

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WASTE AND HAZARDOUS MATERIALS DIVISION

In the matter of the  
administrative proceedings against  
Landfill Management Co., doing business  
at Orchard Hill Sanitary Landfill,  
3290 Hennesey Road,  
located in the SE 1/4 of Section 28, T3S, R17W,  
Watervliet Township, and the East 1/2 of Section 33,  
T3S, R17W, Coloma Township, Berrien County, Michigan

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WHMD Order No. FTO-115-02-08

CONSENT ORDER

This proceeding results from allegations specified in the Letter of Warning ("LOW") issued on June 20, 2008, by the staff of the Department of Environmental Quality ("DEQ"). The DEQ alleges that Landfill Management Co. (the "Respondent"), doing business at Orchard Hill Sanitary Landfill, 3290 Hennesey Road, Watervliet and Coloma Townships, Berrien County, Michigan, is in violation of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*; MSA 13A 11501 *et seq.* ("NREPA"), and the administrative rules promulgated under Part 115. The Respondent and the DEQ agree to resolve the alleged violations set forth in the LOW by entry of this Consent Order ("Order").

I. STIPULATIONS

The Respondent and the DEQ stipulate as follows:

- 1 1 Pursuant to its authority under Section 105 and Part 115 of the NREPA, the DEQ has promulgated administrative rules necessary to implement Part 115. These rules are set forth in the 1998-2000 *Annual Administrative Code Supplement* ("AACS"), R 299.4101 *et seq.*, as amended, by 2005 *Michigan Register* 19, R 299.4101 *et seq.* ("Part 115 Rules")
  
- 1 2 Pursuant to the NREPA and Executive Order No. 1995-18, the Director of the DEQ ("Director") is the state official and the DEQ is the state agency charged with the

administration and enforcement of Part 115 This Order is authorized under Section 11519(2) of Part 115

- 1.3 The Respondent is a "person" as defined by Section 301(h) of the NREPA. The Respondent is a Michigan corporation authorized to do business in Michigan.
- 1.4 The Respondent owns and/or operates a solid waste disposal area that is a Type II sanitary landfill ("Disposal Area"), located at 3290 Hennessey Road, in the SE 1/4 of Section 28, T3S, R17W, Watervliet Township, and the East 1/2 of Section 33, T3S, R17W, Coloma Township, Berrien County, Michigan.
- 1.5 The Disposal Area occupies approximately 283 acres of land Solid Waste Disposal Area Operating License No 9166 was issued for the Disposal Area on September 21, 2007. Attachment 1 sets forth the approximate boundaries of these areas of the Disposal Area.
- 1.6 The Respondent stipulates that the issuance and entry of this Order is proper and acceptable. This Order shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Chief of the Waste and Hazardous Materials Division ("Division Chief"), designee of the Director, pursuant to Section 301(b) of the NREPA
- 1.7 The Respondent agrees to fully and strictly comply with all provisions of Part 115, the Part 115 Rules, and all other applicable state and federal statutes.
- 1.8 The Respondent and the DEQ agree that the signing of this Order is for settlement purposes only and does not constitute an admission by the Respondent of the allegations contained in the LOW or that the law has been violated.

## II. COMPLIANCE PROGRAM

In order to resolve the violations alleged in the LOW, the Respondent shall achieve and maintain compliance with the requirements specified below in accordance with the following schedule:

- 2.1 Within thirty (30) days from the entry of this Order, the Respondent shall submit to the DEQ, for review and approval, a revised construction certification for Cell 6A of Parcel D. This certification shall include all of the information previously submitted, shall identify all deviations from Solid Waste Disposal Area Construction Permit No. 363 and the requirements of Part 115, and shall contain a certification statement from the certifying engineer that all of the deviations do not affect the integrity or performance of the landfill cell. This certification statement shall include an explanation of each deviation and a justification of why each deviation does not impact the integrity of the landfill cell.
- 2.2 When the revised construction certification information required by Paragraph 2.1 is submitted and approved by the DEQ and when payment of the penalty required by Paragraph 7.1, is made, Cell 6A of Parcel D may begin to accept solid waste for disposal, in compliance with Part 115 and Solid Waste Disposal Area Operating License No. 9166, issued on September 21, 2007.

### III. APPROVAL OF SUBMITTALS

- 3.1 For any plan, schedule, report, or other document (collectively, "Submittal"), excluding an application for a permit or license, that is required by this Order to be submitted to the DEQ by the Respondent, the following process and terms of approval shall apply.
- 3.2 To be approved by the DEQ, any Submittal required by this Order shall include all of the information required by the applicable statute and/or rule and all of the information required by the applicable paragraph(s) of this Order.
- 3.3 The DEQ may approve, disapprove, or approve with specific modifications, any Submittal required by this Order. Any Submittal, and the attachments thereto, required by this Order shall be, upon approval or approval with modifications by the DEQ, incorporated into this Order and shall be enforceable in accordance with the terms of this Order. Any approved plans, schedules, reports, or other documents, and the attachments thereto, incorporated by reference into this Order are enforceable in accordance with the terms of this Order.

- 3.4 In the event the DEQ approves a Submittal with specific modifications, the DEQ shall notify the Respondent, in writing, of the specific modifications required to be made to such Submittal and the specific reasons for such modifications. The DEQ may require the Respondent to submit within thirty (30) calendar days of receipt of such approval with specific modifications, a revised Submittal that adequately addresses such modifications.
- 3.5 In the event the DEQ disapproves a Submittal, the DEQ shall notify the Respondent, in writing, of the specific reasons for such disapproval. The Respondent shall submit, within thirty (30) calendar days of receipt of such disapproval, a revised Submittal that adequately addresses the reasons for such disapproval unless the DEQ's notification specifies a longer time period.
- 3.6 Failure by the Respondent to submit an approvable revised Submittal within the applicable time period specified in this section shall subject the Respondent to the enforcement provisions of this Order including, but not limited to, the imposition of additional civil penalties.
- 3.7 Any delays caused by the Respondent's failure to submit an approvable Submittal when due shall in no way affect or alter the Respondent's responsibility to comply with any other deadline(s) specified in this Order.

#### IV. REPORTING

- 4.1 The Respondent shall submit all items required in Section II, Compliance Program, to the District Supervisor, Waste and Hazardous Materials Division, Department of Environmental Quality, 7953 Adobe Road, Kalamazoo, Michigan 49009, unless specifically directed otherwise within this Order. The cover letter with each submittal shall identify the specific paragraph and requirement of this Order that the submittal is intended to satisfy. If the address of the District Supervisor changes, the Respondent will be notified and shall make all subsequent submittals to any new address of which they are notified.

- 4.2 The Respondent shall verbally report any violation(s) of the terms and conditions of this Order to the District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), the precise cause or causes of the violation(s), a detailed description of any action(s) taken or proposed to correct the violation(s), and a schedule for the implementation of any proposed corrective action(s). The Respondent shall report any anticipated violation(s) of this Order to the District Supervisor in advance of the relevant deadlines, whenever possible.

#### V. RETENTION OF RECORDS

- 5.1 Upon request by an authorized representative of the DEQ, the Respondent shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Order or pursuant to Part 115 and the Part 115 Rules. All such documents shall be retained at the Disposal Area for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by Part 115 and the Part 115 Rules.

#### VI. RIGHT OF ENTRY

- 6.1 The Respondent shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the Disposal Area at all reasonable times for the purpose of monitoring compliance with the provisions of this Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and its rules or any other applicable statutory provision.

#### VII. FINES AND PENALTIES

- 7.1 Within thirty (30) days of the effective date of this Order, the Respondent shall pay the sum of \$20,000 to the State of Michigan in settlement of the DEQ's claim for a civil fine arising from the violations alleged in the LOW.

- 7.2 To ensure timely payment of the above civil fine, the Respondent shall pay an interest penalty to the State of Michigan each time the Respondent fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at Section 6013(6) of the Revised Judicature Act, 1961 PA 236, as amended, MCL 600 6013(6), using the full increment of amount due as principal and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 7.3 The Respondent shall make all payments required under this section by check made payable to the "State of Michigan" and mailed to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Revenue Control Unit, 525 West Allegan Street, 5th Floor, South Tower, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Order must reference "Payment Identification Number WHM 1076 " on the front of the check and/or in the cover letter with the payment.
- 7.4 The Respondent agrees not to contest the legality of the civil fine assessed pursuant to this section. The Respondent further agrees not to contest the legality of any interest penalties assessed pursuant to this section.

#### VIII. GENERAL PROVISIONS

- 8.1 With respect to any violations not specifically addressed and resolved by this Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Respondent to comply with the requirements of the NREPA and its rules
- 8.2 This Order in no way affects the Respondent's responsibility to comply with any other applicable local, state, or federal laws or regulations including, without limitation, any corrective action or similar requirements applicable to the Disposal Area pursuant to the NREPA and its rules
- 8.3 Nothing in this Order is or shall be considered to affect any liability the Respondent may have for natural resources damages caused by the Respondent's ownership and/or

operation of the Disposal Area. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

- 8.4 The DEQ and the Respondent agree that the terms and conditions of this Order will be enforceable in circuit court. The DEQ and the Respondent further agree that the appropriate venue for the enforcement of this Order shall be the Circuit Court for Berrien or Ingham County, State of Michigan, which courts shall also be appropriate for dispute resolution.
- 8.5 The provisions of this Order shall apply to and be binding upon the Respondent, the DEQ, and their successors and assigns. The Respondent shall give notice of this Order to any prospective successor in interest prior to transfer of ownership of the Disposal Area property or any portion thereof and shall notify the DEQ of such proposed sale or transfer.

#### IX. TERMINATION

- 9.1 This Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the Division Chief. The Respondent may request that the Division Chief issue a written Notice of Termination at any time after achieving full compliance with this Order. Such a request shall consist of a written certification that the Respondent has fully complied with all of the requirements of this Order and has made payment of any fine and penalties required under this Order. Specifically, this certification shall include:
- a. The date of compliance with each provision of the Compliance Program in Section II of this Order and the date(s) any fines and penalties were paid;
  - b. a statement that all required information has been reported to the District Supervisor; and
  - c. confirmation that all records required to be maintained pursuant to this Order are being maintained at the Disposal Area.

At the time of a request for termination, the Division Chief may request additional relevant information in order to make a determination of the Respondent's full compliance with this Order.

9.2 The Division Chief shall issue a written Notice of Termination unless the DEQ determines that the Respondent has not submitted the certification required under this section, has failed to submit the additional information specifically requested by the Division Chief, or has failed to comply with, or complete, all of the requirements of this Order

X. SIGNATORIES

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Order and to EXECUTE and LEGALLY BIND that party to it

LANDFILL MANAGEMENT CO.

By: John Balkema  
Name: John Balkema  
Title: President  
Date: 8-1-08

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

Steven E. Chester  
Director

By: [Signature]  
George W. Bruchmann, Chief  
Waste and Hazardous Materials  
Division

Date: 8-1-08

APPROVED AS TO FORM:

Michael A. Cox  
Attorney General

[Signature]  
Kathleen L. Cavanaugh (P38006)  
Assistant Attorney General  
Environmental, Natural Resources, and  
Agriculture Division  
Department of Attorney General  
P.O. Box 30755  
Lansing, Michigan 48909

Date: 8/1/08