondent shall submit a detailed draft RI Report no later than December 1, 1994.

F. DEC shall provide its comments to the City on the draft RI Report within 45 days.

G. Respondent shall submit a final approvable RI Report that addresses all of DEC's concerns within 30 days.

III. Feasibility Study

A. Within 60 days after receipt of the Department's approval of the Remedial Investigation Report, Respondent shall submit a draft Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous waste disposal at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph I.B(2) of this Order.

C. The Department shall provide its comments on the draft Feasibility Study within 30 days.

D. Respondent shall submit a revised draft Feasibility Study that addresses all of DEC's comments within 30 days.

E. The Department shall submit its comments on the revised draft within 30 days.

F. Respondent shall submit a final approvable Feasibility Study that addresses all of DEC's comments within 30 days.

G. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate with and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph I.B(2) of this Order, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

IV. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within 90 days after the ROD is signed, Respondent shall submit to the Department a draft remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each essential element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

a. the construction and operation of any structures;

b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;

c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

d. physical security and posting of the Site;

e. health and safety of persons living and/or working at or in the vicinity of the Site;

f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

g. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

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

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed;

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;



7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

C. The Department shall provide its comments on the draft design within 45 days.

D. Respondent shall submit a final approvable design that addresses the Department's comments, no later than 45 days after receiving the Department's comments, provided, however, that if an innovative remedy is employed, Respondent shall submit a revised draft design that addresses the Department's comments, no later than 30 days after receiving the Department's comments. The Department shall provide its comments within 30 days and Respondent shall submit a final approvable design within 30 days after receiving the Department's comments.

V. Remedial Design Construction and Reporting

A. Within 180 days of the Department's approval of the Remedial Design, Respondent shall commence construction of the Remedial Design.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 30 days after completion of the construction activities identified in the Remedial Design,

Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O & M Plan, Respondent shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan.

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment.

VI. Interim Remedial Measures

Respondent shall implement interim remedial measure ("IRMs") for the Site as deemed necessary by the Department.

VII. Progress Reports

Commencing with the initiation of RI field work and continuing until the construction is completed, Respondent shall submit written monthly progress reports

that: (i) describe the actions which have been taken toward achieving compliance with this Order and the documents incorporated herein during the previous month, including identifying all work plans, reports, and other deliverables required by this Order which were completed and submitted during the previous month; and (ii) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and description of efforts made to mitigate those delays or anticipated delays. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order:

Two copies shall be provided to the individual identified in subparagraph XVI.A(2), and one copy to the individual identified in subparagraph XVI.A(4).

VIII. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Paragraph I.B.(1)c. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within the timeframes specified, after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that

addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, provided, however, that for those submittals for which the Order allows Respondent to submit an additional revised submittal upon the Department's disapproval of the first revision, Respondent shall not be in violation of this Order if the first submittal is disapproved, but Respondent shall be in violation of this Order, and the Department reserves all of its rights, if this second revision is disapproved by the Department. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

IX. Violations

A. Within 60 days after the effective date of this Order, Respondent shall provide to the Department an approvable work plan to implement the Environmental Benefit project listed in Appendix B.

B. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

C. Respondent shall be liable for payment to the Department of the sums set forth below as stipulated

penalties for each day or part thereof that Respondent is in violation of the terms of this Order, or any document incorporated by reference into this Order. All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation. Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not sent within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine percent on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order. Stipulated penalties shall be due and payable under this subparagraph of this Order pursuant to the following schedule:

A. For major events of Non-compliance, which are those milestones established in paragraphs I.D. (final work plan); II.G (RI Report), III.D (FS); IV.D (Remedial Design); V.A (Commencement of construction):

<u>PERIOD OF NON-COMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st day through 30th day	\$3,500
31st day through 60th day	7,000
Each day beyond the 60th day	25,000

B. For all other events of non-compliance with this Order:

<u>PERIOD OF NON-COMPLIANCE</u>	<u>PENALTY PER DAY</u>
1st Day through 30th Day	\$1,000
31st Day through 60th Day	3,000
Each day beyond the 60th Day	5,000

C. In the event that Respondent fails to pay any stipulated penalty amount due pursuant to this Order, this Order, together with a notice of noncompliance identifying the provision with which Respondent shall have failed to comply and specifying the amount due, may be filed and enforced by the Department as a civil judgment for the total penalty amount set forth in the notice of noncompliance, in the State of New York and in any other jurisdiction in which Respondent may have assets, without the need for any further proceedings whatsoever.

D. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of events beyond Respondent's control, including an act of God, war, riot, insurrection, strike, judicial injunction, contractor default, or labor dispute. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph of this Order.

X. Compliance Oversight

Two persons shall be employed to monitor Respondent's compliance with this Order, beginning with the initiation of

field work. The monitors, in accord with the access provision of this Order at Paragraph XI of this Order, shall perform announced and unannounced inspections of the Site, any remedial operations, and any investigation operation performed by Respondent at the Site. The monitor staff shall be as follows: one Environmental Engineer I (State Civil Service, Grade 20) and one Engineering Geologist I (Grade 20). The monitors shall be available, as needed, for discussions with and shall provide prompt feedback to the Respondent regarding the Department's position on any submission, plan or question the Respondent may have pertaining to this Order. The monitors shall report to the Department's project manager for the Site. The monitors shall not be the Department's spokespersons in ordering restrictions and/or modifications to the Site, nor shall such monitors be deemed employees of the City of New York for any reason. The monitors will be fully funded by the Respondent in the following manner: an account to fund the environmental monitor(s) shall be established with the Department as follows:

A. Within 60 days after the effective date of this Order, Respondent shall submit to the Department the sum of \$170,000, which shall represent the Department's estimate of the first year costs of the monitors. These funds shall be used for time spent on Landfill-related activities only. The Department shall establish an account within which it shall place such sum. Respondent shall make subsequent payments to the Department on a quarterly basis for the duration of this Order in order to maintain an account balance sufficient to meet the costs and expenses of the monitors anticipated to be incurred in the nine month period following the payment. The quarterly payment may take into account matters such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional on-Site

monitors. Costs and expenses to be covered by this account include:

(1) Direct personal service costs and fringe benefits of the environmental monitors for time spent on Landfill-related activities, including the costs of replacement personnel for the persons regularly assigned to these positions.

(2) Direct non-personal service costs, including without being limited to purchase or lease of a vehicle if necessary and its full operating costs, and any appropriate chemical sampling and analysis.

(3) Inflation increases and negotiated salary increases.

(4) Indirect support or overhead costs at the approved indirect support cost rate.

B. The Department shall notify Respondent in writing when a quarterly payment is due. The Department's invoice will provide Respondent with information as to, inter alia, salary, fringe benefits and other costs, including hours spent on Landfill-related activities. Respondent shall submit such payment to the Department at the following address no later than 60 days from receipt of such notification: New York State Department of Environmental Conservation, 50 Wolf Road, Room 602, Attention: Director of Environmental Monitors, Albany, New York 12233-1010. Payments are to be in advance of the period in which they will be expended.

C. Upon termination of this Order and payment of any outstanding costs and expenses, the Department shall return the unexpended balance, including interest, to Respondent.

XI. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any



State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order, provided, however, that such person shall abide by Respondent's established procedures for entry upon and safety at the Site. During implementation of the Remedial Design, Respondent shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records and job meetings. To the extent Respondent needs to obtain access from other parties, Respondent shall make all reasonable efforts to obtain such access.

XII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns;

2. the Department's right to enforce this Order against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns if Respondent fails to satisfy any of the terms of this Order;

3. the Department's right to bring any action or proceeding against Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns with respect to hazardous substances that are present at the Site or that have migrated from the Site;

4. the Department's right to require Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns to develop and implement IRMs for the Site; and

5. the Department's right to gather information and enter and inspect the Site.

B. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XIII. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is required pursuant to Paragraph V.G., and except for the provisions regarding indemnification, and the future Operation and Maintenance of the site, such acceptance shall constitute a release for 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 or CERCLA relative to or arising from the disposal of hazardous substances at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-site or off-site which are related to the disposal of hazardous substances at the Site and were unknown to the Department at the time of its approval of the Remedial Investigation Report; or

(2) information received, in whole or in part, after the Department's approval of the Remedial Investigation Report, and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis

for determining that the Remedial Program is not protective of human health and the environment.

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

This order shall constitute an administrative settlement under CERCLA, with respect to Respondent's liability to the State of New York for all matters addressed in this consent order, pursuant to Section 113(f)(2) of CERCLA.

XIV. Indemnification

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 relating to the implementation of this Order, except for those arising out of or resulting from the negligence or willful misconduct of the Department.

XV. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Kings County Clerk to give all parties who may acquire any interest in the Site notice of this Order. Said Declaration must indicate that any successor in interest to any portion of the Site shall be responsible for implementing the provisions of this Order. A certified copy of said filing shall be provided to the Department.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the

conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XVI. Communication

A. Communication from Respondent shall be made by sending one copy to:

1. Director, Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-5500
2. Director, Division of Hazardous Waste Remediation  
New York State Department of Environmental conservation  
50 Wolf Road  
Albany, New York 12233-7010
3. Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
4. Regional Director  
NYS DEC Region 2 Headquarters  
47-40 Hunters Point Plaza  
Long Island City, New York 11101

Submittals required by this Order other than the progress reports required by Paragraph VII shall be sent as follows:

- (1) six copies to the DHWR Division Director;
- (2) two copies to the DOH Director; and
- (3) two copies to the Regional Director.

B. Communication to be made from the Department to the Respondent shall be made by sending one copy to:

1. Nancy Lewson, Esq.  
Deputy Commissioner for Legal  
and Legislative Affairs  
New York City Department of  
Environmental Protection  
Tower Building, 19th Floor  
59-17 Junction Blvd.  
Elmhurst, NY 11373
2. Richard Mendes, Ph.D.  
Deputy Commissioner for  
Environmental Remediation and  
Enforcement  
New York City Department of  
Environmental Protection  
Tower Building, 8th Floor  
59-17 Junction Blvd.  
Elmhurst, New York 11373  
(two copies)
3. Chief, Environmental Law Division  
New York City Law Department  
100 Church Street  
New York, New York 10007

The parties reserve the right to designate other  
or different addresses on notice to the other.

XVII. Miscellaneous

A. All activities and submittals required by  
this Order shall address both on-Site and off-Site  
contamination resulting from the disposal of hazardous  
wastes at the Site.

B. Respondent shall retain professional  
consultants, contractors, laboratories, quality  
assurance/quality control personnel, and data validators  
acceptable to the Department to perform the technical,  
engineering, and analytical obligations required by this  
Order. The Department's approval of these firms or  
individuals shall be obtained before the start of any  
activities for which the Respondent and such firms or

individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall ensure that the Department is sent, concurrently with the contractors' submittals to Respondent, the results of all sampling and/or tests or other data generated with respect to implementation of this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order, except that in an emergency Respondent shall provide notice as soon as practicable.

E. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order.

F. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Respondent's responsibilities under this Order shall in no way be altered unless and until DEC approves such a change in responsibility.

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be

responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Order are to calendar days unless otherwise specified.

J. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order provided, however, that minor on-site modifications involving routine engineering judgments may be made by the monitor.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to:

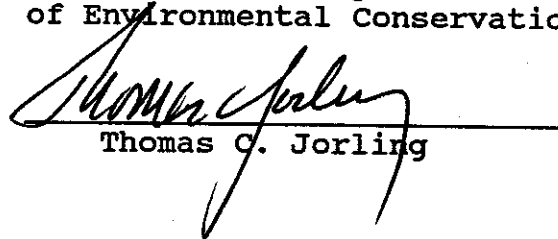
Director, Division of Environmental  
Enforcement  
New York State Department of  
Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

Project Manager  
Hazardous Waste Remediation  
NYS DEC Region 2 Office  
47-40 21st Street, 2nd Floor  
Long Island City, NY 11101

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

DATED: Albany , New York  
May 15 , 1992

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



Thomas C. Jorling



CONSENT BY RESPONDENT

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 this Order.

By: Albert F. Appleton  
Title: Commissioner, NYC Dept. of Soc. Services  
Date: May 4, 1992

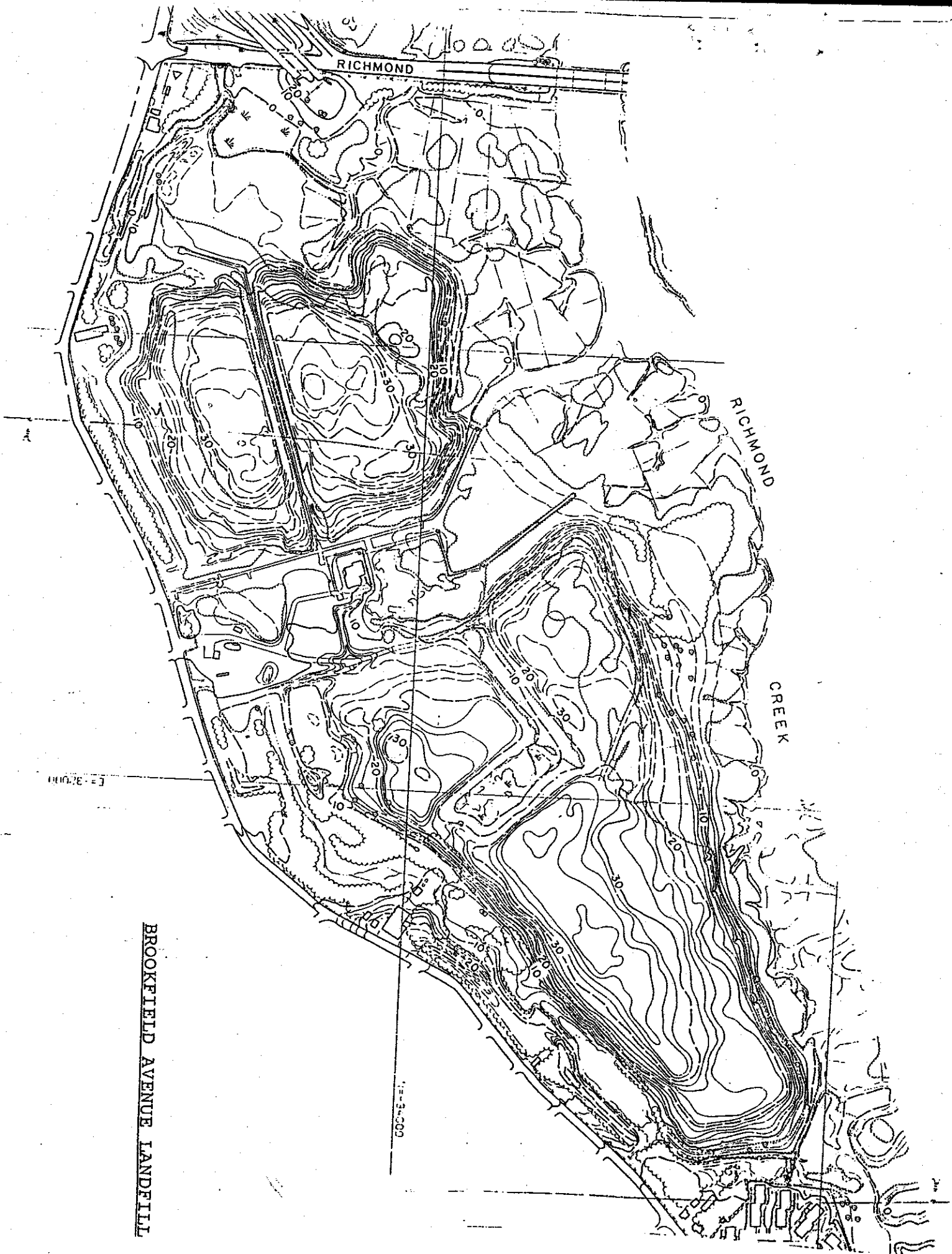
ACKNOWLEDGEMENT

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

On the 4<sup>th</sup> day of May, 1992, before me personally came Albert F. Appleton, to me known, who being duly sworn did depose and say that he is duly authorized to execute the foregoing instrument on behalf of the City of New York.

Peter Lehner  
Notary Public

PETER LEHNER  
Notary Public, State of New York  
No. 31-4888204  
Qualified in New York County  
Commission Expires March 9, 1993



BROOKFIELD AVENUE LANDFILL

Appendix B

Wetlands Restoration

Respondent shall develop and implement the environmental benefit project described in Appendix B of the Pennsylvania Avenue Consent Order executed by Commissioner Jorling on April 7, 1992.