

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
DIVISION OF AIR AND HAZARDOUS MATERIALS

IN RE: APPLICATION OF THE RHODE ISLAND SOLID WASTE  
MANAGEMENT CORPORATION -- CENTRAL LANDFILL

DECISION AND ORDER

This matter is again before this hearing officer on the Rhode Island Solid Waste Management Corporation's (hereinafter "Corporation") request that Conditions 4, 6 and 18 of the Decision and Order (hereinafter "Order") dated March 23, 1988 concerning the above entitled proceeding be modified in light of legislation recently enacted by the General Assembly.

On June 20, 1988 the Corporation by letter requested reassessment of the Order issued by the Director with respect to three (3) specific conditions. Under the Department of Environmental Management's Administrative Rules of Practice and Procedure (hereinafter "Rules"), Rule 14, a party to an administrative proceeding may request that the Order be reconsidered. I have treated the instant letter request filed by the Corporation as one for reconsideration under the Rules. The Department of Environmental Management Division of Air and Hazardous Materials (hereinafter "Division") did not file any papers with respect to this request.

I will separately address each of the modifications sought by the Corporation.

CONDITION 4 -- LAND ACQUISITION FUND/BUFFER ZONE

After careful review of 88-H-8277-Sub A, it is clear that the legislature has chosen to embody in statute, the purpose and intent of Condition 4 of the March 23, 1988 Order. Although it differs in some respects, 88H-8277-Sub A meets the mandates of Condition 4 and even exceeds them with respect to funding. Broadly stated, the Act requires the Corporation to acquire residential real property within 2,000 feet of the operational portion of the landfill. The act further requires that the Corporation submit to DEM for approval, a buffer zone plan for land acquired within 1,000 feet of the licensed area of the landfill.

The Act, at a minimum, is consistent in scope with the buffer zone requirements of Condition 4 and is significantly more demanding with respect to funding. To ensure progress toward achieving the original intent of Condition 4, the buffer zone plan referenced in the statute should be submitted to the hearing officer and the Division by December 31, 1988. Amended versions of the plan, if any, shall be submitted to the hearing officer and the Division as revisions are made.

The funding portion of Condition 4 will be deemed satisfied upon presentation of proof, satisfactory to the hearing officer, that the Rhode Island Solid Waste Management Corporation has in its present fiscal year budget, the monies mandated by 88H-8277 Sub A and that those monies have been allocated for the acquisition of land as outlined in the statute.

CONDITION 6 -- FUNDING FOR MONITORING COMPLIANCE

The Corporation has suggested that this Condition be modified to allow it to establish a fund of thirty thousand dollars (\$30,000) for the present fiscal year in lieu of funding a position in the Division.

The purpose of this Condition is to ensure continuous monitoring of and compliance with all applicable solid waste regulations, air regulations and permit conditions. The alternative method proposed by the Corporation will satisfy the intent of Condition 6 provided the fund is established immediately and may be drawn upon by the Division for the life of the interim license in an amount not to exceed \$30,000.

CONDITION 18 -- ALTERNATIVE DISPOSAL SITES

In light of legislation passed during the last session of the General Assembly, the Rhode Island Solid Waste Management Corporation has requested that the Department of Environmental Management modify the timeframes delineated in Condition 18 of its March 23, 1988 Decision and Order regarding alternative landfill sites.

After a review of 88-S 3068 Sub A, as amended, it is clear that the legislature has mandated a specific procedure to accomplish future siting of waste facilities. The Corporation asserts, rather convincingly, that any alternative facility mandated by Condition 18 must meet the criteria to be recommended by the Statewide Planning Council ("Council") and ultimately adopted by the General Assembly. The legislation sets a timetable for drafting of siting criteria by the Council. The legislature found that the only way to accomplish proper disposal of solid waste is to provide for the siting, design, construction, operation and use of environmentally acceptable solid waste facilities in the manner subsequently outlined in the legislation.

The hearing officer agrees that it would be an exercise in futility to identify new sites whose placement may ultimately conflict with the legislatively approved criteria for siting. The impetus behind Condition 18 of the Order is the present need for environmentally sound alternative landfill sites which would serve to more equitably apportion the environmental impacts of solid waste facilities. The gravamen of Condition 18, as it relates to new sites, is addressed in the legislation and the means by which new sites are to be identified is specifically set forth. Accordingly, in deference to the legislative mandate, the timeframes established in Condition 18 shall be modified to be consistent

with the statute. The newly enacted R.I.G.L. §42-103-2 requires the Council to adopt siting criteria by January 1, 1989. The statute further requires the Council, within six months of adoption of siting criteria, to perform an inventory of existing facilities and their capacities as well as an evaluation of areas within the state not suitable for waste facilities.

The Corporation has offered to assist the Statewide Planning Council in expeditiously developing siting criteria for ultimate adoption. Specifically, the Corporation has offered to fund a new technical position at the Office of State Planning commencing July 1, 1988.

The Director believes such assistance is vital to timely adoption of siting criteria and strongly urges the Corporation to establish and fund the technical position it has offered.

The Director likewise urges the Statewide Planning Council and the Rhode Island Solid Waste Management Corporation to work cooperatively and with dispatch to formulate environmentally sound criteria for the siting of waste facilities.

By Order of March 23, 1988, the Corporation is required to "immediately undertake a statewide search for identification of a minimum of three (3) suitable sites to serve as alternative disposal facilities to the Central Landfill." (Order at p. 44-45).

On May 26, 1988, the Director clarified Condition 18 stating "... the Corporation must identify three (3) additional sites, which may be Corporation-owned or privately owned and operated licensed facilities available for use by the Corporation on a long term basis." (Order of May 26, 1988 at p. 5). To the extent that the Corporation identifies new sites, the timeframes for reports to the Division and hearing officer set forth in Condition 18 of the Order shall be extended to July 30, 1989 and September 1, 1989.

The May 26, 1988 Order indicates that identification of privately owned and operated licensed facilities available for use by the Corporation on a long term basis would likewise satisfy the mandate of Condition 18. The newly enacted legislation does not extend to presently licensed facilities and accordingly, the timeframes for reports concerning identification of such facilities remains in effect. The Corporation has represented in its Memorandum to the Hearing Officer dated June 21, 1988 that the Corporation has already performed a statewide inventory of existing solid waste facilities. This is a significant first step in identifying available facilities and ultimately complying with this Condition of the Order.

Therefore, it is

ORDERED

that the March 23, 1988 Decision and Order as modified on May 26, 1988 is amended to the extent set forth below.

A. Condition 4 of the Order is amended to read as follows:

4. The Corporation shall submit proof, satisfactory to the hearing officer, that it has available, within the present fiscal year budget, the monies required by 88-H-8277 Sub A (to a maximum of 3 million dollars) and that those monies have been allocated for the purchase of residential property as mandated in the statute.

The Corporation is ordered to submit to the Department of Environmental Management for approval, a buffer zone plan for land acquired within one thousand feet (1000') of the licensed area of the landfill. The Corporation shall submit the buffer zone plan to the hearing officer and the Department of Environmental Management by December 31, 1988. Should the final buffer zone plan be incomplete at that time, a preliminary plan shall be submitted. Amended versions of the plan, if any, shall be

submitted upon revision until the final buffer zone plan required by this statute is filed. The Corporation shall submit status reports to the hearing officer and Director outlining efforts and progress made in acquiring the residential real property within one thousand feet (1000') of the licensed area of the landfill. An initial report shall be received by September 30, 1988 and subsequent reports shall be on a quarterly basis until the buffer zone plan is submitted in final form.

B. Condition 6 of the Order is amended to read as follows:

6. The Corporation is ordered to fund a position for an Air Quality Engineer within the Department of Environmental Management and to provide office space at the Central Landfill for this inspector. The Air Quality Engineer shall be employed by the Department of Environmental Management and stationed full time at the Central Landfill to continuously monitor compliance with the Regulations and permit conditions. This inspector shall report directly to Thomas Getz, Chief of the Division of Air and Hazardous Materials of the Department of Environmental



Management and to the Director, Robert L. Bendick, Jr. This inspector shall not report in any manner to the Rhode Island Solid Waste Management Corporation.

There was substantial testimony by witnesses on behalf of the Corporation that existing equipment and personnel were sufficient to comply with all of the Regulations. There was conflicting testimony, however, that even with existing personnel and equipment, the Corporation has either continuously or on many separate occasions violated litter regulations and odor regulations. There was certainly more than adequate evidence to indicate that a period of intensive monitoring by the Department of Environmental Management is necessary to insure that the Corporation will comply with existing Regulations and permit conditions established in this Order. Accordingly, I am requiring that the Corporation fund the position for an Air Quality Engineer no later than thirty (30) days from the date of this Order. The Department of Environmental Management is likewise ordered to, upon receipt of funds, expedite the posting and filling of this position. This position shall

remain funded by the Corporation for the duration of its operating permit.

Alternately, the Corporation shall immediately establish a fund of thirty thousand dollars (\$30,000) to be made available to the Department of Environmental Management Division of Air and Hazardous Materials for the hiring and payment of consultants to perform inspections and monitoring of the Central Landfill. This fund shall be available for use by the Department of Environmental Management for the duration of this operating license. Compliance with either of the above mechanisms shall constitute compliance with this condition.

C. Condition 18, commencing with the first full paragraph on page 45 of the March 23, 1988 Decision and Order, shall be amended as follows:

The Corporation shall submit reports on its progress in identifying new sites to the hearing officer and the Division of Air and Hazardous Materials on or before the following dates: July 30, 1989 and September 1, 1989. The first report must include, at a minimum, identification of at least three (3) suitable locations with due regard for general environmental suitability and

available buffer zones. Specific information regarding the number of acres available, owner(s) of the properties, and anticipated acquisition costs shall also be provided in the first report.

The second report shall be submitted by September 1, 1989 and shall outline progress in negotiations to acquire said properties and the steps taken by the Corporation to effectuate said purchases(s) (i.e. whether written offers have been made or purchase and sale agreements have been signed.) This report shall establish a specific timetable for purchase of the properties and a timetable for submission of an application for operation of the landfill(s) to the Department of Environmental Management with appropriate design plans. This second report shall include other information deemed necessary by the hearing officer after review of the July 30, 1989 report. These reports are necessarily contingent upon the ratification of siting criteria by the General Assembly. Should the General Assembly fail to ratify siting criteria prior to the dates set forth above, the Corporation may move for an adjustment of those dates.

The Corporation has presented no ground for extending the timeframe for reports to the hearing officer with respect to identification of presently licensed facilities available for use by the Corporation on a long term basis. Reports to the hearing officer outlining identification and availability of such sites, if any, remain due on December 1, 1988 and May 30, 1989.

Entered as an Administrative Order this 12<sup>th</sup> day of September, 1988.

9-12-88

Date

Kathleen M. Lanphear

Kathleen M. Lanphear  
in her capacity as  
Hearing Officer

9-15-88

Date

Robert L. Bendick, Jr.

Robert L. Bendick, Jr.  
Director, Department of  
Environmental Management

#### CERTIFICATION

I hereby certify that a true and accurate copy of the within Order has been sent first class mail, postage prepaid, to Albert B. West, Esq., 711 Fleet Bank Building, Providence, R. I. 02903, Arnold Johnson, Esq., Solid Waste Management Corporation, 260 West Exchange Street, Providence, R.I. 02903, Robert Flanders, Esq., One Turks Head Place, No. 700, Providence, R.I. and by interoffice mail to Claude A. Cote, Esq., 9 Hayes Street, Providence, R. I. 02908 on this 15<sup>th</sup> day of September, 1988.

Barbara Mann