

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3213
YORK AREA SOLID WASTE)	
AGENCY, CITY OF YORK)	
FID 347897,)	CONSENT ORDER
)	
Respondent.)	

I. INTRODUCTION

1. The Department of Environmental Quality (DEQ) and the Respondent, York Area Solid Waste Agency, which is jointly owned by the City of York and York County pursuant to Neb. Rev. Stat. § 13-2004 (Reissue 2012), *et seq.*, voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance with Nebraska Administrative Code Title 132, Integrated Solid Waste Management Regulations, which was promulgated pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008, Cum. Supp. 2012).

II. JURISDICTION

2. The DEQ is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504(1) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 to -1532 (Reissue 2008, Cum. Supp. 2012) or hereinafter, "NEPA". This Consent Order is issued under the authority vested in the Director of the DEQ by Neb. Rev. Stats. §81-1504(25) and §81-1507(1).

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not



contest the basis or validity of this Consent Order in any proceedings by the DEQ to enforce this Consent Order.

III. PARTIES

4. This Consent Order is binding on the DEQ and the Respondent and its successors and assigns.

5. The Respondent shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. The Respondent shall be responsible for any noncompliance with this Consent Order.

IV. FINDINGS OF FACT

6. The Respondent owns and operates a municipal solid waste landfill in York County, Nebraska.

7. Title 132, Chapter 3, 004.17C requires owners and operators of a municipal solid waste disposal area to take steps to control explosive gasses. Title 132, Chapter 3, 004.17C1 requires methane levels to be kept below the lower explosive limit (LEL) at the property boundary and lower than 25% of the LEL in any facility structure, with specific exclusions. Title 132, Chapter 3, 004.17C2 states that “[o]wners or operators of a municipal solid waste disposal area shall implement a routine methane monitoring program” that ensures that explosive gas limits are met. This monitoring program must be incorporated into the facility’s “operational plan”, which is part of the permit application approved by the Department according to Title 132, Chapter 2, 006.01F.

8. Prior to August 21, 2008 and continuing to the present, Respondent has periodically detected and reported concentrations of explosive gas above the LEL at the property boundary. The Respondent has not identified any immediate risks to human health and the environment. The Respondent has been undertaking efforts to characterize the nature and extent of the gas and has attempted passive control measures, which have been communicated to NDEQ; however, with efforts to date, the concentrations have not been reduced to below the action levels established in Title 132 Chapter 3, 004. Respondent initially failed to record the methane levels detected and the steps taken within 7 days. Respondent initially failed to implement a remediation plan, including placing the plan in the operating record, and failed to notify the Department within 60 days of initial detection.

V. AGREEMENTS

9. The Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).

10. Respondent agrees to continue to move towards compliance with Title 132 and agrees to the following compliance schedule and activities. DEQ agrees not to pursue any further actions as long as Respondent is complying with the below compliance schedule and activities and the explosive gas concentration are decreasing.

11. This Consent Order shall have the force and effect of a final order of the Director of the DEQ issued pursuant to NEPA.

VI. COMPLIANCE SCHEDULE

12. The Respondent shall perform the following activities:
- A. Respondent shall immediately notify DEQ of any methane detected during the scheduled quarterly sampling in excess of the lower explosive limit and steps taken, if necessary, to protect human health and safety.
 - B. Respondent shall not deviate from any approved plans, as amended, submitted to solve the levels of explosive gas above regulatory limits without written approval by DEQ, unless necessary to prevent an imminent and substantial endangerment to human health and the environment.
 - C. Respondent shall file a summary monthly report with DEQ outlining progress, any problems, and any sampling results, including weekly methane monitoring results, as stated in Attachment -1, the Amended Gas migration Control Action Plan.
 - D. If by January 1, 2014, the passive venting system does reduce or indicate a trend toward reduction in the concentrations of explosive gases at the property boundary, then the landfill must have all perimeter monitoring wells below the LEL by January 1, 2016.

If by January 1, 2014 the passive venting system does not reduce or indicate a trend toward reduction in the concentrations of explosive gases at the property boundary, then the landfill must submit a preliminary plan and a schedule

to the NDEQ by May 1, 2014, for installation of either an active gas collection system or some other proven engineering method which would be expected to reduce the concentrations of explosive gases in the perimeter gas wells to a level below the LEL by January 1, 2016. Approval of such a system shall be at the sole discretion of DEQ.

Within 6 months of the installation of the system, or January 1, 2016, whichever occurs first, the concentrations of explosive gases in the landfill gas perimeter monitoring wells shall be below the LEL for methane.

- E. Under all but the below noted circumstances, with any collection or control system installed, the concentrations of explosive gases in the perimeter landfill gas monitoring wells shall be at a level below the LEL for methane by January 1, 2016. DEQ and Respondent agree that this date would be extended: 1) in the event that Respondent's implementation of a solution(s) are delayed by DEQ, including delays resulting from the issuance of any necessary permits or approvals, or 2) if the selected remedy (system) specifically approved by DEQ fails to perform as anticipated, despite reasonable efforts by the Respondent. Under the latter case the Respondent would remain obligated to proceed expeditiously to control the explosive gas to those levels established in Title 132.

F. The above schedule shall not abrogate any duties Respondent has under Title 132.

G. The DEQ, in its discretion, may agree to an extension caused by any other event.

13. The Respondent shall respond promptly to any written communication by the DEQ to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by DEQ. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order. Information to be submitted under this Order shall be sent to:

William C. Gidley
Waste Management Section Supervisor
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

VII. COMPLIANCE WITH OTHER LAWS

14. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

VIII. FORCE MAJEURE

15. Force majeure for the purposes of this Consent Order means any event arising from causes entirely beyond the control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order.

The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable.

16. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the DEQ by telephone within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

17. If the DEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

IX. RESERVATION OF RIGHTS

18. Nothing in this Consent Order shall be construed to limit the power and authority of the DEQ, now or in the future, to take or order any action necessary to protect human health, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

X. NEGATION OF AGENCY RELATIONSHIP

19. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the DEQ and the Respondent.

XI. AMENDMENT

20. This Consent Order may be modified and amended in writing by mutual agreement of the DEQ and the Respondent.

XII. EFFECTIVE DATE

21. This Consent Order shall become effective on the date it is signed by the Director of the DEQ or his designee.

XIII. SEVERABILITY

22. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XIV. SIGNATURES

23. For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: 

Title: Mayor

Date: October 3 2013

25. IT IS ORDERED and agreed this 7th day of October, 2013.

By: 
Michael J. Linder
Director
Department of Environmental Quality

AFFIDAVIT

State of Nebraska |
County of Lancaster | ss

Comes now Steven J. Moeller, an employee of the Nebraska Department of Environmental Quality, being first duly sworn on oath, deposes that on the 8th day of October 2013, he caused an exact copy of the foregoing Consent Order in Case 3213 to be mailed by regular United States Mail, first class, postage prepaid, to the below individuals:

Mayor Chuck Harris
100 E. 4th Street
P.O. Box 276
York, Nebraska 68467

Steven J. Moeller
Steven J. Moeller, Affiant

Subscribed and sworn to before me, a Notary Public, on this 8 day of October, 2013.

Candice L. Batenhorst
Notary Public

