

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of New York Environmental Conservation Law (ECL) by:

TOWN OF TONAWANDA
Municipal Building
2919 Delaware Avenue
Kenmore, New York 14217
(Erie County)

ORDER ON CONSENT
No. 90-38

DEC File No.
R9-3121-90-05

Respondent

WHEREAS:

1. Article 27 of the Environmental Conservation Law of the State of New York (hereinafter "ECL") sets forth certain provisions governing the disposal of solid waste within the State of New York and provides for the adoption of implementing codes, rules, and regulations therefor and the enforcement thereof by the Department of Environmental Conservation (hereinafter "Department").

2. Respondent is a municipal corporation duly organized under the laws of the State of New York.

3. Respondent owns, operates, and/or maintains control of real property located on East Park Drive in the Town of Tonawanda, New York in the County of Erie.

4. Until on or about October 31, 1989, Respondent operated a solid waste management facility at the aforesaid East Park Drive location (hereinafter, the "Site").

5. In early 1990 the Site was referred to the Department's Division of Solid Waste to effect a landfill closure in accordance with the Department's Part 360 regulations.

6. Despite the efforts of the Town and the Department to effect closure, site constraints including the existence of an adjacent water supply line, the deposition of waste on adjacent property owned by an unrelated utility company, and the detection of elevated radioactivity levels in a portion of the landfill, have delayed closure.

7. It now appears that, having reached agreement with the aforesaid utility companies and having obtained a commitment from the U.S. Army Corps of Engineers (hereinafter, "USACOE") to conduct a remedial investigation/feasibility study of the landfill area where elevated radioactivity levels were detected, Respondent can proceed with Site closure activities in accordance with 6 NYCRR Part 360 and the attached compliance schedule.

8. Respondent has affirmatively waived its right to a hearing on these matters as provided by law and has consented to the issuance and entry of this Order and has agreed to be bound by the provisions, terms, and conditions contained herein.

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

I. **RELIEF**

Respondent shall, on or before the dates indicated therein, complete the activities required in Schedule A which is attached hereto, incorporated herein, and is an enforceable part of this Order.

II. **ACCESS**

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access, upon request, to the landfill site and to all records maintained by the Respondent regarding the site and its closure, including the right to inspect and copy the aforesaid records.

III. **FAILURE, DEFAULT, AND VIOLATION**

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed a violation of both this Order and the ECL.

IV. SETTLEMENT/RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the above-recited violations against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph A of this paragraph, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. BINDING EFFECT

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations recited in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall

be binding unless made in writing and subscribed by the party to be bound by this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. EFFECTIVE DATE

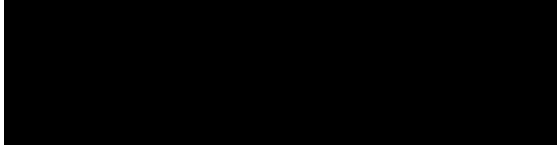
The effective date of this Order is the date that the Commissioner or her designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

Buffalo, New York

DATE:

 Commissioner
New York State Department of
Environmental Conservation

by:



Regional Director

**TOWN OF TONAWANDA
ORDER ON CONSENT NO. 90-38
FACILITY # 15S29**

SCHEDULE A

Respondent shall, on or before the dates indicated, complete the following actions:

<u>ACTION ITEM</u>	<u>DATE DUE</u>
1. Submit draft work plan for completing closure investigation of the landfill in accordance with Part 360-2.15.	Submitted (2/23/94)
2. Commence closure investigation of landfill in accordance With final Department approved work plan.	Commenced (7/94)
3. Submit draft Closure Investigation Report (CIR) to Department for review.	Submitted (11/3/95)
4. Submit final CIR in response to Department comment letters of February 26, 1996, April 26, 1996 and May 10, 1999.	April 1, 2002
5. Submit a draft Operations and Maintenance (O&M) Manual for the placement of Alternative Grading Material (AGM) at the landfill.	Submitted (1/2001)
6. Submit a final O&M Manual for Placement of AGM in response to the Department's comment letter of March 1, 2001. The O&M Manual must contain a site-specific Health and Safety Plan (H&SP) that addresses the procedures for the placement of AGM in the area of the landfill known to contain Americium ²⁴¹ waste.	Submitted (5/14/01)
7. Commence placement of AGM in accordance with the final approved O&M Manual.	Upon receipt of Department approval of O&M Manual
8. Submit quarterly reports to the Department providing detailed information on each source/quantity of AGM delivered to the landfill	Within 30 days of the end of each calendar quarter for duration of project

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| 9. | Submit quarterly reports to the Department indicating fund balance in the closure escrow account maintained by the Town. | Within 30 days of the each calendar quarter for duration of project |
| 10. | Cease acceptance and placement of AGM at the landfill. | Upon attaining final closure elevations or upon receipt of DEC notification. |
| 11. | Submit Conceptual Closure Plan for entire landfill. The Closure Plan should be separated into two phases to address the FUSRAP and non-FUSRAP related areas of the landfill as determined by the US Army Corps of Engineers. Phase 1 should address the closure of the non-FUSRAP related areas | Within 3 months of issuance of USACOE Record of Decision |
| 12. | Submit Post Closure Maintenance and Monitoring Plan for the entire landfill for the Department's review and approval. | Within 1 Month of submission of Conceptual Closure Plan |
| 13. | Submit Final Closure Plan for Phase 1 (non-FUSRAP) Area. | Within 3 months of receipt of Department approval of Conceptual Closure Plan |
| 14. | Implement the environmental monitoring plan in accordance with the Department-approved post closure maintenance and monitoring plan. | Upon commencing construction of Phase 1 closure |
| 15. | Conduct post closure maintenance and monitoring activities in accordance with the approved monitoring plan. | For minimum of 30 years following completion of final closure |

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| 16. | Complete closure of the Phase 1 Area. | Within 24 months of receipt of Department approval of Phase 1 Final Closure Plan |
| 17. | Submit a closure certification report, signed by a NYS licensed professional engineer, for the Phase 1 Area. | Within 45 days of completion of closure |
| 18. | Submit Final Closure Plan for Phase 2 (FUSRAP related) Area. | Within 3 months of completion of USACOE remediation |
| 19. | Complete closure of the Phase 2 Area. | Within 24 months of receipt of Department approval of Phase 2 Final Closure Plan |
| 20. | Submit a closure certification report, signed by a NYS licensed professional engineer, for the Phase 2 Area. | Within 45 days of completion of closure |
| 21. | Record deed restriction in Erie County Clerk's Office stating use of property as a landfill, dates of use, description as a landfill, dates of use, description of wastes contained therein, and fact that records for the facility are maintained by the Department of Environmental Conservation. | Within 45 days of completion of closure |

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

[Redacted]

Title SUPERVISOR

Date 12/18/01

[Redacted]
SUPERVISOR
TOWN OF TONAWANDA
ROOM 11, MUNICIPAL BLDG.
KENMORE, NEW YORK 14217

(Seal)

Corporate

State of New York)
County of Erie)

On this 18th day of December, 2001, before me personally came [Redacted] to me known, who being by me duly sworn did depose and say that he resides at Tonawanda New York that he is the Supervisor of the Town of Tonawanda the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

[Redacted]

Individual

State of)
County of)

Notary Public, State of New York
ID# 01RU4974432
Qualified in Erie County
My Commission Expires Nov 13, 2002

On this _____ day of _____, 2001, before me came _____, to me known and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

NOTARY PUBLIC