State of Oregon
# Department of Environmental Quality Memorandum

**Date:** June 30, 2017

**To:** Environmental Quality Commission

**From:** Richard Whitman, Director

**Subject:** Action item N, Contested case: LQ/SW-NWR-15-048 regarding PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem
July 11-13, 2017, EQC meeting

**Background information**

The Oregon Department of Environmental Quality implements environmental protection laws. DEQ may assess civil penalties and orders to compel compliance or create deterrence. When persons or businesses do not agree with DEQ's enforcement action, they have the right to an appeal and request a contested case hearing before an administrative law judge. When DEQ or Respondents do not agree with the judge's decision, they may appeal to the EQC.

On May 13, 2015, DEQ issued to PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem, herein known collectively as the Respondents, a Notice of Civil Penalty Assessment and Order alleging violations of Oregon solid waste law at a construction and demolition waste landfill in Portland, Oregon. The Notice assessed Respondents a $58,593 civil penalty, and ordered them to comply with the law requiring maintenance of the landfill gas control system such that methane concentrations do not exceed regulatory limits, submit a financial assurance plan, and submit of maintenance and monitoring plans. On June 3, 2015, DEQ received a request for a contested case hearing.

DEQ referred the matter to the Office of Administrative Hearings and the parties filed cross motions for summary determination. In addition, on June 27, 2016, DEQ issued an Amended Notice of Civil Penalty Assessment and Order, citing the same violations and assessing the same civil penalties as the Notice, but amended the date and location of two of the alleged monitoring well methane compliance limit exceedances.

On Aug. 24, 2016, Administrative Law Judge Monica A. Whitaker issued Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order. In addition, Sept. 7, 2016, Administrative Law Judge Whitaker issued Amended Consolidated Rulings on the Cross Motions for Summary Determination and a Proposed Order. The Amended Proposed

Order found that Respondents are jointly liable for the violations alleged in the Amended Notice, assessed a civil penalty of $58,593, and ordered Respondents to obtain financial assurance, and properly maintain the landfill in accordance with Oregon law.

Respondents Skidmore and Respondent Mike Hashem filed a Petition for Review with EQC on Sept. 22, 2016. Respondents request that the commission reverse the Administrative Law Judge's Amended Proposed Order and hold that the alleged violations and penalty assessments are without foundation.

**Findings of Fact and Conclusions of Law as Determined by the Administrative Law Judge**

## Findings of Fact

Administrative Law Judge Whitaker made 32 findings of fact that pertain to the history of ownership of the landfill, a previous 2009 unilateral order, the ongoing monitoring and operational requirements at the landfill, and the Respondents' actions and omissions related to these requirements. The Findings of Fact can be found on pages four through 16 of Attachment B.

## Conclusions of Law

Considering the evidence in the Record and based on her Findings of Fact, Administrative Law Judge Whitaker made the following Conclusions of Law:

1. Respondents are not entitled to a favorable ruling as a matter of law with regard to the following issues:
    a. Whether Respondents Hashem and Skidmore are not responsible for performance of the Permit.
    b. Whether DEQ has the authority to assess a civil penalty against the Respondents Hashem and Skidmore.

2. DEQ is entitled to a favorable ruling as a matter of law with regard to the following issues:
    a. Respondents are jointly liable for all violations cited in the Amended Notice.
    b. Respondents Failed to maintain the landfill gas control system in effective working order such that methane concentrations do not exceed compliance limits
    c. Respondents failed to submit to DEQ a financial assurance plan and annual updates.
    d. Respondents failed to submit to DEQ an updated post-closure operations and maintenance plan.
    e. Respondents failed to provide DEQ an updated landfill gas monitoring plan.
    f. Respondents failed to conduct quality assurance testing.
    g. Respondents failed to submit to DEQ an annual post-

closure evaluation report.

h. DEQ's proposed civil penalty is appropriate.

**Issues on appeal**

An administrative law judge shall grant a motion for summary determination if, considering all evidence in a manner most favorable to the non-moving party, the record shows that: 1) there is no genuine issue as to any material fact that is relevant to resolution of the legal issues, and 2) the moving party is entitled to a favorable ruling as a matter of law. OAR 137-003-0580. The non-moving party must, in its response to the motion for summary determination, present relevant and material evidence that shows a genuine issue of fact exists that requires a fact-finding hearing. OAR 137-003-0580(10) and Oregon Attorney General's Administrative Law Manual, pages 151-152.

The Respondents take exception to several of Judge Whitaker's Findings of Fact and all of the Conclusions of Law. *See Attachment A 6, pages 2 through 8.* DEQ contends that the Respondents' exceptions to fact are either immaterial or unsupported by evidence in the Record and the Respondents' exceptions to conclusions of law are based on an impermissible interpretation of law.

First, Respondents argue that the judge erred in ruling on summary determination claiming that there are disputed material facts, related to whether Respondents demonstrated that the landfill gas control system was properly maintained. However, DEQ contends that the undisputed facts in the Record demonstrate that monitoring wells exceeded compliance limits, and therefore the Respondents violated the underlying requirement.

Second, the Respondents argue that DEQ cannot enforce the permit because it has expired. DEQ contends that the permit, issued in 2011, has not expired and is fully enforceable.

Third, Respondents argue that Respondent Mike Hashem and Respondent Skidmore are not liable for the violations because neither is the permittee. DEQ contends that Respondent Mike Hashem and Respondent Skidmore are responsible for the violations because ORS 459.205 and ORS 459.268 imposes direct liability on them.

Fourth, the Respondents argue that the civil penalties were inappropriate. Specifically, Respondents argue that DEQ's economic benefit assessment is unfounded. DEQ contends that its penalty assessments are supported by substantial evidence in the Record and Respondents offer no evidence to the contrary.

And, finally, the Respondents argue that Respondent Mike Hashem and

Respondent Skidmore are not required to take the compliance actions ordered in the Amended Proposed Order. DEQ contends that all named Respondents are responsible for both paying the civil penalty and ensuring compliance at the landfill.

**EQC authority**

EQC has the authority to hear this appeal under OAR 340-011-0575. Under ORS 183.600 to 183.690, the commission's authority to change or reverse an administrative law judge's proposed order is limited.

The most important limitations are as follows:

1. EQC may not modify the form of the Proposed and Final Order in any substantial manner without identifying the modification and explaining why the EQC made the modification.[1]
2. EQC may not modify a historical finding of fact made by the administrative law judge unless it determines that there is clear and convincing evidence in the record that the finding was wrong.[2]
3. Evidence which was not presented to the administrative law judge cannot be considered by EQC. The commission may, based upon the filing of a motion and a showing of good cause, remand the matter to the administrative law judge to consider the evidence.[3]
4. If EQC remands the matter to the administrative law judge, the commission shall specify the scope of the hearing and the issues to be addressed.[4]

**Alternatives**

The commission may either:

1. As requested by Respondents, issue a final order dismissing the Amended Notice, which would result in Respondents not being required to pay a civil penalty or take compliance actions; or
2. As requested by DEQ, issue a final order adopting Administrative Law Judge Whitaker's Amended Proposed and Final Order, requiring Respondents to pay a $58,593 civil penalty and take the following compliance actions within 60 days after issuance of a final order:
   a. Evaluate and assess the landfill gas control system at the facility and make any necessary repairs to ensure that it remains in good working condition. Submit the results of the evaluation, assessment, and repairs to DEQ;
   b. Submit to DEQ a financial assurance plan required by Section 10.2

[1] ORS 183.650(2) and OAR 137-003-0665(3). "Substantial manner" is when the modification would change the outcome or the basis for the order or to change a finding of fact.
[2] ORS 183.650(3). A historical fact is a determination that an event did or did not occur or that a circumstance or status did or did not exist either before or at the time of the hearing.
[3] OAR 340-011-0575(5) and 137-003-0655(5).
[4] OAR 137-003-0655(2).

of the permit;

c. Submit to DEQ an updated post-closure operations and maintenance plan as required by Section 7.2 of the permit;
d. Submit to DEQ an updated landfill gas monitoring plan as required by Section 8.2 of the permit;
e. Retain an independent DEQ-approved consultant to conduct quality assurance monitoring at the facility; or

3. Take any other action within the commission's authority.

**Attachments**

A. Documents regarding review by EQC
   1. Letter from Stephanie Caldera, dated Feb. 6, 2017.
   2. Respondents' Reply Brief, dated Feb. 1, 2017.
   3. Letter from Stephanie Caldera, dated Jan. 4, 2017.
   4. DEQ's Answer Brief, dated Dec. 23, 2016.
   5. Letter from Stephanie Caldera, dated Nov. 18, 2016.
   6. Respondents' Exceptions and Brief, dated Oct. 24, 2016.[5]
   7. Respondents' Petition for Review, dated Sept. 22, 2016.

B. Amended Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order, dated Sept. 7, 2016.

C. Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order, dated Aug. 24, 2016.

D. Summary Determination Record
   1. DEQ's Reply to Respondents' Response to DEQ's Motion for Summary Determination, dated July 22, 2016.
   2. Respondents' Reply to DEQ's Response to Respondents' Motion for Summary Determination, dated July 20, 2016.
   3. DEQ's Response to Respondents' Motion for Summary Determination, dated July 15, 2016. Includes Exhibit A10.[6]
   4. Respondent PSFM Limited Partnership Letter, dated July 15, 2016.
   5. Respondents' Response to DEQ's Motion for Summary Determination. Includes Declarations and Exhibits.[7]
   6. DEQ's Motion for Summary Determination and Amended Notice of Civil Penalty Assessment and Order, dated June 27, 2016. Includes Exhibits A1-A8.

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[5] Respondents submitted duplicative documents. Any documents already submitted as part of the Summary Determination Record are not included as part of the Respondents Exceptions and Brief.

[6] There is no Exhibit A9 in the Record. DEQ inadvertently mislabeled its ninth exhibit as Exhibit A10.

[7] Respondents submitted duplicative documents. Any documents already submitted as part of the Summary Determination Record with Respondents Motion for Summary Determination are not included as part of Respondents' Response to DEQ's Motion for Summary Determination.

7. Respondents' Motion for Summary Determination, dated June 23, 2016. Includes Declarations and Exhibits.

E. Notice of In-Person Hearing, dated April 27, 2016.
F. Notice of Prehearing Conference, dated March 15, 2016.
G. Attorney Withdrawal Email, dated June 24, 2015
H. Respondent PSFM Letter, dated June 24, 2015
I. Request for Hearing, dated June 16, 2015
J. Request for Hearing, dated June 3, 2015
K. Notice of Civil Penalty Assessment and Order, dated May 13, 2015

Approved:

Sarah G. Wheeler
*Acting Manager, Office of Compliance and Enforcement*

Report prepared by Kieran O'Donnell
*Environmental Law Specialist*

BY REGULAR U.S. MAIL

Feb. 6, 2017

Richard Senders
Rose, Senders and Bovarnick, LLC
1205 NW 25th Avenue
Portland OR 97210

Re: In the Matter of PSFM Limited Partnership, Skidmore Limited Partnership and Mike Hashem
OAH Case No. 1604492
DEQ Case No. LQ/SW-NWR-15-048

The Environmental Quality Commission received your Reply Brief on Feb. 1, 2016. The brief was received in a timely manner.

As all briefs have now been filed, this case will be scheduled at the next regular EQC meeting: April 19 and 20, 2017, to be held in the Portland metro area. I will confirm specific dates, times and location no later than March 17, 2017. Please let me know by March 1, 2017, if you anticipate a conflict with the proposed dates.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,

Stephanie Caldera
Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY – Kieran O'Donnell, Oregon Department of Environmental Quality

# ROSE, SENDERS AND BOVARNICK, LLC

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**Admitted in Oregon and Washington*
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February 1, 2017

**HAND DELIVERED**

Kieran O'Donnell
Oregon DEQ Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Re: Notice of Civil Assessment and Order
PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem
DEQ Case No. LQ/SW-NWR-15-048
OAH Case No. 1604492

Dear Mr. O'Donnell:

Enclosed is a copy of my correspondence to the Oregon Environmental Quality Commission, together with a copy of Respondents Hashem and Skidmore's Reply Brief in the above-referenced matter.

Sincerely,

Richard D. Senders

RDS:dms
Enclosure
cc: PSFM Limited Partnership, c/o Johnny Kondilis
Skidmore Limited Partnership
Mike Hashem

Attachment A 2

# ROSE, SENDERS AND BOVARNICK, LLC

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February 1, 2017

**HAND DELIVERED**

Oregon Environmental Quality Commission
c/o Stephanie Caldera, Assistant
700 NE Multnomah Street, Suite 600
Portland, OR 97232

Re: Notice of Civil Assessment and Order
PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem
DEQ Case No. LQ/SW-NWR-15-048
OAH Case No. 1604492

Dear Ms. Caldera:

This law firm represents Respondents Mike Hashem and Skidmore Limited Partnership in the above-referenced matter. Enclosed for the Commission to review is Respondents Hashem and Skidmore's Reply Brief. A copy of this letter, together with Respondents Hashem and Skidmore's Reply Brief has been sent by messenger to be hand delivered to Kieran O'Donnell for service upon DEQ and a copy has been mailed by certified mail, return receipt requested to Respondent PSFM, Limited Partnership in care of Johnny Kondilis.

If you have any questions or concerns, please contact me.

Thank you for your courtesies in connection with this matter.

Sincerely,

Richard D. Senders

RDS:dms
Enclosure
cc: Kieran O'Donnell
PSFM Limited Partnership, c/o Johnny Kondilis
Skidmore Limited Partnership
Mike Hashem



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**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION**
**STATE OF OREGON**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | RESPONDENTS HASHEM AND SKIDMORE'S REPLY BRIEF |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, AND MIKE HASHEM,** | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| Respondents | ) | |

To properly understand and to rule on Respondents Skidmore and Hashem's Petition for Commission Review, the Members of the Commission are asked to read and consider the following documents that are part of the record in this case:

1. Hashem and Skidmore's Motion for Summary Determination;
2. Memorandum of Facts and Law in Support of Respondent's Motion for Summary Determination;
3. Declaration of Richard Senders in Support of Respondent's Motion for Summary Determination;
4. Declaration of Mike Hashem in Support of Respondent's Motion for Summary Determination;
5. Respondents Hashem and Skidmore's Reply to DEQ's Response to Hashem and Skidmore's Motion for Summary Determination;
6. Respondents Hashem and Skidmore's Memorandum of Facts and Law in Opposition to DEQ's Motion for Summary Determination;
7. Declaration of Mike Hashem in Opposition to DEQ's Motion for Summary Determination;
8. Declaration of Jason Bennett in Opposition to DEQ's Motion for Summary Determination;
9. Declaration of Richard Senders in Opposition to DEQ's Motion for Summary Determination;
10. The Petition for Commission Review;
11. Respondents Hashem and Skidmore's Exceptions and Brief; and
12. Respondents Hashem and Skidmore's Reply Brief.

## DENIAL OF THE RIGHT TO A HEARING

Respondents Hashem and Skidmore have been denied their fundamental right to a hearing in this contested matter. The respondents have been denied the opportunity to

testify, to call witnesses, and to cross examine DEQ witnesses. The right to a hearing in a contested case where a state agency is levying a fine or penalty is protected by constitutional due process, state statutes, and administrative rules.

The right to a hearing can only be denied if there are no material facts in dispute and the party seeking summary determination can prove that it is entitled to prevail as a matter of law. OAR 137-003-0580(6). The Administrative Law Judge must consider all evidence in a manner most favorable to the non-moving party. OAR 137-003-0580(7). The Administrative Law Judge must draw all inferences of fact from the supporting documents against the moving party and in favor of the non-moving party.

The Administrative Law Judge decided the case on the merits as if this was a trial on the written record. The Administrative Law Judge did not consider or make findings on whether material facts were in dispute. Instead, the judge simply decided the legal and factual disputes and issued an opinion.

DEQ, in its Answering Brief, takes the position that there were no material facts in dispute, even though respondents contended and offered evidence in the summary determination record that: PSFM maintained the Landfill Gas Control System ("LFGCS") and provided monthly methane gas readings to DEQ; that the high methane gas readings in early 2014 at two monitoring wells, out of a total of 30 monitoring wells, were caused by vandalism, work in the vicinity of the monitory well by someone other than PSFM, or faulty readings; that Hashem had no ownership or control over the landfill site; that Skidmore had no ownership of the landfill site or control; and the penalties imposed were unsubstantiated. DEQ contends that any incident where methane gas exceeded the compliance limit is a "violation of the law." DEQ argues that the cause or reason why the methane reading exceeded the compliance limit is immaterial. Likewise, the fact that PSFM made prompt and successful repairs or adjustments to the LFGCS System to bring readings within compliance limits is immaterial.

DEQ's argument ignores the realities of the LFGCS, the language of the permit,

and the fact that the landfill was owned and controlled by multiple owners. PSFM's responsibilities are outlined in the permit. Section 5.2 of the permit states that the permit authorizes the permittee to provide post closure maintenance and monitoring of the facility. Section 7.3 requires the permittee to maintain the disposal site in accordance with DEQ approved post closure plan. Section 7.4 of the permit states that the LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Section 8 of the permit deals with the landfill gas monitoring requirements. Section 9.5 of the permit discusses what the permittee is required to do if there is a methane gas reading that exceeds the compliance limit.

The LFGCS is not a static system. Methane gas readings change over time, depending upon the deterioration of debris within the landfill as well as activities on top of the landfill. This is why there are monthly readings and a blower system that can easily be adjusted in response to a rise in methane gas levels. The fact that there is a methane reading in excess of a compliance limit at one or two monitoring well does not trigger a permit violation. It triggers, instead, a response under Section 9.5 of the permit. A high reading at one or two monitoring wells in a system of 30 monitoring wells should not be considered a permit violation, especially when the permittee takes prompt and appropriate action to adjust the LFGCS, retest, and reduce the high reading. This is especially true when the rise in methane gas is due to actions beyond the permittee's control.

A high reading at one or two of the monitoring wells caused by a third party's conduct unbeknown to the permittee, whether it be vandalism or soil compaction activity in the vicinity of the monitoring well, should not be considered a permit violation, especially when the permittee takes appropriate actions to remedy the high reading. To hold otherwise leads to unfair and overly harsh results, as in this case, where a penalty of over $20,000 is proposed.

DEQ also ignores the factual questions of whether Hashem or Skidmore were in ownership or in control of the landfill and therefore, somehow vicariously liable for PSFM's alleged permit violation. The Administrative Law Judge erred in deciding the issues of control and ownership rather than acknowledging that there were factual disputes.

The summary judgment record is that Hashem never owned the site nor was he in control of the site. Hashem's involvement with DEQ was merely as an officer of M.M.D.F. Corporation, the general partner of PSFM. The summary judgement record is that Skidmore never owned or controlled the site. Skidmore only owned one of five parcels that comprised the former landfill.

The respondents should have been allowed a hearing, because of genuine factual disputes, and the opportunity to present evidence and cross-examine witnesses.

**ENFORCEMENT OF THE PERMIT**

The law is clear that landfill closure permits are to be terminated after 30 years, unless there is an explicit finding by DEQ that justifies an extension. According to the summary determination record, the 30-year anniversary of the LaVelle Landfill closure occurred on or about January 1, 2013. According to the summary judgment record, DEQ made no findings at the time that justified the extension of the permit.

DEQ argues that the renewal of the landfill closure permit in 2011 satisfies the statutory requirements for extending a permit beyond 30 years. However, the renewal of the Lavelle Landfill permit in 2011 does not contain an express finding that the permit should exceed the 30-year limit. In fact, the language of the permit simply states that the permit is issued for a <u>maximum</u> of 10 years pursuant to ORS 459.245(2). There is no express finding that the permit will continue beyond 30 years because of a need to protect against a significant hazzard or risk to public health or safety or the environment, as required by OAR 340.095.0050(4).

Whether the permit automatically terminated after 30 years or whether DEQ violated ORS 459.270(2) and OAR 340.095.0050(4) by not terminating the permit, the consequence should be the same. In either case, the permit is unenforceable against the respondents after January 1, 2013. It would be bad policy and contrary to the spirit of the law to hold that DEQ can ignore its legal responsibility by inaction, and a permit can be extended indefinitely by ignoring the requirements of ORS 459.270(2) and OAR 340.095.0050(4).

**HASHEM IS NOT LIABLE FOR PSFM'S BREACH OF THE PERMIT**

ORS 459.205(2) states that if a permittee fails to comply with a permit, "then the person owning or controlling a land disposal site that is closed and no long receiving solid waste must continue or renew the permit..." ORS 459.268 contains similar language. The statutes do not say that the person owning or controlling the site is liable for the past permit violations of the permittee. Instead, the statutes require that the permit be re-issued in the name of the person owning or controlling the site and that this person will have liability for future performance. If the legislature had intended that a person owning or controlling the landfill be vicariously liable for the past permit violations of the permittee, the statute would have expressly imposed liability for past acts. A proper reading of the statutes allow DEQ to substitute the person owning or controlling the landfill as the permittee and to require that person to maintain the site according to the requirements of the permit going forward, as the permittee. The statutory language imposes a future responsibility, but not a liability for the permittee's past conduct.

Assuming for the sake of argument, that the person owning or controlling the landfill site is vicariously liable for the past deficiencies of the permittee, the summary determination record is clear that Hashem does not own the former LaVelle Landfill, nor is PSFM or its general partner M.M.D.F. Corporation the owner of the site. The Summary determination record also contains evidence that Hashem does not control the former

landfill site. Hashem's connection to the site is only as an officer of M.M.D.F. Corporation. Hashem only interacted with DEQ in his capacity as an officer of M.M.D.F. Corporation. As a corporate officer of M.M.D.F., Hashem does not control either PSFM or M.M.D.F. M.M.D.F. is controlled by its Board of Directors, who are in turn elected by the shareholders. There is no evidence in the summary judgment record as to who are the Board of Directors and shareholders of M.M.D.F. Likewise there is no evidence in the record as to who are the partners of PSFM, beyond M.M.D.F. Corporation.

There is a factual dispute as to whether even PSFM has control of the former landfill. The landfill was subdivided and sold to different owners years ago. Some of the owners have negotiated prospective purchase agreements with DEQ that allow the owner to make certain improvements on their portion of the landfill, thereby affecting the LFGCS. For example, the PPA for Dharma Rein Center (Ex 11 to the Hashem Declaration) allows the owner to relocate monitoring wells.

The case before the Commission is unlike the *Kinzua Resources* case cited by DEQ. In *Kinzua Resources*, the entire landfill was owned by a single limited liability company, which had three members. The Commission held all three members liable for Kinzua's failure to close the landfill, on the theory that the members controlled the landfill because they managed and controlled the owner Kinzua Resources. The Commission applied the Webster Dictionary's definition of "control." In the case before the Commission, there is no evidence that Hashem was a partner of PSFM or that he owned or controlled M.M.D.F. Corporation. Although Hashem had contact with DEQ, it does not mean that he had control of either PSFM or M.M.D.F.

It is not good policy to hold individuals liable under a "control" theory, when the individuals are acting merely as an officer or employee of a company that performs permit requirements. First, such a policy, strongly discourages individuals from interacting with DEQ. Second, it disregards the fact that an officer of a corporation acts at the direction of a board of directors, and that the board of directors, in turn, are elected

by the shareholders. An officer or employee of a corporation does not control the corporation; instead the shareholders and directors control the officer. To presume that a corporate officer controls the site because he speaks for a corporation, ignores basic corporate law and shifts liability on to the wrong party.

**SKIDMORE IS NOT LIABLE FOR PSFM'S BREACH OF THE PERMIT**

As explained above, the statutes in question do not impose vicarious liability on a person who controls or who owns the landfill for the past permit violations of the permittee. This argument applies to Skidmore, as well as to Hashem.

The summary determination record is clear that Skidmore was not named as a permittee, does not control the site, and does not own the landfill site. Skidmore merely owns one of five separate parcels within the former landfill. The Skidmore parcel is only about one-third of the former landfill site. According to the summary determination record, the monitoring wells on Skidmore's property are in compliance. Monitoring well 29 is not on Skidmore's property. The LFGCS extraction equipment and blower are not on Skidmore's property. Skidmore neither owns a majority of the site nor has any control over the LFGCS. (See Declaration of Mike Hashem in Opposition to Motion for summary Determination, page 7).

DEQ argues that ownership of any portion of the landfill, no matter how small, or how unrelated to permit infractions, renders the owner liable for the deficiencies of the permit holder. The Administrative Law Judge accepted this argument, but the statute speaks of the person "controlling or owning the property on which the disposal site is located." DEQ's interpretation would require adding the phrase "any portion of" to the words "the property." It is DEQ's interpretation that contravenes ORS 174.010. If the legislature intended to impose liability on anyone who owns any part of a former landfill, it would have either allowed for a mechanism for the affected owner to bring in additional owners into the proceeding to share the liability or a way of apportioning liability among

multiple owners of different parcels.

DEQ's interpretation of the statute so as to impose liability on any owner for any permit infraction, regardless of the size of the parcel and regardless of the owner's responsibility for the violation, is bad policy, fundamentally unfair, and likely a violation of a procedural and substantive due process. Such an interpretation would make the subdividing and sale of former landfill sites far less attractive to buyers. It would severely hamper the redevelopment of landfill sites. It would put the buyer of a one-acre parcel within a 30-acre landfill site at the same level of risk as the owner of the remaining 29 acre parcel. DEQ would be free to impose full liability on the owner of any parcel that it chooses, for whatever reasons, and this, in turn, would lead to unfair or arbitrary results. An owner of a parcel could find itself being held liable for the acts of the permittee, without any prior notice or opportunity to correct non-performance to avoid liability. An owner of a parcel could find itself responsible for future permit performance even though it does not control the site.

DEQ's argument that respondents' interpretation of the statutes would allow owners to sell off parcels in the landfill to escape liability is a sham. Skidmore never owned the entire site, nor did it sell off parcels in the landfill to avoid liability. If the Commission wants to guard against this practice, then it can do so by rule making.

**PSFM DID NOT FAIL TO MAINTAIN THE LFGCS**

As explained above, PSFM complied with its permit in regards to maintaining the landfill gas control system. PSFM maintained the blower extraction system and the monitoring well system, which was made up of 30 or 31 monitoring wells. PSFM did monthly methane gas readings of the monitoring wells, supplied monthly results to DEQ, and quickly reacted to and corrected any problems uncovered with the system, including a higher than normal reading at monitoring well 29, even though the reading was likely caused by someone else. The LFGCS was maintained in effective working order.

PSFM, DEQ, and the third-party contractor for Dharma Rain were all able to obtain methane gas readings from the monitoring wells. When the high methane gas reading was found at well 29, the hours of the blower systems were adjusted to reduce the gas level. It is important to remember that PSFM had been monitoring methane gas levels and adjusting the LFGCS at the former landfill for nearly 20 years. PSFM provided monthly reports to DEQ and made adjustments to the LFGCS system as needed to bring gas levels into compliance, including expanding the system in 2009.

**THE CIVIL PENALTIES ARE UNREASONABLE AND DO NOT REFLECT THE FACTS**

Respondents have been assessed a penalty of $20,720 for PSFM's failure to maintain the LFGCS. DEQ claims that PSFM realized an economic benefit of $8,720 by not spending $15,000 to repair and maintain the system in early 2014. There was no evidence whatsoever that PSFM needed to spend $15,000 to repair the system or that it avoided any costs.

The summary determination record is that on June 5, 2014, DEQ staff reviewed the condition of some of the monitoring wells. The staff found that some of the quick-connecting couplings at the top of the monitoring wells that are used to attach test equipment were corroded or in poor condition. In an email dated June 10, 2014, DEQ asked PSFM to repair or replace the couplings. PSFM responded on June 11, 2014, that it would send out its technician to check the wells and make the needed repairs. A copy of the email chain is attached as Exhibit 14 to the Declaration of Mike Hashem in Opposition to Motion for Summary Determination. On June 26, 2014, PSFM emailed DEQ that the monitoring wells were in good working order except for monitoring well 31 which had been placed in a manhole at the direction of DEQ. Monitoring well 29 showed methane gas levels within compliance limits. A copy of the email is attached as Exhibit 15 to the Declaration of Mike Hashem in Opposition to Motion for Summary Determination. (See Declaration of Mike Hashem in Opposition to Motion for Summary

Determination, page 6.)

Jason Bennett, who was employed by PSFM to maintain the LFGCS stated in his declaration:

> "To the best of my knowledge and belief, I made all the repairs required to the landfill gas control system as requested by DEQ. Whenever a problem was discovered with the extraction system or a monitoring well, repairs were promptly made. To the best of my knowledge, the landfill gas control system was maintained in effective working order throughout 2014." (Declaration of Jason Bennett in Opposition to DEQ's Motion for Summary Determination, page 1.)

The cost of replacing quick-connect couplings at a half dozen monitoring wells was negligible. It is also important to note that PSFM, DEQ, and a contractor hired by Dharma Rain had been able to use the existing couplings to obtain readings.

There is no evidence to support the claim of $15,000 to repair the system or $8,720 in economic benefit in delaying repairs. At a minimum, the cost of repair and the economic benefit derived are factual disputes, and the respondents should have been allowed to present evidence at hearing on this issue.

Similarly, there is no evidence in the summary determination record to support the dollar figure used by DEQ to calculate the penalty for PSFM's failure to provide a financial assurance plan. The proper amount of the penalty, as well as the need to file a financial assurance plan after 30 years of no such requirement, are factual disputes.

**CONCLUSION**

The factual and legal rulings of the Administrative Law Judge are badly flawed. Summary determination should not have been granted because of material factual disputes. The Administrative Law Judge misconstrued what constitutes a violation of the permit and misinterpreted the statutes relating to owner or controlling party liability. The case should be remanded back to another Administrative Law Judge, and the respondents should be allowed a hearing in this contested case.

Respondents request oral argument before the Commission.

DATED this 1st day of February, 2017.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210
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## CERTIFICATE OF SERVICE

On February 1, 2017, I served a copy of **RESPONDENTS HASHEM AND SKIDMORE'S REPLY TO DEQ'S ANSWERING BRIEF**in OAH Case No.1604492, Agency Case No. LQ/SW-NWR-15-048 on the following people and in the manner set forth below:

**Hand Delivered to:**

Stephanie Caldera, EQC Assistant
Environmental Quality Commission
700 NE Multnomah Street, Suite 600
Portland, OR 97232

**Hand Delivered to:**

Kieran O'Donnell
Oregon DEQ Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232

**Sent by Certified Mail, Return Receipt Requested:**

PSFM Limited Partnership
c/o Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 1st day of February, 2017.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
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Email: rsenders@rsblaw.net

BY REGULAR U.S. MAIL

Jan. 4, 2017

Richard Senders
Rose, Senders and Bovarnick, LLC
1205 NW 25th Avenue
Portland OR 97210

Re: In the Matter of PSFM Limited Partnership, Skidmore Limited Partnership and Mike Hashem
OAH Case No. 1604492
DEQ Case No. LQ/SW-NWR-15-048

The Environmental Quality Commission received your request for an extension of time in which to file your Reply Brief. Your request for a 20-day extension is approved.

Please send your Reply Brief to Stephanie Caldera, EQC assistant, at 700 NE Multnomah Street, Suite 600, Portland, OR 97232, with a copy to Kieran O'Donnell, at the same address. The filing must be received by 5 p.m. on Feb. 3, 2017, to be considered for this case.

Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting. Based on initial commission meeting schedules, I anticipate that this case will be scheduled for the April 19-20, 2017, regular meeting, location to be determined though likely in the Portland area. I will provide confirmation of all dates, locations and times once all materials are filed.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,

Stephanie Caldera
Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY – Kieran O'Donnell, Oregon Department of Environmental Quality

Oregon
Kate Brown, Governor

**Department of Environmental Quality**
Office of Compliance and Enforcement
700 NE Multnomah St Ste 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY: 711

December 23, 2016

Environmental Quality Commission
c/o Stephanie Caldera, Assistant
700 NE Multnomah Street, Suite #600
Portland, Oregon 97232

Via Hand Delivery

Re: Notice of Civil Penalty Assessment and Order
PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem
DEQ Case No. LQ/SW-NWR-15-048
OAH Case No. 1604492

Ms. Caldera:

Enclosed please find DEQ's Answering Brief to Respondents' Exceptions and Brief in the above-referenced matter.

Sincerely,

Kieran O'Donnell
Environmental Law Specialist
Office of Compliance and Enforcement

cc: Richard D. Senders, 1205 NW 25th Avenue, Portland, OR 97210
Certified Mail #7014 2870 0001 3378 4584
PSFM Limited Partnership, c/o Johnny Kondilis, 4891 Willamette Falls Drive, Suite 1, West Linn, OR 97068
Certified Mail #7014 2870 0001 3378 4591

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | DEQ'S ANSWERING BRIEF TO RESPONDENTS' EXCEPTIONS AND BRIEF |
| PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, AND MIKE HASHEM | ) | |
| Respondents. | ) | OAH CASE NO. 1604492<br>DEQ CASE NO. LQ/SW-NWR-15-048 |

## AUTHORITY

Pursuant to OAR 340-011-0575(4)(b), the Department of Environmental Quality (the Department or DEQ) files this Answer to Respondent Skidmore Limited Partnership (Respondent Skidmore) and Respondent Mike Hashem's (Respondent Hashem) Exceptions and Brief for review by the Environmental Quality Commission (the Commission or EQC) of the Amended Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order (the Order) entered in the above-captioned matter by the Office of Administrative Hearings and mailed on September 7, 2016.

## INTRODUCTION

Respondents' Exceptions and Brief fails to establish that the Order's findings of fact are not based on substantial evidence or that the Order erroneously interpreted a provision of law and that a correct interpretation compels a particular action. Rather, the Administrative Law Judge (ALJ) properly determined that 1) the permit had not expired, 2) Respondent Hashem and Respondent Skidmore are liable for the alleged violations, 3) Respondents did not properly maintain the landfill gas collection system (LFGCS) such that methane limits do not exceed compliance limits, and 4) DEQ properly assessed civil penalties and ordered compliance actions for the alleged violations. For these reasons, DEQ requests that the Commission deny Respondents' exceptions to the Order.

## FACTS AND PROCEDURAL HISTORY

On November 14, 2011, DEQ issued Respondent PSFM Limited Partnership (Respondent PSFM) and Respondent Hashem a Solid Waste Disposal Site Closure Permit, No. 211 (the Permit) for the H.G. Lavelle Landfill facility with the tax roll description of Section 28, T1N, R2E, WM, located

around 2800 NE 82nd Avenue, in Portland, Oregon (the Facility). (Ex. A7 at 2). On November 18, 2011, DEQ amended the Permit, naming Respondent PSFM as the permittee and operator and Respondent Hashem as the owner. (Ex. A7 at 1). Respondent Skidmore owns the Facility according to the Multnomah County Tax Assessor's office report. (Ex. A5).

On May 13, 2015, DEQ issued Respondents Notice of Civil Penalty Assessment and Order Case No. LQ/SW-NWR-15-048 (the Notice), which required Respondents to pay a $58,593 civil penalty and take compliance actions to mitigate the alleged violations. The Notice alleged that the Respondents failed to operate and maintain the Landfill Gas Control System (LFGCS) in effective working order such that methane concentrations did not exceed compliance limits, failed to submit to DEQ a financial assurance plan and annual updates to the plan, failed to submit to DEQ an updated post-closure operations and maintenance plan, failed to submit to DEQ an updated landfill gas monitoring plan, failed to conduct quality assurance testing during each year of operation, and failed to submit to DEQ an annual post-closure evaluation report by February 15 of each year of permit coverage. Respondents timely appealed the Notice.

On June 27, 2016, DEQ and Respondent Hashem and Respondent Skidmore filed cross-motions for summary determination. DEQ also filed an Amended Notice of Civil Penalty Assessment and Order, Case No. LQ/SW-NWR-15-048 (Amended Notice). The Amended Notice alleged some different dates and monitoring well locations of methane gas compliance limit exceedances, but maintained the same conclusions of law and penalty assessment as the Notice.

On August 24, 2016, Senior ALJ Monica Whitaker issued Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order. On September 7, 2016, Senior ALJ Whitaker issued Amended Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order (the Order). The Order granted DEQ's motion for summary determination in full and rejected Respondents' motion for summary determination in full, ruling that Respondents violated Oregon law and are responsible for civil penalties and compliance actions as alleged in the Amended Notice.

## STANDARDS OF REVIEW

As a general matter, all findings of fact in a proposed or final order must be based on a preponderance of the evidence and supported by substantial evidence in the record. OAR 340-011-0545(2); ORS 183.482(8)(c).

The EQC may substitute its judgment for that of the ALJ in making any finding of fact, conclusion of law, or order, except as limited by ORS 183.650 and OAR 137-003-0665. OAR 340-011-0575(6). If the EQC modifies the Order in any substantial manner (by changing a finding of fact or the outcome of, or basis for, the Order), the EQC must identify the modification and explain to the parties the reason for the modification. ORS 183.650(2); OAR 137-003-0665(3).

In order to modify a finding of "historical fact," the EQC must determine that there is clear and convincing evidence in the record that the finding made by the ALJ was wrong. ORS 183.650(3); OAR 137-003-0665(4). The clear and convincing evidence standard means that the fact finder must believe that the evidence is fully intelligible and free from confusion and that the truth of the facts asserted is highly probable. *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 303 Or 390, 407 (1987). The ALJ makes findings of "historical fact" when the ALJ determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing. ORS 183.650(3); OAR 137-003-0665(4).

The Court of Appeals reviews final orders in contested cases under the standards set forth in ORS 183.482(8). Questions of law are reviewed to determine whether "the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action." ORS 183.482(8)(a). The agency's exercise of discretion is reviewed for whether it is "(A) [o]utside the range of discretion delegated to the agency by law; (B) [i]nconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or (C) [o]therwise in violation of a constitutional or statutory provision." ORS 183.482(8)(b). An agency's findings of fact are reviewed for "substantial evidence in the record." ORS 183.482(8)(c). "Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482(8)(c); *see also Tye v. McFetridge,* 342 Or 61,

73-74 (2006) (explaining substantial evidence standard).

## DISCUSSION

Respondents' Exceptions and Brief conflates findings of fact with conclusions of law, ignores substantial evidence in the Record, and fails to apply the correct standards for EQC review. Therefore, Respondents fail to establish that the Order's findings of fact are not based on substantial evidence[1] or that the Order erroneously interprets a provision of law and that a correct interpretation compels a particular action.

### I. The ALJ correctly decided the case on its merits because there were no genuine issues of material fact.

Respondents argue that the ALJ erred by failing to consider whether there were material facts in dispute before deciding the case entirely on its merits. (Exceptions & Brief at 8). But the Order demonstrates that the ALJ evaluated the cross-motions under the correct legal standard for motions for summary determination and concluded that there were no genuine issues of material fact. (Order at 17).

Respondents also point to a number of issues that they characterize as "material facts in dispute." However, none of these issues actually constitutes a material factual dispute. According to Respondents, there were genuine issues of material fact as to "the cause of the higher than normal methane readings for one or two wells particularly in January 2014." (Exceptions & Brief at 8.) However, under OAR 340-095-0020(9), OAR 340-095-0030(4)(a), and Permit Condition 7.4, *any* exceedance of the methane Compliance Limit is a violation of the law. Thus, the cause of the exceedances is not material to whether or not there was a violation.

Respondents assert that there was a genuine issue of material fact as to "whether PSFM was maintaining the LFGCS in effective working order by promptly making repairs when a monitoring well malfunctioned." (Exceptions & Brief at 8). The issue is not whether repairs were prompt, but rather,

[1] The Department will not separately address each of Respondents' exceptions to the Order's findings of fact. Many of Respondents' exceptions request the Commission to insert unsupported or irrelevant factual findings into the Order. Moreover, Respondents' exceptions fail to explain how clear and convincing evidence in the Record demonstrates that the Order's findings of fact are incorrect. The Department addresses many of the issues that Respondents raise with respect to particular findings of fact elsewhere in the Department's Answer.

whether methane concentrations exceeded the Compliance Limit. They did, and Respondents have failed to point to any evidence in the record that contradicts DEQ's determination that methane concentrations exceeded the Compliance Limit. The promptness of any repairs is not material to whether Respondents violated the rules and Permit conditions by failing to maintain the LFGCS in working order such that methane levels did not exceed the Compliance Limit.

Respondents assert that there was a genuine issue of material fact as to "whether any civil penalty is appropriate, given the facts of the case." (Exceptions & Brief at 8). It is not clear what issue of historical fact Respondents believe was disputed; the issue of whether a civil penalty is appropriate is a legal and discretionary one, based on evaluating the facts of the case according to the criteria set forth in the civil penalty rules.

Respondents assert that there was a genuine issue of material fact as to "whether Hashem or Skidmore controlled the former LaVelle landfill." However, Respondents take exception not to the underlying facts, but to the legal conclusion that the ALJ made based on those facts—that Hashem and Skidmore are liable for the violations alleged in the Amended Notice. Thus, Respondents have not identified a genuine issue of material fact.

Finally, Respondents assert that there was a genuine issue of material fact as to "whether the requirement of a financial assurance plan should have been waived." (Exceptions & Brief at 8). Again, Respondents fail to identify any issue of historical fact that is disputed. The question of whether DEQ should have waived the requirement of a financial assurance plan is a legal and discretionary one, not a factual one. The EQC should reject Respondents' argument that the ALJ improperly decided the case on motions for summary determination when there were genuine issues of material fact.

**II. The Order correctly interpreted Oregon law and correctly determined that substantial evidence in the Record supports a finding that the Department may enforce the Permit.**

Among other contentions, the Department's Amended Notice alleged that Respondents violated conditions of the Permit. Respondents argue that the Permit is unenforceable because it automatically expired 30 years after the closure of the Facility. The Order correctly concluded that the Permit has not

expired and is enforceable because the Department has not affirmatively terminated the Permit and the Department has, on numerous occasions, found that there is a public health need to maintain the Permit.

Respondents argue that, pursuant to OAR 340-095-0050(4), non-municipal land disposal site closure permits terminate automatically 30 years after the subject facility enters closure, unless the Department finds a public health need to maintain the permit. OAR 340-095-0050(4) states:

> The Department shall terminate closure permits for non-municipal land disposal sites not later than 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

Respondents also rely on ORS 459.270(2), which provides, "Unless the Department finds a need to protect against a significant hazard or risk to the public health, safety or environment, the department shall terminate any permit for an active supervision of a land disposal site 30 years after the site is closed."

The question whether the Permit is unenforceable because it expired is a matter of statutory and rule construction. The goal of statutory interpretation is to determine the legislature's intent when it enacted the statute, which is accomplished through a two-step analytical process. *State v. White*, 346 Or 275, 280 (2009). The first step involves an evaluation of the text and context of the statute, as well as any useful legislative history. *State v. Gaines*, 346 Or 160, 171 (2009). If ambiguity remains, "the court may resort to general maxims of statutory construction to aid in resolving the remaining uncertainty." *Id.* at 172.

The key phrase in both ORS 459.270(2) and OAR 340-095-0050(4) is "the Department shall terminate" the permit. In this phrase, the "Department" is the subject performing the act of termination on the "permit," the object. Therefore, a textual analysis of this phrase indicates that the Department must affirmatively act to terminate the permit. By arguing that the permit automatically terminates after 30 years, Respondents ask the EQC to interpret the phrase as if the "permit," not the "Department," were the subject (i.e., "the permit shall terminate"). However, this interpretation contradicts the plain meaning of the statute and the rule and is therefore erroneous.

In addition, the context of OAR 340-095-0050(4) demonstrates that the rule requires an affirmative act by the Department to terminate the Permit. Specifically, OAR 340-095-0050(6) states

that a closure permit "remains in effect and is a binding obligation of the permittee until the Department terminates the permit." In other words, unless and until the Department acts to terminate the Permit, it remains in effect. Therefore, both the text and context of the rule demonstrate that the Department must affirmatively act to terminate the permit.

Respondents also assert, erroneously, that "the Department did not take action to extend the permit beyond thirty years." (Exceptions and Brief at 9). The ALJ correctly held that the Record contained substantial evidence that the Department had, on numerous occasions, found that there was a public health need to maintain the Permit. The ALJ relied on the following evidence from the Record: first, in 2009, the Department issued a Unilateral Order due to Respondent Hashem and Respondent PSFM's ongoing failure to properly manage the Facility; and second, in 2011, the Department renewed the Permit, explicitly setting a permit expiration date of August 31, 2021. (See Ex. A10 and A7). Respondents fail to point to evidence in the Record that contradicts the ALJ's factual findings. Respondents therefore fail to demonstrate that there is clear and convincing evidence that the ALJ erred in finding that DEQ had not terminated the Permit and that it had determined that there is a public health need to maintain the Permit.

**III. The Order correctly held that Hashem is liable for permit violations.**

The EQC should reject Respondents' contention that the Order erred in concluding that Hashem is personally liable for the permit violations. The Order concludes that Hashem's direct liability flows from two statutes: ORS 459.205 and ORS 459.268. ORS 459.205(2) describes who is responsible for continuing or renewing a permit for a closed land disposal site. It provides that, if the person who holds or last held a permit under ORS 459.205(1) for a land disposal site that is closed and no longer receiving solid waste fails to continue or renew the permit, "the person owning or controlling" the site must continue or renew the permit. ORS 459.205(2). Relatedly, ORS 459.268 describes who is responsible for maintaining and closing a closed land disposal site. It provides that, if the person who holds or last held a land disposal site permit under ORS 459.205(1) for a closed site fails to comply with any condition of the permit, any requirement of ORS Chapter 459, or any rule adopted pursuant to ORS 459.045, the "person owning or controlling the property on which the disposal site is located"

becomes responsible for closing and maintaining the site according to requirements imposed by DEQ. ORS 459.268. These two statutes reflect the legislature's judgment that landfill safety is so important to public health that it warrants the existence of special statutory provisions imposing direct liability on persons who own or control the property where a landfill is located.

With respect to Hashem's liability, the Order held:

> The overwhelming evidence in this case establishes that Hashem exercised direct control over the landfill. Hashem has been the primary individual with whom the Department has communicated for numerous years. Hashem has acted as a manager of the landfill, directed funds and resources for remedial improvements, operations, maintenance, and monitoring. Therefore, the Department has established that Hashem is liable for the violations as a person controlling the landfill pursuant to ORS 459.205 and ORS 459.268.

(Order at 21). In other words, because PSFM, the permit holder, failed to close and maintain the Facility as required by DEQ, Hashem, who controls the Facility, is responsible for closing and maintaining the site. *Id.*; ORS 459.268. (*See also* DEQ's Motion for Summary Determination at 5-7; DEQ's Response to Respondents' Motion for Summary Determination at 2-4).

Respondents assert that Hashem cannot be held liable for the acts or omissions of PSFM "merely by reason of being a shareholder." (Exceptions and Brief at 10). But this argument is a red herring. DEQ is not seeking to hold Hashem *derivatively* liable for the acts or omissions of PSFM. Rather, DEQ is seeking to hold Hashem *directly* liable for his own acts, as explicitly authorized by ORS 459.205(2) and ORS 459.268. The common-law principle of limited derivative liability, which has been codified at ORS 60.151, is inapplicable here, because ORS 459.205 and ORS 459.268 expressly place direct liability on the person who controls a Facility. For that reason, Respondents' discussion of the limits of derivative liability in the context of torts and contracts is irrelevant. (Exceptions and Brief at 10-11).[2]

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[2] Respondents cite ORS 60.151, ORS 60.357, and ORS 60.377 in support of their argument that Hashem is not liable for the acts or omissions of PSFM. These statutes limit corporate officers' and directors' liability for acts taken by the corporation, or for their own acts taken in their representative capacity for the corporation. They do not negate ORS 459.205(1) and 459.268, which explicitly authorize direct liability. Respondents also cite *Kahn v. Weldin*, 60 Or App 365, 377 (1982), for the proposition that a corporate officer who makes a contract in his representative capacity and within the scope of his authority is not liable for its breach. *Kahn*'s discussion of derivative liability is irrelevant here because ORS 459.205 and ORS 459.268 expressly authorize direct liability. Furthermore, *Kahn*

Respondents further assert that "[i]f a statute is going to make a corporate officer personally liable for the responsibilities or liabilities of the corporation, in contravention to an officer's statutory and common law privilege, the statute must expressly waive the corporate officer's general privilege." (Exceptions and Brief at 10). First, Respondents fail to cite any legal authority whatsoever in support of this proposition. But even assuming, for the sake of argument, that it were a correct statement of the law, it is irrelevant to this case. DEQ is not seeking to impose *derivative* liability on Hashem as a corporate officer. Rather, DEQ is seeking to impose *direct* liability on Hashem because of his actual control over the operations of the Facility. (Order at 21); ORS 459.268. Thus, Respondents' assertion that a statute must expressly waive a corporate officer's "general privilege" simply has no bearing on the direct liability authorized by ORS 459.205 and ORS 459.268.

Recently, in *In the Matter of Kinzua Resources LLC, et al.*, the Commission rejected arguments similar to the ones proffered here by Respondents. In *Kinzua,* members of an LLC argued that they could be held liable under ORS Chapter 459 only when it was appropriate to pierce the corporate veil and hold them derivatively liable for the actions of the LLC. The Commission rejected that argument, explaining:

> The proper control and management of landfills is a matter [of] great significance to public health and the environment. Consequently, ORS chapter 459 establishes detailed and comprehensive regulation of these activities, including placing regulatory burdens on both the permittee, and in the event of the failure of the permittee to comply, those persons controlling the property. If these special statutory provisions did not exist, then it would be reasonable to assume that DEQ would need to pierce the corporate veil and establish derivative liability to enforce against controlling members of the limited liability corporation controlling the permittee and property. But the provisions do exist in the statute and they should be given full effect consistent with the language and the important objective of ensuring the proper operation and closure of landfills.
>
> * * * *
>
> Moreover, this appears to be the very type of situation that the statutes were intended to address in order to assure that those entities with authority to exercise control do so when a permittee has failed to comply with the requirements of the permit and underlying statutes and rules.

discusses derivative liability in the context of an action for breach of contract; there is no contract at issue here.

EQC, Final Order, *In the Matter of Kinzua Resources, LLC et al.*, OAH Case No. 1403637, Agency Case No. LQ/SQ-ER-11-108 (Dec. 10, 2015). As it did in *Kinzua*, the Commission should again reject the attempt to ignore the plain language of ORS 459.268, which clearly authorizes direct liability for persons owning or controlling property on which a land disposal site is located.

**IV. The Order correctly held that Skidmore is liable for permit violations.**

Respondents argue that the Order erred in holding Skidmore liable for permit violations under ORS 459.268 because Skidmore is not named as the "owner" on the permit, and does not own the entire landfill site. (Exceptions & Brief at 11). The ALJ correctly rejected these arguments at the summary determination stage, and the Commission should affirm the ALJ's ruling and reasoning.

As discussed above, if the person who holds or last held a disposal site permit fails to comply with the requirements of ORS 459.268, that statute requires "the person owning or controlling the property on which the disposal site is located" to close and maintain the site as required by DEQ. The Order concluded that Skidmore is liable for permit violations as a property owner because it owns 12.51 acres located at 2800 NE 82nd Avenue in Portland, the Facility's location. (Order at 21). Thus, the fact that Skidmore is not named as the "owner" on the permit is irrelevant. ORS 459.268 does not require that the person be named an "owner" on the permit; rather, it imposes liability on a person who owns property on which the landfill is located. The uncontroverted evidence in this case shows that Skidmore owns property on which the Facility is located.

Respondents assert that the Order erred in holding that Skidmore is liable for permit violations because ORS 459.268 "does not impose liability on a person owning merely a portion of the landfill."[3] (Exceptions & Brief at 11). As DEQ argued—and the ALJ held—at the summary determination stage, there is nothing in the text of ORS 459.268 that suggests that *only* a single owner of an entire Facility may be held responsible for permit violations. Adopting Respondents' interpretation of ORS 459.268

[3] Respondents further assert that, even if a partial owner may be held liable, "the Department should have named all the property owners as respondents and should have allocated liability in proportion to the respective size of their parcels or on some other equitable manner." (Exceptions & Brief at 12). Respondents may well believe that this *should be* the law, but that does not make it so, and Respondents' failure to cite to any statutory provisions or other legal authorities in support of this argument demonstrates its vacuity.

would require the Commission to insert what has been omitted from the statute's text. Respondents' interpretation would require the Commission to read the statute as containing the following additional words, set forth in brackets: "the [single] person owning or controlling [all of] the property on which the disposal site is located." Respondents' interpretation thus contravenes ORS 174.010, which provides that, "[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted[.]"

ORS 174.127 further reinforces the fact that ORS 459.268 imposes liability on partial owners. ORS 174.127 provides that, "[a]s used in the statute laws of this state: (1) The singular number may include the plural and the plural number, the singular." ORS 174.127 makes clear that the term "person," as used in ORS 459.268, may include one or more entities—in other words, one or more property owners. Thus, ORS 459.268 imposes liability on an owner when a single person owns all of the property on which the landfill is located, *and* when multiple people own the property on which the landfill is located.

Finally, adopting Respondents' interpretation of ORS 459.268 would lead to absurd results and would undercut the regulatory scheme established in ORS Chapter 459. Under Respondents' interpretation, an owner could completely escape liability for a closed landfill site by selling off any infinitesimal fraction of the site. That is not the result envisioned by ORS Chapter 459, which authorizes multiple layers of potential liability precisely in order to avoid a situation in which a dangerous landfill is no one's responsibility. The Commission should reject Respondents' proposed interpretation of ORS 459.268, which would require the Commission to insert words that are not contained in the statute and would severely undermine the purpose of ORS Chapter 459, which recognizes the potential public health hazards of landfills and seeks to ensure that someone will always be held responsible for properly managing them.[4]

[4] For the same reasons that the EQC should reject Respondents' exceptions to the Order's imposition of liability on Hashem and Skidmore, the EQC should also reject Respondents' assertion that the ALJ erred in ordering Hashem and Skidmore to take the actions described in Section 3(a) through (g) of the Order. (*See* Exceptions & Brief at 15). Because Hashem and Skidmore are liable for the violations in

## V. The Order correctly determined that Respondents failed to maintain the LFGCS in effective working order such that the concentration of methane did not exceed the Compliance Limit.

The ALJ found that the Record contained substantial evidence to establish that methane concentrations exceeded compliance limits and that certain gas monitoring probes were malfunctioning at the Facility in 2014. The ALJ relied on the following undisputed facts in the Record: the Compliance Limit for methane is 5 percent by volume (Ex. A7); methane concentrations exceeded the Compliance Limit at monitoring wells MW-29, MW-30, and MW-3S on January 13, 2014, at monitoring wells MW-29 and MW-4S on January 24, 2014, and at monitoring well MW-29 on May 27, 2014 (Ex. A4); and in May and June of 2014, Respondents' monitoring wells were malfunctioning such that certain probe lids would not close, had stripped bolts, or were plugged with gravel and soil. (Ex. A4). Therefore, the ALJ concluded that Respondents had violated applicable rules and Permit Condition 7.4 by failing to maintain the LFGCS in effective working order such that the concentration of methane did not exceed the Compliance Limit.

Respondents argue that the ALJ erroneously interpreted the law and ignored evidence in the Record that Respondents maintained the LFGCS in effective working order. Respondents misinterpret the plain meaning of the law, explicitly admit to methane Compliance Limit exceedances, and misinterpret the Order.

Frist, Respondents erroneously claim that "[t]he permit does not require perfection in the operation of the LFGCS so that there is never a high methane gas reading." (Exceptions & Brief at 12). However, OAR 340-095-0020(9)(a), OAR 340-095-0030(4)(a), and Condition 7.4 of the Permit unambiguously prohibit methane exceedances above the Compliance Limit. The ALJ relied on the following relevant rule language: "No person shall operate or maintain a non-municipal land disposal site except in conformance with the provisions for gas control in OAR 340-095-0030(4)." OAR 340-095-0020(9)(a). And, "No person shall establish, expand or modify a non-municipal land disposal site such that… [t]he concentration of methane (CH4) gas at the landfill exceeds 25 percent of its lower

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the Amended Notice, they are required to take the actions described in Section 3(a) through (g) of the Order.

explosive limit in facility structures (excluding gas control or gas recovery system components) or its explosive limit at the property boundary." OAR 340-0095-0030(4)(a). In addition, Condition 7.4 of the Permit states, "The permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS *must function* such that methane concentrations *do not exceed* regulatory compliance limits… in permit Section 9.4" (emphasis added). Therefore, according to the plain language of the relevant rules and Permit condition, *any* exceedance of the methane Compliance Limit is a violation of the law. Respondents offer no legal authority in support of their assertion that the Permit does not "require perfection." (Exceptions & Brief at 12).

Second, Respondents do not take exception to the ALJ's findings of fact establishing that exceedances of the methane Compliance Limit occurred. In fact, Respondents explicitly admit that the Facility exceeded the methane Compliance Limit, stating that "on only a couple of occasions were the readings at one or two well sites above normal," "all the monitoring wells were in compliance except for wells 29 and 4s which exceeded compliance levels only on January 24, 2014," and "on May 29, 2014, DEQ tested well 29 and found it slightly over the compliance level." (Exceptions & Brief at 12-13). Therefore, not only have Respondents failed to demonstrate that the ALJ's findings of fact are not supported by substantial evidence, Respondents have, in fact, conceded that methane concentrations at the Facility exceeded the Compliance Limit.

Finally, Respondents argue that the ALJ erred by failing to consider Respondent Hashem's Declaration and the Declaration of Jason Bennett. (Exceptions & Brief at 13). Respondents claim that these declarations demonstrate Respondents' efforts to repair the LFGCS upon the request of the Department. However, a violation is established simply by the Facility exceeding a Compliance Limit. Any repairs made to the LFGCS after the Facility exceeds a Compliance Limit are irrelevant to the question whether an exceedance occurred. Therefore, the ALJ did not err in finding that the Declaration of Respondent Hashem and the Declaration of Jason Bennett were not relevant to whether or not a violation occurred.

**VI. The Order correctly upheld the civil penalties assessed in the Amended Notice.**

The Order correctly upheld the Department's assessed civil penalties because Respondents failed to offer any evidence into the Record contrary to the Departments' factual allegations underlying the penalty assessments.

Respondents argue that the ALJ erred in holding that an $8,720 economic benefit portion of the civil penalty assessment was appropriate for Respondents' failure to maintain the LFGCS in effective working order such that methane does not exceed the Compliance Limit. The ALJ ruled that the Department sufficiently supported its allegation of an economic benefit portion of the civil penalty for this violation by submitting into the Record an economic benefit memorandum that explained the Department's processes, model, and underlying estimates used in estimating the civil penalty amount. (Ex. A8). Specifically, the Department estimated that the cost to fix three probes and monitor from the probes from January 13, 2014 was approximately $15,000. Respondents failed to enter any evidence to the contrary, summarily stating that cost of repairs was "negligible."

Respondents argue that the ALJ erred in holding that a $37,873 civil penalty assessment was appropriate for Respondents' failure to submit to the Department a financial assurance plan and annual updates to the plan. (Exceptions & Brief at 15). Respondents argue that the ALJ erred because 1) the Department should have waived the requirement, 2) the Department provided no evidence to support the penalty amount, and 3) Respondents Hashem and Skidmore are not liable for the violation. However, again, Respondents' argument ignores substantial evidence in the Record and misconstrues Oregon law. First, Respondents provide no support—nor is the Department aware of any—for their assertion that the financial assurance plan requirement "should have been waived." Second, the Department provided substantial evidence of its penalty assessment in the Amended Notice and the economic benefit memorandum. (Ex. A1; Ex. A8). Respondents offer no evidence contrary to the facts submitted by the Department. And third, Respondents Hashem and Skidmore are liable for the alleged violations because ORS 459.268 authorizes direct liability for persons owning or controlling property on which a land disposal site is located, as described in Sections III and IV above.

**VII. The Order correctly upheld the compliance schedule ordered in the Amended Notice.**

Respondents argue that they are not required to perform the compliance actions in the Order because they are not liable for the violations alleged in the Amended Notice. However, Respondents' argument is not based on a correct interpretation of Oregon law. As described in Sections III and IV above, Respondents Hashem and Skidmore are directly liable for the violations because the plain language of ORS 459.268 clearly authorizes direct liability for persons owning or controlling property on which a land disposal site is located. Therefore, Respondents Hashem and Skidmore are subject to the compliance schedule in the Order.

## CONCLUSION

For the reasons stated herein, DEQ respectfully requests that the Commission deny all of Respondents' Exceptions and issue a Final Order consistent with the analysis in DEQ's Answer that finds that Respondents violated Oregon law as alleged in DEQ's Amended Notice and orders Respondents to pay civil penalties and comply with the compliance schedule as set forth in the ALJ's Order.

DATED this 23rd day of December 2016.

Respectfully Submitted,

Rachel Weisshaar, OSB No. 124964
Assistant Attorney General
Attorney for Oregon Department of Environmental Quality

Kieran O'Donnell
Environmental Law Specialist
Oregon Department of Environmental Quality

BY HAND DELIVERY

Nov. 18, 2016

Kieran O'Donnell
DEQ Environmental Law Specialist
700 NE Multnomah Street, suite 600
Portland OR 97232

Re: In the Matter of PSFM Limited Partnership, Skidmore Limited Partnership and Mike Hashem
OAH Case No. 1604492
DEQ Case No. LQ/SW-NWR-15-048

The Environmental Quality Commission received your request for a 30-day extension in which to file your answering brief. That brief was originally due Nov. 23, 2016, and your materials were filed in a timely manner.

The 30-day extension is granted. Your answering brief must be received by 5 p.m. on Friday, Dec. 23, 2016. Please provide one copy to the Environmental Quality Commission c/o Stephanie Caldera at 700 NE Multnomah Street, suite 600, Portland OR 97232 and a copy to the respondents as noted on the CC line of this letter.

Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,

Stephanie Caldera
Assistant to the Oregon Environmental Quality Commission

Cc: BY U.S. MAIL
- Richard Senders, Rose, Senders and Bovarnick, LLC, 1205 NW 25th Ave., Portland OR 97210
- PSFM Limited Partnership, c/o Johnny Kondilis, 4891 Willamette Falls Drive, Suite 1, West Linn OR 97068

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*Admitted in Oregon and Washington
**Admitted in Oregon, Washington and Montana

October 24, 2016

***Hand Delivered by Messenger***

Stephanie Caldera
EQC Assistant
811 SW 6th Avenue
Portland, OR 97204

Re: Before the Environmental Quality Commission State of Oregon
In the Matter of PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem
OAH Case No. 1604492
Agency Case No. LQ/SW-NWR-15-048

Dear Ms. Caldera:

Enclosed is Respondents Hashem and Skidmore's Exceptions and Brief, together with 11 documents to be considered as part of the record.

Sincerely,

Richard D. Senders

RDS:dms
Enclosures
cc: Kieren O'Donnell (w/enc) - Hand Delivered
Johnny Klondilis, PSFM Limited Partnership
Clients (w/o enc)

**BEFORE THE ENVIRONMENTAL QUALITY COMMISSION**
**STATE OF OREGON**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | RESPONDENTS HASHEM AND SKIDMORE'S EXCEPTIONS AND BRIEF |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, AND MIKE HASHEM,** | ) | |
| Respondents | ) | OAH Case No. 1604492<br>Agency Case No. LQ/SW-NWR-15-048 |

## NATURE OF PROCEEDINGS AND COMMISSION REVIEW

The Department of Environmental Quality ("DEQ" or the "Department") issued an Amended Notice of Civil Penalty Assessment and Order (the "Notice") against PSFM Limited Partnership ("PSFM"), Skidmore Limited Partnership ("Skidmore"), and Mike Hashem ("Hashem"). The Notice alleged that PSFM, Skidmore, and Hashem had violated the solid waste closure permit for the facility known as the LaVelle Landfill (the "Permit"). Specifically, the Notice claimed that the respondents failed to operate and maintain the landfill gas control system (the "LFGCS") in effective working order between January 13, 2014 and June 30, 2014. DEQ assessed a civil penalty of $20,720 for this violation against the three respondents. The order also alleged that respondents failed to submit a financial assurance plan and assessed a civil penalty of $37,873 for this violation.

The respondents denied the factual allegations, claims, and conclusions in the Notice. The parties were unable to negotiate a resolution. Respondents requested a contested hearing before an administrative law judge.

Skidmore and Hashem filed a Motion for Summary Determination on the narrow issue of whether they are legally responsible for the performance of the Permit issued to PSFM and whether DEQ has the authority to assess a civil penalty against them. The Respondents Motion for Summary Determination did not address the issues of whether or not there was noncompliance or what would be the correct penalty if there was noncompliance.

DEQ submitted its own Motion for Summary Determination. DEQ requested that the administrative law judge rule in DEQ's favor on all legal issues in the Notice.

The administrative law judge issued a Consolidated Rulings on Cross Motions for Summary Determinations and Proposed Final Order dated August 24, 2016. The administrative law judge's decision was subsequently amended to include additional relief

for DEQ in the Amended Consolidated Rulings on Cross Motions for Summary Determination and Proposed Final Order dated September 7, 2016 (the "Order"). The administrative law judge denied respondents' motion for summary determination, ruled on the merits of the case, and found in favor of DEQ on all of the issues and claims.

Respondents Skidmore and Hashem filed a Petition for Commission Review on or about September 22, 2016. Respondents Hashem and Skidmore are asking the Commission to review the exceptions raised in this brief, and revise the findings of facts, conclusions of law, and the order of the administrative law judge, pursuant to OAR 340-011-0575.

## EXCEPTIONS TO THE FINDINGS OF FACT

Respondents Hashem and Skidmore take exception to the factual findings generally because the administrative law judge failed to consider whether or not there were material facts in dispute before granting summary determination. The administrative law judge decide the case on the merits without a proper (or any) analysis of whether or not there are material facts in dispute that are relevant to the legal issues. OAR 137-003-0580(6). The administrative law judge erred in granting DEQ's motion in total.

As to the Findings of Fact listed in the Order, Respondents Hashem and Skidmore take exception to the following:

Factual Finding # 4 states that "Hashem was MMDF's president and was involved in the acquisition of the 33-acre site known as the LaVelle Landfill." This Factual Finding is incorrect for two reasons: PSFM only acquired 21 acres, and not the 33-acre site; and Hashem's involvement in the acquisition was only in his capacity as president of M.M.D. F. Corp., the general partner of PSFM. (Declaration of Hashem in Opposition at 1)

The factual findings should state: "Hashem was M.M.D.F.'s president, and in that capacity, was involved in PSFM's acquisition of a portion of the 33-acre site known as the LaVelle Landfill."

Factual Finding # 16 states "On November 18, 2011, the Department amended the permit. The amended 2011 permit was issued to PSFM. The amended permit lists "Mike Hashem, PSFM Limited Partnership" as the owner and lists PSFM Limited Partnership as the operator." This factual finding omits the relevant fact that the listing of Hashem and PSFM as owners was in error. As of 2011, PSFM had no ownership interest in the LaVelle Landfill, and Hashem never had an ownership interest. (Declaration of Hashem in Opposition at 4)

The following language should be added to the factual finding: "The naming of Mike Hashem and PSFM as the owner was a mistake. At that time neither PSFM nor Hashem had any ownership interest in the former LaVelle Landfill."

Factual Finding # 20 omits the relevant and undisputed fact that none of the respondents were a party to the negotiations or to the PPA. (Declaration of Hashem in Opposition at 5)

The following language should be added to the factual finding: "Neither Hashem, PSFM, nor Skidmore were a party to the PPA or participated in the negotiations of the terms of the PPA."

Factual Finding # 20 also omits the relevant and undisputed fact that under the PPA, Dharma was allowed to surcharge the soil, monitor methane gasses, and build a structure on its property. It was also authorized to modify the extraction system and monitoring wells in order to build a street. (Declaration of Hashem in Opposition at 5 and Exhibit 11)

The following language should be added to the factual finding: "According to the terms of the PPA, Dharma was allowed to surcharge the soil, monitor methane gasses, and build a structure on its property. It was also authorized to modify the extraction system and monitoring wells in order to build a street."

Factual Finding # 21 omits the relevant and undisputed fact that Dharma's contractor surcharged the soil on the Dharma parcel and took methane readings near where the surcharging was taking place in November of 2013, December of 2013, and January of 2014. PSFM was not notified that Dharma was surcharging the soil, taking methane gas readings or turning off the extractor blower. Dharma's contractor never consulted PSFM or its experts on how to take methane readings or what equipment to use. (Declaration of Hashem in Opposition at 5) The finding also omits the important fact that the readings received by DEQ on March 14, 2014 came from Dharma's contractor. (Declaration of Hashem in Opposition at 5 and Exhibit 12)

The following language should be added to the factual finding: "Dharma's contractor surcharged the soil on the Dharma parcel and took methane readings near where the surcharging was taking place in November of 2013, December of 2013, and January of 2014. PSFM was not notified that Dharma was surcharging the soil, taking methane gas readings or turning off the extractor blower. Dharma's contractor never consulted PSFM or its experts on how to take methane readings or what equipment to use. The readings received by DEQ on March 14, 2014 came from Dharma's contractor."

Factual Finding # 21 also omits the relevant and undisputed fact that on March 14, 2014, PSFM notified the Department of a vandalism problem that it had experienced back in January with the gas blower extraction system and speculated that this was the likely cause of the higher than normal reading in January of 2014. PSFM also informed the Department that the extraction blower system had been repaired. PSFM agreed to follow the Department's recommendations to re-test the monitoring wells that were producing a higher than normal reading. (Declaration of Hashem in Opposition at 5 and Exhibit 12)

The following language should be added to the factual finding: "On March 14, 2014, PSFM notified the Department of a vandalism problem that it had experienced back in January with the gas blower extraction system and speculated that this was the likely cause of the higher than normal reading in January of 2014. PSFM also informed the Department that the extraction blower system had been repaired. PSFM agreed to follow the Department's recommendations to re-test the monitoring wells that were producing a higher than normal reading."

Factual Finding # 24 omits the fact that Mike Hashem's interactions with Mr. Spencer were always in his capacity as the president of M.M.D.F. Corp., the general partner of PSFM. (Declaration of Hashem in Opposition at 1)

The following language should be added to the factual finding: "All of Mr. Spencer's dealings with Mr. Hashem were in Mr. Hashem's capacity as the president of M.M.D.F. Corp. the general partner of PSFM."

Factual Finding # 25 omits the relevant and undisputed fact that PSFM's monitoring of well 29 showed that it was in compliance on February 18, 2014, April 25, 2014, May 17, 2014, June 26, 2014, and July 11, 2014. PSFM had higher than normal readings on monitoring well 29 on only two occasions: January 24, 2014 and on the morning of March 20, 2014. The first reading was thought to be caused by an act of vandalism, but may have been caused by Dharma's surcharging of the soil, and the system was quickly repaired. The second instance was due to the pump being off due to an electrical short that was promptly fixed. All other readings were within compliance levels. (Declaration of Hashem in Opposition at 5 and Exhibit 16)

The following language should be added to the factual finding: "PSFM's monitoring of well 29 showed that it was in compliance on February 18, 2014, April 25, 2014, May 17, 2014, June 26, 2014, and July 11, 2014. PSFM had higher than normal readings on monitoring well 29 on only two occasions: January 24, 2014 and on the morning of March 20, 2014. The first reading was thought to be caused by an act of vandalism, but may have been the result of Dharma's surcharging of the soil, and the system was quickly repaired. The second instance was due to the pump being off due to an electrical short that was promptly fixed. All other readings were within compliance levels.

Factual Finding # 26 omits the fact that both DEQ and PSFM were able to obtain readings from the monitoring wells despite the deficiencies. (Declaration of Hashem in Opposition at 5 and Exhibit 16)

The following language should be added to the factual finding: "Both the Department and PSFM were able to obtain readings from the monitoring wells despite the deficiencies."

Factual Finding # 26 also omits the relevant and undisputed facts that on June 11, 2014, PSFM notified DEQ that it would send out a technician to check out wells that might need repairs. On June 26, 2014, PSFM emailed DEQ that the monitoring wells had been

cleaned, the valves replaced where recommended, and the system was in good working order except for monitoring well 31, which had been placed in a manhole with DEQ approval and was constantly inundated with water. The monitoring wells showed methane gas levels within compliance limits. (Declaration of Hashem in Opposition at 6 and Exhibits 14 and 15)

The following language should be added to the factual finding: "On June 11, 2014, PSFM notified DEQ that it would send out a technician to check out wells that might need repairs. On June 26, 2014, PSFM notified DEQ that the monitoring wells had been cleaned, the valves replaced where recommended, and the system was in good working order except for monitoring well 31, which had been placed in a manhole with DEQ approval and was constantly inundated with water. The monitoring wells showed methane gas levels within compliance limits".

Factual Finding # 27 omits the relevant and undisputed fact that by June 26, 2014, the monitoring wells had been cleaned and couplings and bolts replaced where recommended, and the system was in good working order. (Declaration of Hashem in Opposition at 6 and Exhibit 15)

The following language should be added to the factual finding: "By June 26, 2014, the monitoring wells had been cleaned, couplings and bolts replaced where recommended, and the system was in good working order."

Factual Finding # 31 omits the fact that PSFM had made the necessary repairs to the probes and monitors by June 26, 2014 and any economic benefit from not making the repairs earlier was de minimus.

The following language should be added to the factual finding: "PSFM had made the necessary repairs to the probes and monitors by June 26, 2014 and any economic benefit from not making the repairs earlier was de minimus."

Respondents Hashem and Skidmore take exception to the omission of the following factual findings:

1. There is a material factual dispute as to whether methane readings supplied by Dharma are reliable. There is no evidence that Dharma's contractor was using measuring equipment approved by the Department or that the contractor followed testing procedures approved by the Department.

2. There is a material factual dispute as to whether the high readings of well 29 were the caused by a failure to maintain the LFGCS by PSFM. It can be inferred from the evidence that higher than normal readings for well 29 were the result of the activities of Dharma's contractor who was surcharging soil in the area, an isolated act of vandalism, and an electrical short. Both the vandalism and the electrical short were promptly repaired.

3. There is a material factual dispute as to whether the monitoring wells and probes were working and were in effective working order. PSFM, Dharma's contractor, and DEQ were all able to take periodic readings.

4. There is a material factual dispute as to whether PSFM's quick response to concerns raised by the Department over the monitoring wells and probes amounted to a failure to operate and maintain the system in effective working order.

5. There is a material factual dispute as to whether Hashem controlled the former landfill site. Hashem's involvement was as the president of M.M.D.F. Corp., which was the general partner of PSFM. The LaVelle Landfill at the time in question was owned by five separate property owners. PSFM no longer had any ownership interest in the landfill property. Hashem was an officer of Skidmore Management Corporation, which was the general partner of Skidmore. However, Skidmore only owned approximately one-third of the former landfill. Four other property owners owned and controlled approximately two thirds of the former landfill.

6. The Department has produced no agreement or agreements between the various property owners that gives Hashem, PSFM, or Skidmore control over the property of the other owners.

7. There is a material factual dispute as to whether the penalty of $20,720 for the alleged failure to keep the LFGCS in effective working order is appropriate, given the fact that the monitoring wells were in effective working condition and DEQ, PSFM, and Dharma were all able to measure methane levels, and given the fact that PSFM promptly made repairs after being notified of the Department's concerns.

8. There is a material factual dispute as to whether the penalty of $37,833 for failure to maintain a financial assurance plan was appropriate, given the fact that DEQ provided no evidence in support of this figure and given the fact that there are questions as to whether the financial assurance plan should be required or waived given the age of the closed landfill and the fact that no financial assurance plan was required in the past.

## EXCEPTIONS TO THE CONCLUSIONS OF LAW

Respondents Hashem and Skidmore take exception to the conclusions of law generally because the administrative law judge failed to consider whether or not there were material facts in dispute before granting summary determination. The summary determination record shows that there are material facts in dispute. The administrative law judge erred in deciding the case on the merits and granting DEQ's motion for summary determination in full. The administrative law judge should have concluded that material facts are in dispute and that a summary determination cannot be issued in favor of the Department on all of their claims and issues. Specifically, conclusions 2(a), (b), (c), and (i) should not have been decided by summary determination in favor of the Department.

Respondents Hashem and Skidmore take exception to the administrative law judge's following conclusions of law.

Conclusion of Law # 1(a) that Hashem and Skidmore were responsible for performance of the Permit. The reasons for the exception are discussed in the section entitled Exceptions to Opinion. The conclusion of law should state that Hashem and Skidmore were not responsible for performance of the Permit issued to PSFM.

Conclusion of Law # 1(b) that the Department has the authority to assess a civil penalty against Hashem and Skidmore. The reasons for the exception are discussed in the section entitled Exceptions to Opinion. The conclusion of law should state that the Department has no authority to assess a civil penalty against Hashem, personally, since he was acting at all times in his capacity as President of M.M.D.F. Corp., and the Department has no authority to assess a civil penalty against Skidmore, since Skidmore was not the owner of the property, since it only owned a fraction of the former landfill.

Conclusion of Law # 2(a) that PSFM, Hashem, and Skidmore are jointly liable for all violations cited in the Notice. The reasons for the exception are discussed in the section entitled Exceptions to Opinion. The conclusion of law should state that Hashem and Skidmore were not individually or jointly liable for the violations cited in the Notice. There is also a material factual dispute as to whether PSFM should be liable for some of the violations.

Conclusion of Law 2 # (b) that PSFM, Hashem, and Skidmore failed to maintain the LFGCS in effective working order. The reasons for this exception are discussed in the section entitle Exceptions to Opinion. The conclusion of law should state that there is a material factual dispute as to whether PSFM failed to maintain the LFGCS in effective working order. Hashem and Skidmore had no responsibility to maintain the LFGCS in effective working order.

Conclusion of Law # 2(c) that PSFM, Hashem, and Skidmore failed to submit to the Department a financial assurance plan and annual updates. The reasons for this exception are discussed in the section entitle Exceptions to Opinion. The conclusion of law should state that there is a material factual dispute as to whether PSFM should have been required to submit a financial assurance plan and annual update. Hashem and Skidmore had no responsibility to furnish a financial assurance plan and updates to the Department.

Conclusions of Law # 2(d),(f),(g), and (h) that all respondents failed to perform certain aspects of the Permit. The reasons for this exception are discussed in the section entitle Exceptions to Opinion. The conclusion of law should state that Hashem and Skidmore had no responsibility to perform the conditions of the Permit.

Conclusion of Law # 2(i) that the Department's proposed civil penalty is appropriate. The reasons for this exception are discussed in the section entitle Exceptions to Opinion. The conclusion of law should state that there is a material factual dispute as to whether the proposed penalty is appropriate.

## EXCEPTIONS TO THE OPINION

Hashem and Skidmore take exception to the following rulings and portions of the administrative law judge's opinion.

**The administrative law judge erred in deciding the case in its entirety on the merits.**

OAR 137-003-0580 allows the administrative law judge to grant a motion for summary determination only if the summary determination record shows that there are no relevant and material facts at issue or in dispute and the moving party is entitled to a favorable ruling as a matter of law. The administrative law judge must consider all evidence in a manner most favorable to the non-moving party and draw all reasonable inferences from the record against the moving party and in favor of the non-moving party.

In this case, the administrative law judge simply decided the merits of the case on the summary determination record, without deciding if there were material facts in dispute. The administrative law judge granted the Department's motion in total even though the record demonstrates material facts in dispute on several key issues. Hashem and Skidmore take exception to this part of the Opinion.

The material facts in dispute centered on the cause of the higher than normal methane readings for one or two wells particularly in January 2014, whether PSFM was maintaining the LFGCS in effective working order by promptly making repairs when a monitoring well malfunctioned, and whether any civil penalty is appropriate, given the facts of the case.

There are also material facts in dispute as to whether Hashem or Skidmore controlled the former LaVelle landfill given the facts that Hashem acted only in his capacity as a corporate officer and Skidmore was just one of five owners of different parcels making up the former landfill. DEQ offered no evidence that Hashem, personally, or Skidmore had assumed control of the property or had been granted control by the other property owners. The PPA between the Department and Dharma gave Dharma significant control over its parcel.

There is also a factual dispute as to whether the requirement of a financial assurance plan should have been waived, since at the time the permit was re-issued with this requirement the landfill had been closed for over 27 years and no financial assurance plan had been required in the past.

The administrative law judge erred in granting the Department's motion for summary determination against PSFM for violating the Permit requirement that it maintain the LFGCS in effective working order, and she erred in imposing the requested penalty for this alleged infraction. The administrative law judge also erred by granting the Department's motion as it relates to holding Hashem, personally, and Skidmore jointly liable for the violations of PSFM. Finally the administrative judge erred in holding the respondents liable for a civil penalty for not filing a financial assurance plan.

**The administration law judge erred in concluding that the permit had not expired.**

OAR 340-095-0050(4) states that:

> "Department shall terminate closure permits for non municipal land disposal sites not later than 30 years after the site is closed, unless the Department finds there is a need to protect against a significant hazzard or risk to public health or safety or the environment."

OAR 340.095.0080(2) reiterates that post closure care permits are generally to terminate 30 years after the closure of the non-municipal land disposal site. See also ORS 459.270(2).

It is an unconverted fact that the LaVelle Landfill closed in 1982. The landfill had been closed for over 30 years when the Department issued its pre-enforcement notice to PSFM on July 30, 2014. The landfill have been closed for 33 years when the Department issued its Notice of Civil Penalty and Order on May 13, 2015. The civil penalty assessed for failure to maintain the LFGCS centered on events occurring in early 2014.

It is also an undisputed fact that the Department did not take action to extend the permit beyond thirty years, by finding that there was, after 30 years, a continued need to protect against a significant hazard or risk to public health or safety or the environment.

The Department argued that DEQ must take an affirmative step to terminate a permit after 30 years, and since DEQ had not formally terminated the permit, it continues on indefinitely. The administrative law judge accepted this argument and ruled that the permit remained in effect and enforceable since the Department had taken no action to terminate the permit. Hashem and Skidmore take exception to this part of the Opinion.

The Department's argument and the opinion runs counter to the plain meaning of the statute and the implementing administrative rule. The Department is required to terminate a 30-year old permit, unless specific findings are made to justify its continuation. If the Department fails to terminate the permit, without making the specific findings required for continuation by rule and statute, the permit either must expire on its own or becomes ineffective or unenforceable. The Department cannot ignore the requirements of the law by simply doing nothing.

The fact the expiration date for the permit was nine years beyond the 30 year closure anniversary has no significance. The closure permits are routinely issued for 10 years in duration. When the 30 year anniversary of the closure arrives, the Department must make specific findings to continue the permit or the permit ends regardless of its expiration date.

**The administrative law judge erred in holding Hashem personally liable for Permit violations**

The administrative law judge made no factual finding that Hashem owned the former LaVelle Landfill. The administrative law judge made no factual finding that Hashem personally controlled the former LaVelle Landfill. Nevertheless, the administrative law judge held Hashem personally liable for PSFM's alleged Permit violations. Hashem and Skidmore take exception to this part of the Opinion.

The administrative law judge states, in her opinion, that Hashem exercised direct control over the landfill. The administrative law judge, however, does not distinguish between acting in one's personal capacity and acting as an officer of a corporation.

The statutory law in Oregon is that a shareholder of a corporation may not be liable for the acts or omissions of the corporation merely by reason of being a shareholder. ORS 60.151(2). Similarly, an officer or director of a corporation may not be liable if the person performs his duties in good faith, with the care of an ordinarily prudent person, and in a manner that the person reasonably believes to be in the best interest of the corporation. ORS 60.377(1) and (4); ORS 60.357 (1) and (4). An officer is not personally liable to third parties for the acts of a corporation unless the officer himself engaged in tortuous conduct or unless there is a common law or an express statutory exemption to the privilege that shields a corporate officer from personal liability, such as the statute holding corporate officers liable for employee withholding taxes under certain circumstances.

The common law in Oregon is that an officer of a corporation who acts within the scope of his authority, discloses his representative capacity to the other party, and makes a contract in the corporation's name is not liable for the breach of that contract. *Kahn v. Weldon*, 60 Or App 365, 377, 653 P.2d 1268 (1982).

If a statute is going to make a corporate officer personally liable for the responsibilities or liabilities of the corporation, in contravention to an officer's statutory and common law privilege, the statute must expressly waive the corporate officer's general privilege. The language in ORS 459.268 does not do that.

Hashem directed operations, maintenance, and monitoring of the former landfill in his capacity as the President of M.M.D.F. Corp., the general partner of PSFM. At no time was Hashem acting in his personally capacity. Under Oregon law, Hashem has no liability for PSFM's alleged non-performance of the Permit. Arguably, M.M.D.F. is a "person"

controlling the LaVelle Landfill and has potential liability under ORS 459.205(2) and ORS 459.268, but Hashem, personally, has no liability.

Finally, to establish third party liability for the actions of the person that was issued the permit, the Department must establish: (1) failure to comply; and (2) control of the property. On the issue of maintaining the monitors and probes in effective working order, the Department has not proven a failure to comply. On the issue of control of the property, the record establishes only that PSFM had control over the permit, but not the property. There were multiple property owners that each controlled their individual parcels, as evidenced by the unilateral actions of Dharma.

It is an undisputed that Hashem is not a permittee, the general partner of the permittee, the controlling owner of the site, nor was there any agreement with PSFM or with the owners of the site that gave Hashem personal responsibility for the former landfill. DEQ had not re-issued the permit into Hashem's name personally. There is simply no legal basis for holding Hashem personally liable for the responsibilities of PSFM.

**The administrative law judge erred in holding Skidmore liable for Permit violations.**

It is an undisputed fact that the former Lavelle Landfill covers approximately 33 acres. Skidmore owns only 12.5 acres. Four other property owners own the balance of the former landfill. Skidmore is not named as the Owner on the permit, nor has it contractually assumed the obligations of the Permit holder or of the other property owners.

The administrative law judge ruled that since Skidmore owned a portion of the former Lavelle Landfill, it was fully liable for the Permit violations of PSFM, based on the judge's interpretation of ORS 459.205(2) and ORS 459.268. These statutes shift liability from the permit holder to the person owning a landfill site, if the permit holder fails to comply with the permit. Skidmore and Hashem take exception to this part of the Opinion.

According to the Opinion, the owner of any portion of a former landfill, regardless of the size of the fractional ownership, regardless of whether named in the permit as the owner, and regardless of its involvement in the administration of the permit can be held fully liable for the activities of the Permit holder. This is contrary to the clear language of the statute, which imposes third party liability on the "person owning" the landfill. The statute contemplates a single owner. The statute does not contemplate or cover the situation where there are multiple parcels or lots and multiple owners. The statute does not impose liability on a person owning merely a portion of the landfill.

The Department argued that Skidmore's interpretation of the statute would create an absurd result, whereby the owner of the landfill could escape liability by selling off any portion of the land. Yet, the Department's interpretation of the statue results in a far more unjust result, whereby any person who owns any small fraction or portion of a former landfill can be fully liable for all costs and obligations associated with a closure permit. If this is a correct interpretation of the statute then the reclamation and subdivision of former landfill

sites is no longer possible, because no single buyer of a lot or separate parcel is going to want to take the risk.

The rationale for holding the owner of all of the former landfill property liable for the permit's performance makes certain sense, because the owner is often directly tied to the permittee, is named as the owner on the permit, has knowledge of the permit obligations and performance, and has a financial interest in the entire property. This cannot be said for a fractional owner.

If for the sake of argument an owner of a fraction of the property has any liability, then the Department should have named all the property owners as respondents and should have allocated liability in proportion to the respective size of their parcels or on some other equitable manner.

**The administrative law judge erred in holding that PSFM did not maintain the LFGCS in working order.**

It is undisputed that during the first half of 2014, the blower, extraction system was operational, that Dharma's contractor, PSFM's expert and DEQ were all able to take methane readings from the monitoring wells, and that on only a couple of occasions were the readings at one or two well sites above normal. When DEQ recommended increasing the blower time or raised issues about the condition of some of the monitoring wells or probes, PSFM responded quickly to address the concerns.

The methane gas levels within the former landfill are not static. The gas concentrations can change with the decomposing of debris within the landfill and with activities on the surface. For this reason, LFGCS system is designed so that the number of hours that the extraction blower system is run per day can be increased as methane gas levels increase. The permit does not require perfection in the operation of the LFGCS so that there is never a high methane gas reading. The permit requires the permittee to do periodic testing and monitoring of the system and to make adjustments or repairs in a prompt manner when needed.

Dharma's engineers surcharged the soil at the former landfill and took methane readings near where the surcharging was taking place in November 2013, December 2013, and January of 2014. Surcharging the soil involved adding dirt to the landfill to increase the soil cover and compacting the dirt. DEQ expected the surcharging would likely have some effect on the methane readings. PSFM was not notified of the surcharging, nor did it participate in the methane readings at the monitoring wells near the surcharging area. It is not known whether Dharma's engineers used the right methane measuring equipment or followed the right procedures.

During these months, PSFM continued to take monthly methane readings at the various monitoring wells. Between December 8, 2013 and July 11, 2014, all the monitoring wells were in compliance except for wells 29 and 4s which exceeded compliance levels

only on January 24, 2014. At about the same time in January, PSFM discovered a problem with the LFGCS caused by vandalism, and PSFM promptly repaired the system. After the repair, monitoring wells 29 and 4s were retested and found to be within compliance limits. On March 20, 2014, monitoring well 29 read high. The fuse for the extraction pump had been tripped. The pump was restarted, and by the afternoon, well 29 was in compliance. A short was discovered in the extraction pump electrical system and was repaired.

On March 14, 2015, DEQ received a copy of Dharma's methane readings during its surcharging operations. On the same day, DEQ notified PSFM that monitoring well 29 was showing high methane readings, and it asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. That same day, PSFM notified DEQ of a problem it had with the gas blower extraction system a couple of months earlier, and PSFM speculated that this was the likely cause of the higher than normal reading. In the same email, PSFM reported to DEQ that the extraction blower system had been repaired. PSFM agreed to follow DEQ's recommendations and to retest the monitoring wells that were producing the high readings. By the afternoon of March 20, 2014, PSFM was reporting that monitoring well 29 was in compliance.

On May 29, 2014, DEQ tested well 29 and found it slightly over the compliance level. The meter used by DEQ was old and experiencing problems. Monitoring well 29 was retested again by DEQ on June 5, 2014 presumably using a better meter, and the methane gas concentration was at 1.8 percent and well within the compliance level. The target compliance level for a monitoring well is no more than 5 percent methane by volume.

On June 5, 2014, DEQ staff reviewed the condition of some of the monitoring wells. The staff found that the couplings and bolts on a few of the wells were in poor condition, although the DEQ technician was able to take methane readings. In an email dated June 10, 2014, DEQ asked PSFM to make certain repairs. PSFM responded on June 11, 2014 that it would send out its technician to check the wells and to make any needed repairs. On June 26, 2014, PSFM emailed DEQ that the recommended repairs had been completed and that all the monitoring wells were in good working order except for monitoring well 31, which had been placed in a manhole with DEQ approval and was constantly inundated by water. Monitoring well 29 showed methane gas levels within compliance limits.

Hashem and Skidmore take exception to the administrative law judge's Opinion that PSFM failed to maintain the LFGCS in effective working order. The judge states in her opinion that PSFM presented no evidence to support its assertion that Jason Bennett made repairs when PSFM was alerted to problems with the system. The administrative law judge is clearly in error. The summary determination record includes the Declaration of Hashem in Opposition to Summary Determination. Hashem testifies in his Declaration on pages 5 and 6 of the actions taken by Bennett to make repairs, whenever there was a high methane reading or concerns raised by the Department. The Declaration testimony is supported by Exhibits 13, 14, 15, and 16 to the Hashem Declaration. The summary determination record also includes the Declaration of Bennett in which he testifies that he promptly made all the repairs to LFGCS requested by DEQ.

PSFM tested the monitoring wells on a monthly basis as required by the Permit, supplied its data to DEQ on a monthly basis, and responded in an appropriate and timely fashion to any concerns raised by DEQ. The monitoring wells were in good enough condition to allow Bennett, PSFM's contractor, to conduct tests using the equipment approved by DEQ according to the procedures set forth in the permit. PSFM had a high reading on well 29 in January 2014 and again in March 2014. In both instances, PSFM took prompt corrective action to repair the LFGCS, re-tested the monitoring well, and obtained readings within compliance levels. PSFM properly operated the LFGCS in effective working order.

The evidence presented by DEQ is that just before and during surcharging work on the Dharma property, Dharma's contractor obtained high methane gas reading from monitoring well 29. There is no evidence that the contractor was using measuring equipment approved by DEQ or following DEQ approved procedures.

Assuming for the sake of argument that the Dharma contractor was following approved testing procedure, there is no evidence that the higher than normal methane readings at monitoring well 29 were the result of some problems with the maintenance and operation of the LFGCS. It can be inferred from the evidence that the high readings which fluctuated from 23.6 percent to 1.2 percent methane were a response to the activities of Dharma's contractor who was surcharging in the area.

Even if the readings were correct, as soon as PSFM received the information from DEQ about well 29, PSFM began to closely monitor the well, as required by the permit, and increased the blower time as suggested by DEQ. All readings after March 20, 2014 were within compliance levels, except for one reading obtained by DEQ on May 27, 2014,which at 6.3 percent was slightly over the 5 percent target. However, according to the DEQ technician, the meter used was old and had problems that day. When the well was re-tested by DEQ on June 5, 2014, using a newer meter, the methane reading was at 1.8 percent.

As for the condition of the monitoring wells, PSFM, Dharma, and DEQ were all able to take periodic readings. Even on June 5, 2014 when DEQ noted the condition of the monitoring wells, it obtained readings from all of the wells tested except for well 30. Monitoring well 30 was located in a manhole with the approval of DEQ, and this is the reason for its water problem.

DEQ notified PSFM on June 10, 2014 that, in its opinion, a few of the monitoring wells needed to be cleaned and the valves checked. PSFM promptly cleaned the monitoring wells and replaced couplings and bolts to the satisfaction of DEQ. There is ample evidence that PSFM complied with the provisions of the Permit to operate and maintain the LFGCS in effective working order.

**The administrative law judge erred in holding that $20,727 was an appropriate penalty for not maintaining the LFGCS in working order.**

The administrative law judge upheld a penalty of $20,720 for the alleged failure to keep the LFGCS in effective working order. The administrative law judge found that under the economic benefit portion of the civil penalty, PSFM should have spent, and therefor saved, $15,000 to repair three probes and monitors between January 13, 2014 and June 30, 2014 (Factual Findings 30 and 31). Hashem and Skidmore take exception to this ruling and portion of the Opinion.

According to Agency Exhibit 8, page 10, the penalty is based on an assumption that PSFM avoid costs of $15,000. DEQ has provided no evidence to support this figure. The monitoring wells were in effective working condition, and Dharma's Contractor, PSFM, and the DEQ technicians were all able to measure methane gas levels. As explained above, PSFM promptly repaired the probes after being notified by DEQ that minor repairs were requested, and PSFM continued to obtain monthly readings from the probes, thereby avoiding no costs. If there was a violation, the violation was de minimus. PSFM derived no economic benefit from avoiding repairs. Moreover, the costs of removing soil and gravel from two of the probes, replacing seven bolts that secure vault lids, and changing the fitting for attaching the gas meter to MW-31 were negligible.

**The administrative law judge erred in holding that PSFM violated the Permit provision requiring a financial assurance plan and in ordering Hashem and Skidmore to pay a penalty of $37,873.**

It is an undisputed fact that the landfill had been closed for approximately 29 years when the Department inserted a provision in the Permit that a financial assurance plan was required. No financial assurance plan was required in the past. The financial assurance plan should have been waived given the age of the closed landfill. In addition, the Department provided no evidence to support the penalty amount. Finally, Hashem and Skidmore should not be assessed the penalty because they have no liability for PSFM's violation of the Permit. For these reasons, Hashem and Skidmore take exception to this part of the Opinion.

**The administrative law judge erred in ordering Hashem and Skidmore to take the actions described in Section 3(a) through (g) of the Order.**

Hashem and Skidmore take exception to Section 3 of the Order whereby they are required, along with PSFM, to perform various conditions of the Permit within 60 days. As explained above, neither Hashem nor Skidmore should have any liability or responsibility for PSFM's performance of the Permit.

## CONCLUSION

The Environmental Quality Commission should take the following action:

1. Adopt the findings of fact and conclusions of law proposed by Skidmore and Hashem.

2. Reverse the granting of summary determination in favor of the Department on the issues of: (a) whether PSFM failed to keep the LFGCS in effective working order; (b) whether Hashem has personal liability for Permit violations; whether Skidmore has liability for Permit violations; and whether the civil penalties are appropriate.

3. Rule that the Permit expired or was no longer in effect after December 2012.

4. Rule that Hashem has no liability for the performance of the Permit.

5. Rule that Skidmore has no liability for the performance of the Permit.

6. Rule that PSFM maintained the LFGCS in effective working order.

7. Rule that the penalty of $20,727 for not maintaining the LFGCS in working order is not appropriate.

8. Rule that the penalty for failure to provide a financial assurance plan is not appropriate.

9. Revise that portion of the Order that requires Hashem and Skidmore to take affirmative action within 60 days to perform the Permit.

## DOCUMENTS INCLUDED

The following documents are submitted with Respondent Hashem and Skidmore's Exceptions and Brief and are to be included in the record for Commission review:

1. Mike Hashem & Skidmore Limited Partnership's Motion for Summary Determination.
2. Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination.
3. Declaration of Richard D. Senders in Support of Respondents' Motion for Summary Determination.
4. Declaration of Mike Hashem in Support of Respondents' Motion for Summary Determination.
5. Respondents Hashem and Skidmore's Reply to DEQ's Response to the Hashem and Skidmore's Motion for Summary Determination.

6. Respondent PSFM LP in Opposition to DEQ Motion for a Summary Determination.

7. Respondents Skidmore and Hashem's Memorandum of Facts and Law in Opposition to Dept. of Environmental Quality's Motion for Summary Determination.

8. Declaration of Mike Hashem in Opposition to DEQ's Motion for Summary Determination.

9. Declaration of Jason Bennett in Opposition to DEQ's Motion for Summary Determination.

10. Declaration of Richard D. Senders in Opposition to DEQ's Motion for Summary Determination.

11. Amended Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order.

DATED this 24 day of October, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Mike Hashem and
Skidmore Limited Partnership
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
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# CERTIFICATE OF SERVICE

On October 24, 2016, I served **RESPONDENTS HASHEM AND SKIDMORE'S EXCEPTIONS AND BRIEF** in OAH Case No.1604492, Agency Case No. LQ/SW-NWR-15-048 on the following people and in the manner set forth below:

**Hand Delivered to:**

Stephanie Caldera, EQC Assistant
Environmental Quality Commission
811 SW 6th Avenue
Portland, OR 97204

**Hand Delivered to:**

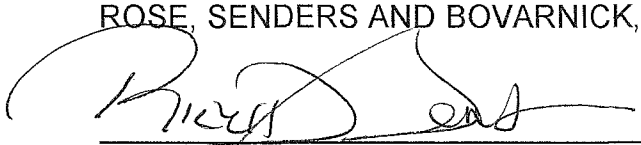
Kieran O'Donnell
Oregon DEQ Enforcement
811 SW 6th Ave
Portland, OR 97204

**Sent by Certfied Mail, Return Receipt Requested:**

PSFM Limited Partnership
c/o Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 24th day of October, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
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Attachment A 7

# ROSE, SENDERS AND BOVARNICK, LLC

**Steven M. Rose**
*(Retired)*
**Richard D. Senders***
rsenders@rsblaw.net

**Admitted in Oregon and Washington*
***Admitted in Oregon, Washington and Montana*

**ATTORNEYS AT LAW**
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**Paul S. Bovarnick****
*(Of Counsel to Rose, Senders & Bovarnick, LLC)*
pbovarnick@rsblaw.net

RECEIVED
SEP 22 2016
OFFICE OF COMPLIANCE AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

September 22, 2016

**Hand Delivered and Sent by Facsimile to (503) 229-6762**

Environmental Quality Commission
c/o Dick Pedersen, Director, DEQ
Pete Shepard, Interim Director
811 SW 6th Avenue
Portland, OR 97204

Re: In the Matter of PSFM Limited Partnership,
Skidmore Limited Partnership, and Mike Hashem
OAH Case No. 1604492
Agency Case No. LQ/SW-NWR-15-048

Dear Mr. Pedersen and Mr. Shepard:

This law firm represents Skidmore Limited Partnership and Mike Hashem in the above-referenced case. Enclosed is Respondents Skidmore Limited Partnership and Mike Hashem's Petition for Commission Review for filing.

Sincerely,

Richard D. Senders

RDS:dms
Enclosure
cc: Kieran O'Donnell
PSFM Limited Partnership, c/o Johnny Kondilis
Skidmore Limited Partnership
Mike Hashem
W:\Hashem-DEQ\Correspondence\09-14-16 Pedersen.wpd

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**ENVIRONMENTAL QUALITY COMMISSION**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | RESPONDENTS SKIDMORE LIMITED |
| **PSFM LIMITED PARTNERSHIP,** | ) | PARTNERSHIP AND MIKE HASHEM'S |
| **SKIDMORE LIMITED PARTNERSHIP,** | ) | PETITION FOR COMMISSION REVIEW |
| **AND MIKE HASHEM** | ) | |
| | ) | OAH Case No. 1604492 |
| Respondents | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |

Respondents Skidmore Limited Partnership and Mike Hashem request that the Commission review the Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order issued by Senior Administrative Law Judge Monica A. Whitaker on August 24, 2016 and the Amended Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order issued by Senior Administrative Law Judge Monica A. Whitaker on September 7, 2016.

Petitioners will file written exceptions and a brief within 30 days from the filing of this Petition for Review.

DATED this 22nd day of September 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Plaintiff
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Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

## CERTIFICATE OF SERVICE

On September 22, 2016, I served Respondents Skidmore Limited Partnership and Mike Hashem's Petition for Commission Review in OAH Case No.1604492, Agency Case No. LQ/SW-NWR-15-048 on the following people and in the manner set forth below:

Hand Delivered and sent via Fax to (503) 229-6762:

Environmental Quality Commission
c/o Dick Pedersen, Director, DEQ
Pete Shepard, Interim Director
811 SW 6th Avenue
Portland, OR 97204

Hand Delivered and sent via Fax to (503) 229-6124:

Kieran O'Donnell
Oregon DEQ Enforcement
811 SW 6th Ave
Portland, OR 97204

Sent by Mail:

PSFM Limited Partnership
c/o Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 22nd day of September, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
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Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**ENVIRONMENTAL QUALITY COMMISSION**

| | |
|---|---|
| IN THE MATTER OF: | ) **AMENDED** |
| | ) **CONSOLIDATED RULINGS ON** |
| **PSFM LIMITED PARTNERSHIP,** | ) **CROSS MOTIONS FOR** |
| **SKIDMORE LIMITED** | ) **SUMMARY DETERMINATION AND** |
| **PARTNERSHIP, AND** | ) **PROPOSED AND FINAL ORDER** |
| **MIKE HASHEM** | ) |
| | ) OAH Case No.: 1604492 |
| Respondents | ) Agency Case No.: LQ/SW-NWR-15-048 |
| | ) |

## HISTORY OF THE CASE

On May 13, 2015, the Department of Environmental Quality (DEQ or the Department) issued a Notice of Civil Penalty Assessment and Order (Notice) to PSFM Limited Partnership (PSFM), Skidmore Limited Partnership (Skidmore), and Mike Hashem (Hashem) (collectively, Respondents), proposing to impose civil penalties in the amount of $58,593 against Respondents. On or about June 3, 2015 and June 16, 2015, Respondents requested a hearing. On March 8, 2016, the Department referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Jennifer H. Rackstraw to preside over the case.

ALJ Rackstraw convened a telephone prehearing conference on April 25, 2016. Attorney Richard Senders represented Respondents Skidmore and Hashem. Johnny Kondilis represented Respondent PSFM. Kieran O'Donnell represented the Department. At the conference, ALJ Rackstraw scheduled deadlines for the submission of motions for summary determination, responses, and replies. She also scheduled the contested case hearing to convene on September 19 and 20, 2016. During the prehearing conference, the matter was reassigned to Senior ALJ Alison Greene Webster.

Respondents Skidmore and Hashem filed Mike Hashem and Skidmore Limited Partnership's Motion for Summary Determination (Hashem and Skidmore Motion) and supporting documents on June 23, 2016. The Department filed its Motion for Summary Determination (the Department's Motion) and supporting documents on June 27, 2016. The Department's Motion included an Amended Notice of Civil Penalty Assessment and Order (Amended Notice), proposing to impose civil penalties against Respondents in the amount of $58,593 and requiring Respondents to comply with certain requirements.

Respondent PSFM filed a statement[1] in which it opposed the Department's Motion on July 14, 2016. Respondents Hashem and Skidmore filed a Memorandum of Facts and Law In Opposition to Dep[artment] of Environmental Quality's Motion for Summary Determination (Hashem and Skidmore Opposition) and supporting documents on July 14, 2016. The Department filed its Response to Respondents' Motion for Summary Determination (the Department's Response) and supporting documents on July 15, 2016. Respondents Hashem and Skidmore filed a Reply to the Department's Response on July 20, 2016. The Department filed a Reply to Respondents' Hashem and Skidmore opposition. Response on July 22, 2016.

The OAH reassigned the matter to Senior ALJ Monica A. Whitaker for purposes of ruling on the motions for summary determination. ALJ Whitaker closed the record on July 26, 2016 and took the matter under advisement.

On August 24, 2016, the OAH issued ALJ Whitaker's Consolidated Rulings on Cross Motions for Summary Determination and Proposed and Final Order. On August 29, 2016, the OAH received the Department's Request for an Amended Proposed and Final Order.[2] The ALJ

[1] In its statement, PSFM stated that "adopts as its own the facts and arguments submitted by Skidmore [Limited Partnership] and Mike Hashem in their opposition to DEQ's motion for summary determination." PSFM offered no other information or evidence in support of its statement.

[2] OAR 340-011-0573 provides, in relevant part:

> (2) Within 15 days after a proposed contested case order is served, a participant in the contested case hearing may file a motion requesting that the administrative law judge clarify or supplement a proposed order. The motion must specify why the participant believes that the proposed order fails to conform to the requirements of OAR 137-003-0645 and recommend changes to the order. The motion must be filed with the administrative law judge and a copy provided to all participants.
>
> (3) The administrative law judge may grant or deny a motion filed under section (2) of this rule within 15 days. If the motion is granted, the administrative law judge may take the matter under advisement and reissue the proposed order unchanged or may issue an amended proposed order. If the administrative law judge fails to act on the motion within 15 days, the motion is deemed denied by operation of law.
>
> (4) The filing of a timely motion for clarification under section (2) of this rule tolls the period for filing a Petition for Commission Review of the proposed contested case order under OAR 340-011-0575. Tolling of the period begins on the day the motion is filed with the administrative law judge and ends on the day the motion is denied, deemed denied by operation of law, or the proposed order is reissued without changes. If the administrative law judge issues an amended proposed order, the amended order will be treated as a new proposed order for the purpose of filing a timely Petition for Commission Review under 340-011-0575.
>
> (5) The motion for clarification authorized by this rule is intended to alter the provisions of OAR 137-003-0655 but not to eliminate the authority of the administrative law judge to correct a proposed order in the manner specified in section (2) of that rule.

considered the Department's request and determined that the Proposed and Final Order should be amended to include the conditions that were included in the Department's Amended Notice.

## ISSUES

1. Whether Respondents Hashem and Skidmore are entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Whether Respondents Hashem and Skidmore are not responsible for performance of the Permit.

b. Whether the Department has the authority to assess a civil penalty against Respondents Hashem and Skidmore.

2. Whether the Department is entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Whether Respondents are jointly liable for all of the violations cited in the Second Amended Notice.

b. Whether Respondents failed to maintain the landfill gas control system (LFGCS) in effective working order such that methane concentrations do not exceed compliance limits.

c. Whether Respondents failed to submit to the Department a financial assurance plan and annual updates.

d. Whether Respondents failed to submit to the Department an updated post-closure operations and maintenance plan.

f. Whether Respondents failed to provide the Department an updated landfill gas monitoring plan.

g. Whether Respondents failed to conduct quality assurance testing.

h. Whether Respondents failed to submit to the Department an annual post-closure evaluation report.

i. Whether the Department's proposed civil penalty is appropriate.

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(6) A motion for clarification and any response to a motion for clarification will be part of the record on appeal.

## EVIDENTIARY RULINGS

The following documents were admitted into the record and considered in reaching this Ruling and Proposed and Final Order:

- Mike Hashem & Skidmore Limited Partnership's Motion for Summary Determination and the following supporting documents:
  - Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination (Memorandum) and Memorandum Exhibits 1-6
  - Declaration of Mike Hashem in Support of Motion for Summary Determination (Hashem Declaration) and Hashem Declaration Exhibits 1 through 15
- The Department's Motion for Summary Determination and the following supporting documents:
  - Declaration of Kieran O'Donnell
  - Exhibits A1 through A8
- Respondents Skidmore and Hashem's Memorandum of Facts and Law in Opposition to Dep[artment] of Environmental Quality's Motion for Summary Determination (Opposition) and the following supporting documents:
  - Opposition Exhibits 1 and 2
  - Declaration of Jason Bennett in Opposition to DEQ's Motion for Summary Determination
  - Declaration of Richard D. Senders in Opposition to DEQ's Motion for Summary Determination and supporting Exhibits 1 through 6
  - Declaration of Mike Hashem in Opposition to DEQ's Motion for Summary Determination and supporting Exhibits 1 through 17
- The Department's Response to Respondents' Motion for Summary Determination and supporting Exhibit A10
- Respondents Hashem and Skidmore's Reply to DEQ's Response to the Hashem and Skidmore[] Motion for Summary Determination
- The Department's Reply to Respondents' Response to DEQ's Motion for Summary Determination

## FINDINGS OF FACT

### *Relevant Background*

1. The H.G. LaVelle Landfill is located at 2800 NE 82nd Ave., Portland, Oregon 97220 (the landfill or the Facility). (Ex. A4 at 1.) An active landfill gas extraction system was installed in 1980 after the Department found high levels of methane in the soil 200 feet north of the landfill in a residential area. The gas extraction system consists of 19 wells located around the north and west perimeter of the landfill. These wells are connected to a large blower which pulls landfill gas out of the soil. (Respondents' Motion Exhibit 2 at 1.)

2. Harold LaVelle operated this demolition landfill until his lease expired on December 31, 1982. At that time, he closed out and covered all of the landfill except a small area that

needed approximately 60,000 cubic yards of fill to bring it up to final grade. (Respondents' Motion Exhibit 2 at 1.) Rose City Sand & Gravel Co. (Rose City) assumed responsibility for operating the landfill gas control facilities and maintaining the site. Rose City applied for a closure permit. (*Id.*)

3. On December 1, 1984, the Department issued Solid Waste Disposal Site Closure Permit Number 211 (closure permit) to Rose City for the landfill. (Declaration of Hashem in Opposition Exhibit 2.) Rose City subdivided the 33-acre tract into five parcels and listed the properly for sale.

4. In 1996, Mike Hashem participated in the formation of PSFM Limited Partnership. PSFM's general partner is MMDF Corp. Hashem was MMDF's president and was involved in the acquisition of the 33-acre site known as the LaVelle Landfill. Hashem was also involved in PSFM's administration of the closure permit issued to PSFM. (Declaration of Hashem at 1; Declaration of Hashem in Support of Motion for Summary Determination Ex. 1.)

5. In or about 1997, PSFM acquired Parcel No. 4, which consisted of approximately 21 acres. At about the same time, M. Hashem Limited Partnership acquired Parcel 2, which consisted of approximately 1.5 acres, and Parcel 3, which consisted of approximately 4.5 acres.[3] M. Hashem's general partner was NMB Corp, of which Hashem was, and is, president. (Declaration of Hashem at 1-2.)

6. In 1998, PSFM assumed the closure permit previously issued to Rose City. The Department issued an amended closure permit on June 30, 1998 that named PSFM as the permittee, owner, and operator. (Declaration of Hashem at 2.)

7. In March 2000, PSFM sold its 21-acre parcel to Skidmore on contract. The contract was paid off in 2004. (Declaration of Hashem at 3.) Skidmore is registered with the Oregon Secretary of State as a limited partnership. Skidmore Management Corporation[4] is Skidmore's general partner. At the time Skidmore acquired the 21-acre parcel, Hashem served as Skidmore Management Corporation's president. (Declaration of Hashem at 3.)

8. Multnomah County, Oregon property records from 2016 list Skidmore Limited Partnership as the owner of 12.51 acres located at 2800 NE 82nd Ave. Portland, Oregon. (Ex. A5.)[5]

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[3] Rose City sold Parcel 5 to a developer, who built an apartment complex. Rose City sold Parcel 1 to an individual, who built a carpet store. (Declaration of Hashem at 2.)

[4] Skidmore Management Corporation is registered with the Oregon Secretary of State Corporation Division, with Mike Hashem listed as the president. (Ex. A6 at 3.) Skidmore Management Corporation is the sole partner of Skidmore Limited Partnership. (*Id.* at 1.)

[5] The Multnomah County property records indicate that PSFP Limited Partnership sold the property at this address to Skidmore Limited Partnership on November 6, 2008 for consideration in the sum of $0. (Ex. A5 at 2.)

9. The closure permit was set to expire on March 31, 2004. At the Department's request, PSFM submitted an application to renew the permit on September 1, 2003. Hashem signed the application in his capacity as president. (Declaration of Hashem at 3.)

10. In 2004 or 2005, M. Hashem Limited Partnership sold Parcel 2 to Asian American Plaza LLC. (Declaration of Hashem at 3.)

11. In February 2009, the Department issued PSFM an order requiring it to investigate and to take remedial action at the landfill due to high methane readings. A work plan was prepared by PSFM's engineers and approved by the Department. The work plan called for expansion of the active gas extraction and passive ventilating system that was installed at the landfill in 1979. Pursuant to the work plan, four new extraction wells were added to the system as well as additional low grade piping. The work was completed by the end of September 2009. (Declaration of Hashem at 3.)

12. PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and provide the readings to the Department. (Declaration of Hashem at 4.) Bennett was responsible for maintaining the Facility's gas control system. He has maintained the system and taken monthly readings of methane gas levels for over seven years. The Department trained Bennett on how to sample methane gas levels. To the best of Bennett's knowledge, the Facility's gas control system was maintained in effective working order throughout 2014. (Declaration of Bennett at 1.)

***The Department's methane investigation at the Facility***

13. Methane is a flammable gas that can pose a safety risk when it migrates into enclosed spaces such as in-ground utility service boxes, utility conduits, and unvented crawl spaces beneath buildings. In some circumstances, the presence of methane in a closed space may pose an explosion hazard. In-ground utility boxes or utility buildings built on the soil may provide enclosed spaces for methane vapors to concentrate. (Declaration of Senders in Support of Respondents' Motion Exhibit 1.)

14. The Department conducted an evaluation of methane levels in the soil, utility lines, and enclosed spaces in structures adjacent to the landfill. DEQ and the landfill owner tested for methane in confined spaces and crawl spaces in some of the ten buildings adjacent to the Facility on the north side of Knott Street. (Declaration of Senders in Support of Respondents' Motion Exhibit 1.) No methane was found in the confined spaces in or around the Knott Street homes. However, elevated methane levels were found in methane monitoring wells near some of these homes. (*Id.*)

***The November 2011 Permit***

15. On September 16, 2003, the Department received a solid waste permit renewal application. (Ex. A7 at 2.) On November 14, 2011, the Department issued Solid Waste Permit 211 to Hashem. The November 14, 2011 permit listed the site owner and operator as PSFM Limited Partnership. (Ex. A7 at 2.)

16. On November 18, 2011, the Department amended the permit. The amended 2011 permit was issued to PSFM. The amended permit lists "Mike Hashem PSFM Limited Partnership" as the owner and lists PSFM Limited Partnership as the operator. (Ex. A7 at 1.) The permit expires on August 31, 2021. The 2011 permit contains the following relevant sections and conditions:

**7.2 Post-closure plan**

> The permittee must prepare an updated post-closure operations and maintenance plan and submit the plan to DEQ for review and approval by no later than October 15, 2012. The post-closure plan must describe in detail how the permittee intends to carry out all activities identified in sections 7.4 to 7.12 of this permit as well as other requirements of this permit and must be prepared and stamped by a registered engineer with current Oregon registration.
>
> The permittee must revise the post-closure plan as necessary to keep it reflective of current facility conditions and procedures. Plan revisions must be submitted to DEQ for approval.
>
> Reference: *Solid Waste Landfill Guidance,* September 1996, provides information on applicable elements of a post-closure plan.

**Section 7.4 Landfill gas control system**

> The permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Refer to methane compliance limits in permit Section 9.4.
>
> The permittee must notify DEQ about any damaged, defective, or worn-out gas-system equipment, replace or repair such equipment immediately, and provide a written description of any such work in the annual post-closure maintenance and monitoring report.

**Section 8.2 LFG monitoring plan**

> The permittee must update the landfill gas (LFG) monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-required monitoring procedures. The current plan, dated April 3, 2009, was prepared by Hart Crowser, Inc. By March 31, 2012, the permittee must submit an updated plan to DEQ for review and approval. The plan updates must be prepared and stamped by a registered geologist or registered engineer with current Oregon registration.

**Section 9.5 Methane exceedance**

If methane levels exceed the specified compliance limits, the permittee must:

1. Immediately take all necessary steps to ensure protection of human health and safety and report the exceedance to DEQ;

2. Within 7 days of the detection (unless DEQ approves an alternative schedule), notify DEQ in writing about the exceedance and describe measures taken to protect human health and safety;

3. Immediately increase the frequency of monitoring at the affected compliance monitoring probe or probes to a weekly testing schedule, or more frequently if DEQ requires, until methane concentrations return to levels below the compliance limits for a period of at least two weeks;

4. Adjust or modify the landfill gas control system as needed to increase vacuum levels (suction pressure) and gas extraction rates in the affected area;

5. Within 60 days of the exceedance, submit to DEQ for review and approval a written report plan describing the corrective actions implemented.

**Section 8.9 Quality assurance testing**

Each year the permittee must retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. The consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee must submit the quality assurance test results to DEQ as an attachment to the annual maintenance and monitoring report.

**Section 9.4 Methane compliance limits**

The concentration of methane must not exceed:

- 25 percent of the Lower Explosive Limit for methane in onsite structures (excluding gas control structures or gas recovery system components); and
- The Lower Explosive Limit for methane in soil gas at the facility

boundary.

Note: The Lower Explosive Limit for methane is 5 percent by volume.

**Section 10.2 Financial Assurance Plan**

Prior to May 31, 2013, the permittee must prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval. The plan also needs to propose a financial assurance mechanism. The permittee must revise the financial assurance plan in the future as necessary to reflect current post-closure and corrective action costs and the current financial assurance mechanism. The permittee must submit any future plan revisions to DEQ for review and approval and maintain an up-to-date copy of this plan in the permitted-facility administrative records.

Reference: The plan must be prepared in accordance with OAR 340-095-0090. Acceptable mechanisms are described in OAR 340-095-0095.

**Section 10.4 Recertification of financial assurance**

The permittee must annually review and update financial assurance requirements. The permittee must submit the annual update to DEQ prior to May 31 of each year, beginning in 2014.

Note: The permittee must prepare the annual review according to OAR 340-095-0090(6)(d)(A).

**Section 11.3 Evaluation**

Prior to February 15 of each year, the permittee must evaluate the facility's status and submit to DEQ, as part of the annual post-closure maintenance and monitoring report, the following information:

- a discussion of implementation of the post-closure plans
- a description of unanticipated occurrences and any changes to the post-closure plans

**Section 12.1 Summary**

| Due Date | Activity | See section… |
|---|---|---|
| Each calendar quarter by March 15, June 15, September 15, and December 15, beginning in 2012, | Submit landfill gas test data for the preceding three months | 8.11 Summary of LFG probe monitoring procedures<br>8.12 Landfill |

| | | |
|---|---|---|
| for each year the permit is in effect | | gas monitoring |
| By March 31, 2012 | Submit updated landfill gas monitoring plan | 8.2 Landfill gas monitoring plan |
| Within 180 days of issuance of this permit | Submit existing or modified property deed record | 11.6 Deed record |
| By February 15, beginning in 2013, for each year the permit is in effect | Submit an annual post-closure maintenance and monitoring report | 7.17 Annual reporting requirements 11.3 Evaluation |
| By May 31, 2013 | Submit financial assurance plan | 10.2 Financial assurance plan |
| By May 31 of each year, beginning in 2014 | Submit annual financial assurance update | 10.4 Recertification of financial assurance |

(Ex. A7 at 8-9, 12-18; emphasis in original.)

***The Department's 2009 Order and ongoing monitoring***

17. On February 25, 2009, the Department issued to Hashem, M. Hashem Limited partnership/PSFM Limited Partnership an Order Requiring Investigation and Removal and Remedial Actions (Unilateral Order). (Ex. A10.) The Unilateral Order stated, in relevant part:

> **1. Purpose**
> The purpose of this Unilateral Order (Order) is to protect public health, safety, and welfare and the environment by requiring investigation and removal and/or remedial actions at the H.G. LaVelle Landfill Site in accordance with ORS 465.200 through 465.420 and regulations promulgated there under.
>
> **2. Findings of Fact**
>
> A. Mr. Mike Hashem is the current owner of the property at the southeast corner of NE 82nd Avenue and NE Siskiyou Street in Portland, Oregon (the Property). The landfill occupies tax lots 100 and 400. The "site", referenced in DEQ files as H.G. LaVelle Landfill or LaVelle Landfill site, includes the Property and all places where contamination from the Property, including but not limited to landfill gases, has come to be located. * * *.

* * * * *

D. Methane gas concentrations in excess of the lower explosive limits have been detected at several locations on the landfill property. Methane readings have shown 45 percent by volume in a monitoring probe MW-30 located at the southern property boundary within 100 feet north of the Madison Place Subdivision, 36.5 percent by volume in monitoring probe MW-34 near the landfill's northeast boundary and approximately 60 percent by volume in passive vents located near the landfill's northern boundary, within 100 feet of off-site residences on N.E. Siskiyou Street. Because Respondent has not provided information on methane gas readings for over two years, DEQ is concerned that gas could have migrated to offsite residences.

E. Current requirements for operation and maintenance of the landfill are specified in the Solid Waste Disposal Site Closure Permit No. 211. The permit expired on April 4, 2004, and was not renewed because a change in ownership of the Property was anticipated by DEQ and Respondent. That transfer of the Property did not occur. However, because DEQ has not terminated the expired permit, its conditions still apply as specified in OAR 340-93-070(7)(b)(iii).

F. The permit requires, among other things, that the Respondent measure methane concentrations at all the gas monitoring wells at least twice each month, and submit this information to DEQ every three months. DEQ has not received monitoring data in over two years. Recent inspections indicate that the active venting system is operating. However, DEQ has not received data to indicate whether it is operating properly.

G. During DEQ's March 16, 2007 inspection of the landfill site the Respondent indicated that methane monitoring and reporting to DEQ would resume consistent with the requirements of the solid waste closure permit. Following the inspection, however, the Respondent did not submit any methane monitoring results during the calendar years 2007 and 2008. When DEQ contacted the Respondent by phone regarding methane monitoring requirements, in follow-up to the March 16, 2007, inspection, the Respondent refused to conduct methane monitoring or to provide any information required under the solid waste closure permit.

* * * * *

Based on the above Findings of Fact and Conclusions of Law and Determinations, DEQ Orders:

> **5. Work to Be Performed**
>
> A. Work plan. Within 20 calendar days of issuance of this Order, Respondent shall submit a work plan describing activities * * *. This Work Plan shall describe all equipment and methods used, and the contents of reports submitted to document these activities. * * *.
>
> B. Gas Monitoring. Respondent shall record the barometric pressure and measure methane, carbon dioxide, and oxygen concentrations and gas pressure at all existing monitoring probes a minimum of once every week for one month immediately following the issuance of this order and once every two weeks, thereafter, until DEQ determines that a lower monitoring frequency is acceptable. Results will be described in reports submitted monthly to DEQ, except that the respondent must report results for the initial one-month period of monitoring in the Evaluation Report described in paragraph C below. * * *.
>
> C. Evaluation of gas management and monitoring system. Respondent shall conduct a thorough evaluation of the gas management and monitoring system and prepare a report describing the observations, conclusions and recommendations. This report shall also provide a summary and analysis of the initial methane monitoring results collected in accordance with Paragraph B above. The evaluation shall address the condition of all extraction and monitoring equipment (including perimeter monitoring probes), system performance, and recommendations for modifications to system components and operation. This report shall be submitted within 30 days of DEQ approval of the work plan.

(*Id.* at 1-5.)

18. In January 2010, the Department measured landfill gas concentrations in key gas monitoring wells, and compared readings using the Department's monitor and the landfill owner's monitor. As a result, the Department made the following recommendations:

> 1. All wells should be equipped with caps with quick-connect fittings for attaching the gas meter. DEQ concluded that wells on the east side of the landfill do not require further monitoring. The following wells are therefore excluded from this requirement (listed from north to south): MW-20, 28, 27, 19, 26, 25, 18, 24, 23, and 33.
>
> 2. Landfill gas should be measured at all monitoring wells on the north, west and south sides of the landfill.
>
> 3. The extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continue to

be elevated along the landfill's south side.

4. The next round of readings should be done in February 2010. DEQ should collect readings from selected wells also, to provide additional information on how well the two meters correlate.

5. MW-30 is adjacent to a home and high methane readings have been recorded there in the past. It should therefore be pumped out so that it can be sampled from now on. A pump with sufficient capacity should be used so that water can be removed quickly.

(Declaration of Hashem in Support of Motion for Summary Determination Ex. 6 at 3.)

19. In 2012, M. Hashem Limited Partnership and Skidmore did a lot line adjustment. After the lot line adjustment, Skidmore retained 12.5 acres and M. Hashem Limited Partnership owned 13.7 acres. Following the lot line adjustment, M. Hashem Limited Partnership entered into an agreement to sell all of the 13.7 acre parcel to Northwest Zen Sangha, dba Dharma Rain Zen Center (Dharma). (Declaration of Hashem in Support of Motion for Summary Determination at 5.)

20. In October 2012, Dharma entered into an Order on Consent – PPA (Prospective Purchaser Agreement) with the Department. The purpose of the PPA was to "(a) protect public health, safety, and welfare of the environment in accordance with applicable provisions of ORS 465.200 through 465.420 and regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Respondent [Dharma] with protection from potential liabilities in accordance with applicable law." (Declaration of Hashem in Support of Motion for Summary Determination Ex. 11 at 3.) The PPA requires Dharma to grant access to its purchased property to the Department, its contractors, the permittee, or the permittee's successors, to perform the continued operation and oversight of the Facility. (*Id.* at 9.)

21. On March 14, 2014, the Department notified PSFM that monitoring well 29 was showing elevated methane readings, and asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. (Declaration of Hashem in Support of Motion for Summary Determination at 5 and Exhibit 12.) That same day, PSFM notified the Department of a problem it had with the gas blower extraction system a couple of months earlier and speculated that this was the likely cause of the higher than normal reading. PSFM also informed the Department that the extraction blower system had been repaired. PSFM agreed to follow the Department's recommendations and to retest the monitoring wells that were producing the high readings. By March 20, 2014, PSFM was reporting that well 29 was in compliance. (Declaration of Hashem at 5.)

22. On June 5, 2014, Department staff reviewed the condition of some of the monitoring wells and found that some of the wells were in poor condition. In an email dated June 10, 2014 and addressed to Hashem, the Department asked PSFM to repair certain monitoring wells. Hashem responded on June 11, 2014 that PSFM would send out its technician to check the wells and make the necessary repairs. (Declaration of Hashem in Support of Motion for Summary

Determination at 5-6 and Ex. 14.)

23. On June 26, 2014, Hashem emailed the Department and indicated that the monitoring wells were in good working order except for monitoring well 31, which had been placed in a manhole and was inundated with water. Monitoring well 29 showed methane gas levels within compliance limits. Hashem again emailed the Department on June 30, 2014 with information that Bennett had removed some dirt and gravel from the MW-31 casing, and replaced the valves on MW-29, 31, 32, 3, 4, and 5. (Declaration of Hashem in Support of Motion for Summary Determination at 6 and Ex. 15.)

24. Tim Spencer is employed by the Department as an environmental engineer and solid waste project manager. He has worked in this or in similar positions for 27 years. (Ex. A4 at 1.) Mr. Spencer has managed the Department's oversight of the landfill for approximately 20 years. During the course of his oversight, Mr. Spencer has communicated directly with Hashem regarding the statutory, rule, and permit requirements that pertain to the landfill. Hashem has been Spencer's primary point of contact for his oversight of the landfill's operations. Spencer has communicated with Hashem via telephone or email regarding the landfill's operation since at least 1998. (*Id.* at 2, 11-12.) Spencer has consistently witnessed Hashem act as a manager of the landfill, directing funds and resources for remedial improvements, operations, maintenance, and monitoring. (*Id.* at 1-2.)

25. In 2014, Mr. Spencer reviewed the LFGCS monitoring results for the Facility. The results indicated that methane levels exceeded five percent from the following wells on the following dates:

- Wells MW-29, MW-3S, and MW-4S on January 13, 2014
- Wells MW-29 and MW-4S on January 24, 2014
- Well MW-29 on May 27, 2014

(Ex. A4 at 2, 4-7.) MW-29 and MW-30 are located approximately 10 to 15 feet from residential buildings. (*Id.* at 2.)

26. On May 27 and June 5, 2014, the Department performed inspections of the landfill. At the time of the inspections, the landfill's gas monitoring probes demonstrated the following deficiencies:

- MW-30 was plugged with water;
- MW-31 was filled with soil and gravel and fittings for attaching the gas meter were defective and would not provide an air tight seal;
- Bolts used to secure flush mounted vault lids on all seven gas probes checked by the Department were missing or damaged;

- MW-32 appeared to be plugged with unknown foreign material and did not function properly.

(Ex. A4 at 2, 8.)

27. In a June 10, 2014 email to Hashem, Mr. Spencer informed him about the June 5, 2014 site visit. The email detailed the findings from the site visit and outlined which wells had methane levels in excess of five percent. The email stated, in part:

> Because of the public safety risks associated with methane gas it is extremely important that PSFM maintain all the gas monitoring wells in good working order. Accurate monitoring-well readings are the only way to determine if the gas control system is doing an adequate job of preventing off-site migration of landfill gas beneath neighboring properties.
>
> Please submit to DEQ a plan for evaluating the gas monitoring wells and restoring those that are in poor condition. In addition, we would like to schedule a site visit with you within the next 3 weeks to a month to conduct split PSFM-DEQ testing of the gas monitoring wells.

(Ex. A4 at 9-10.)

28. As of June 27, 2016, PSFM has not submitted to the Department a financial assurance plan or annual updates to the financial assurance plan, a post-closure operations and maintenance plan, an updated landfill gas monitoring plan, or a post-closure evaluation report for any of the years of operation under the permit. (Ex. A4 at 2.)

29. From 2012 to 2015, PSFM did not submit, to the Department, quality assurance testing results conducted by an independent Department-approved consultant. (Ex. A4 at 3.)

***The Economic Benefit***

30. The economic benefit portion of the civil penalty formula is the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay a penalty than to pay the costs of compliance. (Ex. A8 at 1.)

31. The Department determined Respondents should have spent $15,000 to repair three probes and monitors from these probes since January 13, 2014. (Ex. A1 at 9.) Additionally, the Department concluded Respondents avoided spending $25,000 to develop and maintain a financial assurance plan. (*Id.* at 11.)

32. The Department relies on the EPA's "BEN" computer model to determine economic benefit. The BEN model relies on income-tax rates, inflation rates, and discount rates. The

model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the years of the violation, the state where the violation occurred and the entity's legal and profit status (*e.g.,* C-corporation, other for-profit, non-profit, municipality, or federal facility). The BEN model calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. (Ex. A8 at 2.)

## CONCLUSIONS OF LAW

1. Respondents Hashem and Skidmore are not entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Whether Respondents Hashem and Skidmore are not responsible for performance of the Permit.

b. Whether the Department has the authority to assess a civil penalty against Respondents Hashem and Skidmore.

2. The Department is entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Respondents are jointly liable for all violations cited in the Second Amended Notice.

b. Respondents failed to maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits.

c. Respondents failed to submit to the Department a financial assurance plan and annual updates.

d. Respondents failed to submit to the Department an updated post-closure operations and maintenance plan.

f. Respondents failed to provide the Department an updated landfill gas monitoring plan.

g. Respondents failed to conduct quality assurance testing.

h. Respondents failed to submit to the Department an annual post-closure evaluation report.

i. The Department's proposed civil penalty is appropriate.

## OPINION

*Standard of Review for Motion for Summary Determination*

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

> (6) The administrative law judge shall grant the motion for a summary determination if:
>
> (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
>
> (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
>
> (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
>
> (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.
>
> * * * * *
>
> (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

Pursuant to OAR 137-003-0580, the various motions, responses, replies, and the supporting declarations, affidavits, and exhibits were considered. Hashem and Skidmore move for partial summary determination, while the Department moves for summary determination on all issues. For the reasons set forth below, Hashem and Skidmore's Motion for Summary Determination is denied, and the Department's Motion for Summary Determination is granted.

*Whether the Department may enforce the Permit and assess a civil penalty*

Respondents Skidmore and Hashem contend that the post closure care period for the former landfill is 30 years and that more than 30 years have passed between the closure of the landfill and the alleged violations. Respondents Skidmore and Hashem assert the Department lacks the authority to enforce the Permit and to assess a civil penalty. In support of their position, Respondents Skidmore and Hashem rely on OAR 340-095-0050(4),[6] which provides:

[6] Respondents Skidmore and Hashem also rely on ORS 459.270(2), which provides:

> The Department shall terminate closure permits for non-municipal land disposal sites not later than 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

Respondents Skidmore and Hashem assert that the Department made no formal finding that the landfill posed a significant health or safety risk and that the permit was not formally extended beyond the 30-year termination date. Therefore, Respondents argue, the Department lacks the authority assess a civil penalty for conduct that occurred after the statutory termination of the permit.

The Department disagrees, arguing that OAR 340-095-0050(4) requires the Department to take affirmative action to terminate the permit, unless there is a public health need to maintain the permit. The Department further argues that OAR 340-095-0050(6) explicitly states that a closure permit "remains in effect and is a binding obligation of the permittee until the Department terminates the permit," again implying termination of a closure permit requires an affirmative act by the Department.

Here, the Department has not affirmatively terminated the permit. In addition, the evidence establishes that the Department has, on numerous occasions, found that there is a public health need to maintain the permit. In 2009, the Department issued the Unilateral Order because of the ongoing failure of Hashem and PSFM to properly manage the landfill. Moreover, in 2011, the Department renewed the permit, explicitly setting a permit expiration date of August 31, 2021. The renewal of the permit further supports the Department's argument that it intended to continue to regulate the landfill until at least 2021 because it found a significant public health need that required such continued regulation.

For these reasons, Skidmore's and Hashem's argument is not persuasive. Respondents Skidmore and Hashem are not entitled to a favorable ruling as matter of law that the Department lacks the authority to enforce the permit conditions and to assess a civil penalty for permit violations.

*Whether Respondents are jointly liable for all of the violations cited in the Amended Notice*

Respondent Hashem argues that he is not the permittee, the operator, or the owner of the real property and has not assumed the permit. Therefore, Hashem contends, he is not liable for the alleged permit violations. Respondent Skidmore argues that it is not the permittee or the operator, is not named on the permit, and has not assumed the responsibilities of the permit. Skidmore further argues that it has no liability for permit compliance. Respondents Skidmore and Hashem move for summary determination that they should be dismissed as Respondents in

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> Unless the department finds a need to protect against a significant hazard or risk to the public health, safety or environment, the department shall terminate any permit for an active supervision of a land disposal site 30 years after the site is closed.

this matter.

The Department contends that as either owners or operators demonstrating control over the Facility, all three Respondents are responsible for the violations cited in the Amended Notice. The Department moves for summary determination on this issue. The Department relies on ORS 459.205(2) in support of its position, which provides:

> The person who holds or last held the permit issued under subsection (1) of this section, or, if that person fails to comply, then the person owning or controlling a land disposal site that is closed and no longer receiving solid waste must continue or renew the permit required under subsection (1) of this section after the site is closed for the duration of the period in which the department continues to actively supervise the site, even though solid waste is no longer received at the site.

In addition, ORS 459.268 provides:

> When solid waste is no longer received at a land disposal site, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of this chapter, any applicable rule adopted by the Environmental Quality Commission under ORS 459.045 and any requirement imposed by the Department of Environmental Quality as a condition to renewing or issuing a disposal site permit.

ORS 174.100 provides, in part:

> As used in the statute laws of this state, unless the context or a specially applicable definition requires otherwise:
>
> * * * * *
>
> (5) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

ORS 174.127 provides:

> As used in the statute laws of this state:
>
> (1) The singular number may include the plural and the plural number, the singular.
>
> (2) Words used in the masculine gender may include the feminine and the neuter.

ORS 459.205(2) provides that when the permittee fails to comply with any applicable statute, rule, or permit condition, the burden of the proper operation of the landfill is placed on the person or persons that either own or control the property.

*Webster's Third New Int'l Dictionary* 496 (unabridged ed 2002) defines "control" as follows:

> [T]he act or fact of controlling * * * power or authority to manage: directing or restraining domination * * *.

The statutes do not define the terms "control" or "controlling." It is therefore necessary to consider the analytical approach set forth in *PGE v. Bureau of Labor and Industries,* 317 Or 606 (1993) and *State v. Gaines,* 346 Or 160, (2009) to discern the meaning of the phrase, as it is used in ORS 459.205(2) and 459.268. In *PGE*, the Oregon Supreme Court explained that to determine legislative intent, a court begins by examining a statute's text, and its statutory context, giving words of common usage their plain, natural, and ordinary meaning. If the legislative intent is unambiguous, the court stops at that first level of analysis. *PGE*, 317 Or at 610-11.[7]

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[7] The Court in *PGE* stated:

> In this first level of analysis, the text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent [citations omitted]. In trying to ascertain the meaning of a statutory provision, and thereby to inform the court's inquiry into legislative intent, the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning [citations omitted].
>
> Also at the first level of analysis, the court considers the context of the statutory provision at issue, which includes other provisions of the same statute and other related statutes [citations omitted]. Just as with the court's consideration of the text of a statute, the court utilizes rules of construction that bear directly on the interpretation of the statutory provision in context. Some of those rules are mandated by statute, including, for example, the principles that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all," ORS 174.010, and that "a particular intent shall control a general one that is inconsistent with it," ORS 174.020. Other such rules of construction are found in case law, including, for example, the rules that use of a term in one section and not in another section of the same statute indicates a purposeful omission, *Emerald PUD v. PP&L,* 302 Or. 256, 269, 729 P2d 552 (1986), and that use of the same term throughout a statute indicates that the term has the same meaning throughout the statute, *Racing Com. v. Multnomah Kennel Club,* 242 Or. 572, 586, 411 P2d 65 (1966).

*PGE,* 317 Or at 610-11.

In the Final Contested Case Hearing Order *In the Matter of Kinzua Resources, LLC, ATR Services, Inc., Gregory M. Demers, and Frontier Resources LLC* (herein Kinzua) (OAH Case No. 1403637, Agency Case No. LQ/SW-ER-11-108) 2015, the Environmental Quality Commission (EQC) articulated the public health policy that supports the statutes' placement of liability for the operation of a landfill on multiple parties. The EQC stated that "the proper control and management of landfills is a matter of great significance to public health and the environment." *Kinzua* at 10. The EQC further stated that "ORS 459 establishes detailed and comprehensive regulation of these activities, including placing regulatory burdens on both the permittee, and in the event of the failure of the permittee to comply, those persons controlling the property." *Id.*

On its face, the 2011 permit was issued to PSFM as the permittee, and listed Mike Hashem, PSFM Limited Partnership as the owner and PSFM Limited Partnership as the operator. The overwhelming evidence in this case establishes that Hashem exercised direct control over the landfill. Hashem has been the primary individual with whom the Department has communicated for numerous years. Hashem has acted as a manager of the landfill, directed funds and resources for remedial improvements, operations, maintenance, and monitoring. Therefore, the Department has established that Hashem is liable for the violations as a person controlling the landfill pursuant to ORS 459.205 and ORS 459.268.

The evidence also establishes that Skidmore Limited Partnership is the record owner of 12.51 acres located at 2800 NE 82nd Avenue in Portland, the landfill's location. Skidmore Limited Partnership's sole partner is Skidmore Management Corporation, and Skidmore Management Corporation's president is Mike Hashem. Skidmore argues that a reasonable reading of the statute is that the owner must own all of the property or control all of the property in order to have liability and that neither the statute nor the regulations impose liability on an owner of just a portion or just a piece of a former landfill, unless the owner controls the landfill. Skidmore further argues that "[w]hat is relevant is whether or not Skidmore owned all of the former landfill property when the alleged non-compliance occurred in 2013 and 2014. It is undisputed that at the time of the alleged permit violations, Skidmore only owned about one-third of the site." Reply to DEQ's Response to Hashem and Skidmore's Motion for Summary Determination at 4. Skidmore contends that the Department cannot impose full or even partial liability on an owner of only a fraction of the former landfill.

In response, the Department argues that the statute does not contain limiting language, and that Skidmore's interpretation would "create an absurd result, allowing any owner to escape liability under the statute simply by selling off any portion of the closed landfill site." DEQ's Reply to Respondents' Response to DEQ's Motion for Summary Determination at 6. I agree with the Department. Skidmore's interpretation of the controlling statutes would require inserting what has been omitted from the statute's text.

For these reasons, Hashem and Skidmore are liable for the permit violations addressed below. Hashem and Skidmore's Motion for Summary Determination on this issue is denied, and the Department's Motion for Summary Determination on this issue is granted.

*Failure to maintain the LFGCS in effective working order*

The Department alleges Respondents failed to maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits.

OAR 340-095-0020 provides, in part:

> (9) Gas Control:
>
> (a) No person shall operate or maintain a non-municipal land disposal site except in conformance with the provisions for gas control in OAR 340-095-0030(4).

OAR 340-095-0030 provides, in part:

> (4) Gas Control. No person shall establish, expand or modify a non-municipal land disposal site such that:
>
> (a) The concentration of methane (CH4) gas at the landfill exceeds 25 percent of its lower explosive limit in facility structures (excluding gas control or gas recovery system components) or its lower explosive limit at the property boundary.

Respondents Skidmore and Hashem argue that they did maintain the LFGCS in effective working order, specifically by having Jason Bennett make all the repairs required to the LFGCS as requested by DEQ. However, Respondents presented no evidence to support this assertion.[8] The evidence in this record establishes that methane concentrations exceeded compliance limits at monitoring wells MW-29, MW-30, and MW-3S on January 13, 2014, at monitoring wells MW-29 and MW-4S on January 24, 2014; and at monitoring well MW-29 on May 27, 2014. In addition, on March 14, 2014, Respondents reported to DEQ that its gas blower system had malfunctioned. In May and June 2014, some of Respondents' landfill gas monitoring probes were malfunctioning. In addition, DEQ's inspection revealed certain probe lids would not close, had stripped bolts, and/or were plugged with gravel and soil. This violated the above-cited administrative rules, as well as section 7.4 of the permit. Therefore, the Department has established Respondents failed to maintain the LFGCS in effective working order.

*Failure to submit to the Department a financial assurance plan and annual updates to the plan*

OAR 340-095-0090(1) provides:

> Financial Assurance Required. The owner or operator of a non-municipal land disposal site shall maintain a financial assurance explain with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs

[8] As noted above, Respondent PSFM joined in the arguments presented by Skidmore and Hashem but presented no independent evidence.

of:

(a) Closure of the non-municipal land disposal site;

(b) Post-closure maintenance of the non-municipal land disposal site; and

(c) Any corrective action required by the Department to be taken at the non-municipal land disposal site, pursuant to OAR 340-095-0040(3).

OAR 340-095-0050 provides, in part:

(3) While a closure permit is in effect, the permittee shall submit a report to the Department within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department, which contains but it not limited to:

* * * * *

(b) A copy of the annual update of financial assurance as required by OAR 340-095-0090(6)(d). If the financial mechanism used is a trust fund, the permittee shall include an evaluation of the financial assurance plan documenting an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance. This evaluation must also assess the adequacy of the financial assurance and justify any changes in the plan[.]

The evidence establishes that Respondents failed to submit to the Department a financial assurance plan and annual updates to the plan, in violation of the above-cited administrative rules and section 10.2 of the permit.

*Failure to submit to the Department an updated operations and maintenance plan*

Section 7.2 of the permit requires the permittee to prepare an updated post-closure operations and maintenance plan and submit the plan to the Department for review and approval by no later than October 15, 2012. The permit also requires the permittee to revise the post-closure plan as necessary to keep it reflective of the current Facility conditions and procedures, and to submit those revisions to the Department for approval. PSFM, as the permittee, failed to comply with this requirement. Hashem, as a listed owner of the landfill, and Skidmore, as the legal owner of the landfill, are responsible for compliance under the aforementioned statutes. As such, the preponderance of the evidence establishes that Respondents violated section 7.2 of the permit.

*Failure to submit to the Department an updated landfill gas monitoring plan*

Section 8.2 of the permit requires Respondents to update the landfill gas monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-

required monitoring procedures. Section 8.2 also required the permittee to submit an updated plan to DEQ for review and approval by March 31, 2012. The evidence establishes that, to date, the permittee, PSFM, has not done so. Because the Respondents are liable for the permittee's failure to comply with the permit requirements, the Department established that Respondents failed to submit to the Department an updated landfill gas monitoring plan.

*Failure to conduct quality assurance testing during each year of operation*

Section 8.9 of the permit requires the permittee to retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. Pursuant to the conditions set forth in Section 8.9, the consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee is required to submit the quality assurance test results to the Department as an attachment to the annual maintenance and monitoring report.

Respondents Skidmore and Hashem argue that PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and that Mr. Bennett was to provide the readings to the Department. However, Respondents provided no evidence to support a finding that they complied with the conditions set forth in Section 8.9, specifically that the consultant performed the monitoring side by side with the permittee's representative; that both sets of data were cross-checked for accuracy; or that the permittee submitted the quality assurance test results to the Department as an attachment to the annual maintenance and monitoring report.

For these reasons, the Department has established that Respondents violated Section 8.9 of the permit.

*Failure to submit to the Department an annual post-closure evaluation report by February 15 of each year of permit coverage*

Section 11.3 of the permit requires the permittee to evaluate the Facility's status and submit to the Department, as part of the annual post-closure maintenance and monitoring report, a discussion of implementation of the post-closure plans and a description of unanticipated occurrences and any changes to the post closure plans. As of June 27, 2016, Respondents have not submitted to the Department a post-closure evaluation report for any of the years of operation covered by the permit. In the absence of PSFM's compliance, Respondents Skidmore and Hashem are responsible for compliance with this condition. Therefore, the Department has established that all Respondents violated section 11.3 of the permit.

*Civil Penalties*

The Department proposes to impose a civil penalty only for the violations of failing to operate and maintain the LFGCS in effective working order and for failing to submit to the

Department a financial assurance plan and annual updates to the plan.

OAR 340-012-0045 sets forth the criteria for calculating civil penalties as follows:

> DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB.
>
> (1) BP is the base penalty and is determined by the following procedure:
>
> (a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.
>
> (b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.
>
> (c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.
>
> (2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.
>
> (3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

The values of the various aggravating or mitigating factors are set forth in OAR 340-012-0145, which provides, in relevant part:

> (1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.
>
> (2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first formal enforcement action ( FEA) in which it is cited is issued.
>
> (a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:
>
> (A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.

(B) 1 if the PSAs included one Class II violation or two Class III violations; or

(C) 2 if the PSAs included one Class I violation or Class I equivalent.

(D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.

(b) The value of "P" will not exceed 10.

(c) If any of the PSAs were issued under ORS 468.996, the final value of "P" will be 10.

(d) In determining the value of "P," DEQ will:

(A) Reduce the value of "P" by:

(i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.

(ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.

(B) Include the PSAs:

(i) At all facilities owned or operated by the same respondent within the state of Oregon; and

(ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.

(e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.

(f) PSAs that are more than ten years old are not included in determining the value of "P."

(3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:

(a) -2 if the respondent corrected all prior violations cited as PSAs.

(b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or

(c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

(d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.

(4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding that supports each are as follows:

(a) 0 if there was only one occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

(b) 2 if there were more than one but less than seven occurrences of the violation.

(c) 3 if there were from seven to 28 occurrences of the violation.

(d) 4 if there were more than 28 occurrences of the violation.

(e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:

(a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

(b) 2 if the respondent had constructive knowledge (reasonably should have known) of the requirement.

(c) 4 if the respondent's conduct was negligent.

(d) 8 if the respondent's conduct was reckless or the respondent acted or failed to act intentionally with actual knowledge of the requirement.

(e) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:

(a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.

(b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.

(c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.

(d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.

(e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.

(f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.

(g) 2 if the respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

***Failure to operate and maintain LFGCS in effective working order***

Pursuant to OAR 340-012-0065(1)(f), this is a Class I violation. Pursuant to OAR 340-012-0130(1), the magnitude of the violation is "moderate" because there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation.

The Base Penalty for a Class I moderate violation is $6,000. OAR 340-012-0140(2)(b)(A)(ii) and OAR 340-012-0140(2)(a)(Q)(i).

**P factor:** The Department proposed a value of 0 (zero) for the "P" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**H factor:** The Department proposed a value of 0 (zero) for the "H" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**O factor:** The Department proposed a value of 4 for the "O" factor because there were more than 28 occurrences of the violation. The Department considers each day of the violation to constitute a separate occurrence. Pursuant to OAR 340-012-0145(4)(d), a value of 4 is appropriate.

**M factor**: The Department proposed a value of 4 for the "M" factor because Respondents' conduct was negligent. On February 24, 2009, the Department issued a Unilateral Order requiring evaluation of the LFGCS. In addition, the Unilateral Order required the submission progress reports on the administration of the LFGCS. Moreover, the permit required Respondents to maintain the LFGCS in effective working order. Respondents failed to take reasonable care to avoid the risk that its failure to maintain an effective LFGCS would result in a violation. Therefore, a value of 4 is appropriate.

**C factor:** The Department proposed a value of 2 for the "C" factor because Respondents did not address the violation. A value of 2 is appropriate.

**EB:** The Department proposed the EB for this violation should be $8,720. The Department determined that Respondents avoided spending $15,000 to repair and maintain the landfill gas control system in effective working order. The Department calculated the EB pursuant to OAR 340-012-0150(1). This amount is appropriate.

The above factors are applied to the following penalty calculation:

BP + [(0.1 x BP) x (P + H + O + M + C)] + EB = penalty

$6,000 + [(0.1 x $6,000) x (0 + 0 +4 +4 +2)] + $8,720

$6,000 + [($600 x 10)] + $8,720

$6,000 + $600 + $8,720 = $20,720

Therefore, the appropriate civil penalty for this violation is $20,720.

***Failure to submit to the Department a financial assurance plan and annual updates to the plan***

Pursuant to OAR 340-012-0065(1)(i), this is a Class I violation. Pursuant to OAR 340-012-0130(1), the magnitude of the violation is "moderate" because there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation.

The Base Penalty for a Class I moderate violation is $6,000. OAR 340-012-0140(2)(b)(A)(ii) and OAR 340-012-0140(2)(a)(Q)(i).

**P factor:** The Department proposed a value of 0 (zero) for the "P" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**H factor:** The Department proposed a value of 0 (zero) for the "H" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**O factor:** The Department proposed a value of 4 for the "O" factor because there were more than 28 occurrences of the violation. The Department considers each day of the violation to constitute a separate occurrence. The 2011 permit requires Respondents to submit a financial assurance plan by May 31, 2014. As of the date of the Amended Notice, Respondents had not submitted the financial assurance plan. Pursuant to OAR 340-012-0145(4)(d), a value of 4 is appropriate.

**M factor**: The Department proposed a value of 4 for the "M" factor because Respondents' conduct was negligent. On October 5, 2011, the Department wrote to Respondents and highlighted that the new permit would require financial assurance. The 2011 permit expressly requires Respondents to prepare and maintain a financial assurance plan. On August 14, 2014, the Department provided Respondents with additional information on how to obtain financial assurance. Considering these facts, a value of 4 is appropriate.

**C factor:** The Department proposed a value of 2 for the "C" factor because Respondents did not address the violation. A value of 2 is appropriate.

**EB:** The Department proposed the EB for this violation should be $25,873. The Department concluded that Respondents avoided spending $25,000 to develop and maintain a financial assurance plan. The Department calculated the EB pursuant to OAR 340-012-0150(1). This amount is appropriate.

The above factors are applied to the following penalty calculation:

BP + [(0.1 x BP) x (P + H + O + M + C)] + EB = penalty

$6,000 + [(0.1 x $6,000) x (0 + 0 +4 +4 +2)] + $25,873

$6,000 + [($600 x 10)] + $25,873

$6,000 + $600 + $25,837 = $37,873

Therefore, the appropriate civil penalty for this violation is $37,873.

The civil penalties of $20,720 for Respondents' failure to maintain the LFGCS in effective working order and $37,873 for Respondents' failure to submit to the Department a financial assurance plan and annual updates to the plan total $58,593.

## RULING

Respondent Hashem and Skidmore's Motion for Summary Determination is DENIED.

The Department of Environmental Quality's Motion for Summary Determination is GRANTED.

**ORDER**

I propose the Department of Environmental Quality issue the following order:

1. Respondents PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem:

- Failed to operate and maintain the Landfill Gas Control System in effective working order such that methane concentrations did not exceed compliance limits;
- Failed to submit to the Department a financial assurance plan and annual updates to the plan;
- Failed to submit to the Department an updated post-closure operations and maintenance plan by no later than October 15, 2012;
- Failed to submit to the Department an updated landfill gas monitoring plan by March 31, 2012;
- Failed to conduct quality assurance testing during each year of operation; and
- Failed to submit to the Department an annual post-closure evaluation report by February 15 of each year of permit coverage.

2. Respondents must pay a civil penalty in the amount of $58,593.

3. By no later than sixty (60) days after this decision becomes final, Respondents must do the following:

a. Evaluate and assess the LFGCS at the Facility and make any necessary repairs to ensure that it remains in good working condition. Submit the results of the evaluation, assessment, and repairs to the Department;

b. Submit to the Department a financial assurance plan as required by Section 10.2 of the Permit;

c. Submit to the Department an updated post-closure operations and maintenance plan as required by Section 7.2 of the Permit;

d. Submit to the Department an updated landfill gas monitoring plan as required by section 8.2 of the Permit;

e. Retain an independent Department-approved consultant to conduct quality

assurance monitoring at the Facility;

f. Submit to the Department a post-closure evaluation report as required by Section 11.3 of the Permit;

g. Written documentation demonstrating Respondents' compliance must be sent to:

DEQ, Northwest Region Office
c/o Tim Spencer
2020 SW 4th Ave., Suite 400
Portland, OR 97201
spencer.tim@deq.state.or.us

**NOTE: The hearing scheduled for September 19 and 20, 2016 is hereby cancelled.**

Monica A. Whitaker, Senior Administrative Law Judge
Office of Administrative Hearings

## APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission (Commission). To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you. Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

Environmental Quality Commission
c/o Pete Shepherd, Interim Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

If the Petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. *See* ORS 183.480 et. seq.

## CERTIFICATE OF MAILING

On September 7, 2016, I mailed the foregoing AMENDED CONSOLIDATED RULINGS ON CROSS MOTIONS FOR SUMMARY DETERMINATION AND PROPOSED AND FINAL ORDER issued on this date in OAH Case No. 1604492.

By: First Class Mail

Richard Senders
Rose, Senders & Bovarnick, Llc
1205 NW 25th Avenue
Portland, OR 97210

PSFM Limited Partnership
c/o Johnny Kondilis, Registered Agent
4891 Willamette Falls Dr. Suite 1
West Linn OR 97068

PSFM Limited Partnership
c/o Jeffrey Abbot, Registered Agency
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068

Kieran O' Donnell
Dept. of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Alesia Vella
Administrative Specialist
Hearing Coordinator

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**ENVIRONMENTAL QUALITY COMMISSION**

| | |
|---|---|
| IN THE MATTER OF: | ) **CONSOLIDATED RULINGS ON** |
| | ) **CROSS MOTIONS FOR** |
| **PSFM LIMITED PARTNERSHIP,** | ) **SUMMARY DETERMINATION AND** |
| **SKIDMORE LIMITED** | ) **PROPOSED AND FINAL ORDER** |
| **PARTNERSHIP, AND** | ) |
| **MIKE HASHEM** | ) OAH Case No.: 1604492 |
| | ) Agency Case No.: LQ/SW-NWR-15-048 |
| Respondents | ) |

## HISTORY OF THE CASE

On May 13, 2015, the Department of Environmental Quality (DEQ or the Department) issued a Notice of Civil Penalty Assessment and Order (Notice) to PSFM Limited Partnership (PSFM), Skidmore Limited Partnership (Skidmore), and Mike Hashem (Hashem) (collectively, Respondents), proposing to impose civil penalties in the amount of $58,593 against Respondents. On or about June 3, 2015 and June 16, 2015, Respondents requested a hearing. On March 8, 2016, the Department referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Jennifer H. Rackstraw to preside over the case.

ALJ Rackstraw convened a telephone prehearing conference on April 25, 2016. Attorney Richard Senders represented Respondents Skidmore and Hashem. Johnny Kondilis represented Respondent PSFM. Kieran O'Donnell represented the Department. At the conference, ALJ Rackstraw scheduled deadlines for the submission of motions for summary determination, responses, and replies. She also scheduled the contested case hearing to convene on September 19 and 20, 2016. During the prehearing conference, the matter was reassigned to Senior ALJ Alison Greene Webster.

Respondents Skidmore and Hashem filed Mike Hashem and Skidmore Limited Partnership's Motion for Summary Determination (Hashem and Skidmore Motion) and supporting documents on June 23, 2016. The Department filed its Motion for Summary Determination (the Department's Motion) and supporting documents on June 27, 2016. The Department's Motion included an Amended Notice of Civil Penalty Assessment and Order (Amended Notice), proposing to impose civil penalties against Respondents in the amount of $58,593 and requiring Respondents to comply with certain requirements.

Respondent PSFM filed a statement[1] in which it opposed the Department's Motion on July 14, 2016. Respondents Hashem and Skidmore filed a Memorandum of Facts and Law In Opposition to Dep[artment] of Environmental Quality's Motion for Summary Determination (Hashem and Skidmore Opposition) and supporting documents on July 14, 2016. The Department filed its Response to Respondents' Motion for Summary Determination (the Department's Response) and supporting documents on July 15, 2016. Respondents Hashem and Skidmore filed a Reply to the Department's Response on July 20, 2016. The Department filed a Reply to Respondents' Hashem and Skidmore opposition. Response on July 22, 2016.

The OAH reassigned the matter to Senior ALJ Monica A. Whitaker for purposes of ruling on the motions for summary determination. ALJ Whitaker closed the record on July 26, 2016 and took the matter under advisement.

## ISSUES

1. Whether Respondents Hashem and Skidmore are entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Whether Respondents Hashem and Skidmore are not responsible for performance of the Permit.

b. Whether the Department has the authority to assess a civil penalty against Respondents Hashem and Skidmore.

2. Whether the Department is entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Whether Respondents are jointly liable for all of the violations cited in the Second Amended Notice.

b. Whether Respondents failed to maintain the landfill gas control system (LFGCS) in effective working order such that methane concentrations do not exceed compliance limits.

c. Whether Respondents failed to submit to the Department a financial assurance plan and annual updates.

d. Whether Respondents failed to submit to the Department an updated post-closure operations and maintenance plan.

f. Whether Respondents failed to provide the Department an updated landfill gas monitoring plan.

[1] In its statement, PSFM stated that "adopts as its own the facts and arguments submitted by Skidmore [Limited Partnership] and Mike Hashem in their opposition to DEQ's motion for summary determination." PSFM offered no other information or evidence in support of its statement.

g. Whether Respondents failed to conduct quality assurance testing.

h. Whether Respondents failed to submit to the Department an annual post-closure evaluation report.

i. Whether the Department's proposed civil penalty is appropriate.

## EVIDENTIARY RULINGS

The following documents were admitted into the record and considered in reaching this Ruling and Proposed and Final Order:

- Mike Hashem & Skidmore Limited Partnership's Motion for Summary Determination and the following supporting documents:
  - Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination (Memorandum) and Memorandum Exhibits 1-6
  - Declaration of Mike Hashem in Support of Motion for Summary Determination (Hashem Declaration) and Hashem Declaration Exhibits 1 through 15
- The Department's Motion for Summary Determination and the following supporting documents:
  - Declaration of Kieran O'Donnell
  - Exhibits A1 through A8
- Respondents Skidmore and Hashem's Memorandum of Facts and Law in Opposition to Dep[artment] of Environmental Quality's Motion for Summary Determination (Opposition) and the following supporting documents:
  - Opposition Exhibits 1 and 2
  - Declaration of Jason Bennett in Opposition to DEQ's Motion for Summary Determination
  - Declaration of Richard D. Senders in Opposition to DEQ's Motion for Summary Determination and supporting Exhibits 1 through 6
  - Declaration of Mike Hashem in Opposition to DEQ's Motion for Summary Determination and supporting Exhibits 1 through 17
- The Department's Response to Respondents' Motion for Summary Determination and supporting Exhibit A10
- Respondents Hashem and Skidmore's Reply to DEQ's Response to the Hashem and Skidmore[] Motion for Summary Determination
- The Department's Reply to Respondents' Response to DEQ's Motion for Summary Determination

## FINDINGS OF FACT

### *Relevant Background*

1. The H.G. LaVelle Landfill is located at 2800 NE 82nd Ave., Portland, Oregon 97220 (the landfill or the Facility). (Ex. A4 at 1.) An active landfill gas extraction system was installed

in 1980 after the Department found high levels of methane in the soil 200 feet north of the landfill in a residential area. The gas extraction system consists of 19 wells located around the north and west perimeter of the landfill. These wells are connected to a large blower which pulls landfill gas out of the soil. (Respondents' Motion Exhibit 2 at 1.)

2. Harold LaVelle operated this demolition landfill until his lease expired on December 31, 1982. At that time, he closed out and covered all of the landfill except a small area that needed approximately 60,000 cubic yards of fill to bring it up to final grade. (Respondents' Motion Exhibit 2 at 1.) Rose City Sand & Gravel Co. (Rose City) assumed responsibility for operating the landfill gas control facilities and maintaining the site. Rose City applied for a closure permit. (*Id.*)

3. On December 1, 1984, the Department issued Solid Waste Disposal Site Closure Permit Number 211 (closure permit) to Rose City for the landfill. (Declaration of Hashem in Opposition Exhibit 2.) Rose City subdivided the 33-acre tract into five parcels and listed the properly for sale.

4. In 1996, Mike Hashem participated in the formation of PSFM Limited Partnership. PSFM's general partner is MMDF Corp. Hashem was MMDF's president and was involved in the acquisition of the 33-acre site known as the LaVelle Landfill. Hashem was also involved in PSFM's administration of the closure permit issued to PSFM. (Declaration of Hashem at 1; Declaration of Hashem in Support of Motion for Summary Determination Ex. 1.)

5. In or about 1997, PSFM acquired Parcel No. 4, which consisted of approximately 21 acres. At about the same time, M. Hashem Limited Partnership acquired Parcel 2, which consisted of approximately 1.5 acres, and Parcel 3, which consisted of approximately 4.5 acres.[2] M. Hashem's general partner was NMB Corp, of which Hashem was, and is, president. (Declaration of Hashem at 1-2.)

6. In 1998, PSFM assumed the closure permit previously issued to Rose City. The Department issued an amended closure permit on June 30, 1998 that named PSFM as the permittee, owner, and operator. (Declaration of Hashem at 2.)

7. In March 2000, PSFM sold its 21-acre parcel to Skidmore on contract. The contract was paid off in 2004. (Declaration of Hashem at 3.) Skidmore is registered with the Oregon Secretary of State as a limited partnership. Skidmore Management Corporation[3] is Skidmore's general partner. At the time Skidmore acquired the 21-acre parcel, Hashem served as Skidmore Management Corporation's president. (Declaration of Hashem at 3.)

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[2] Rose City sold Parcel 5 to a developer, who built an apartment complex. Rose City sold Parcel 1 to an individual, who built a carpet store. (Declaration of Hashem at 2.)

[3] Skidmore Management Corporation is registered with the Oregon Secretary of State Corporation Division, with Mike Hashem listed as the president. (Ex. A6 at 3.) Skidmore Management Corporation is the sole partner of Skidmore Limited Partnership. (*Id.* at 1.)

8. Multnomah County, Oregon property records from 2016 list Skidmore Limited Partnership as the owner of 12.51 acres located at 2800 NE 82nd Ave. Portland, Oregon. (Ex. A5.)[4]

9. The closure permit was set to expire on March 31, 2004. At the Department's request, PSFM submitted an application to renew the permit on September 1, 2003. Hashem signed the application in his capacity as president. (Declaration of Hashem at 3.)

10. In 2004 or 2005, M. Hashem Limited Partnership sold Parcel 2 to Asian American Plaza LLC. (Declaration of Hashem at 3.)

11. In February 2009, the Department issued PSFM an order requiring it to investigate and to take remedial action at the landfill due to high methane readings. A work plan was prepared by PSFM's engineers and approved by the Department. The work plan called for expansion of the active gas extraction and passive ventilating system that was installed at the landfill in 1979. Pursuant to the work plan, four new extraction wells were added to the system as well as additional low grade piping. The work was completed by the end of September 2009. (Declaration of Hashem at 3.)

12. PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and provide the readings to the Department. (Declaration of Hashem at 4.) Bennett was responsible for maintaining the facility's gas control system. He has maintained the system and taken monthly readings of methane gas levels for over seven years. The Department trained Bennett on how to sample methane gas levels. To the best of Bennett's knowledge, the facility's gas control system was maintained in effective working order throughout 2014. (Declaration of Bennett at 1.)

***The Department's methane investigation at the Facility***

13. Methane is a flammable gas that can pose a safety risk when it migrates into enclosed spaces such as in-ground utility service boxes, utility conduits, and unvented crawl spaces beneath buildings. In some circumstances, the presence of methane in a closed space may pose an explosion hazard. In-ground utility boxes or utility buildings built on the soil may provide enclosed spaces for methane vapors to concentrate. (Declaration of Senders in Support of Respondents' Motion Exhibit 1.)

14. The Department conducted an evaluation of methane levels in the soil, utility lines, and enclosed spaces in structures adjacent to the landfill. DEQ and the landfill owner tested for methane in confined spaces and crawl spaces in some of the ten buildings adjacent to the Facility on the north side of Knott Street. (Declaration of Senders in Support of Respondents' Motion Exhibit 1.) No methane was found in the confined spaces in or around the Knott Street homes. However, elevated methane levels were found in methane monitoring wells near some of these

[4] The Multnomah County property records indicate that PSFP Limited Partnership sold the property at this address to Skidmore Limited Partnership on November 6, 2008 for consideration in the sum of $0. (Ex. A5 at 2.)

homes. (*Id.*)

***The November 2011 Permit***

15. On September 16, 2003, the Department received a solid waste permit renewal application. (Ex. A7 at 2.) On November 14, 2011, the Department issued Solid Waste Permit 211 to Hashem. The November 14, 2011 permit listed the site owner and operator as PSFM Limited Partnership. (Ex. A7 at 2.)

16. On November 18, 2011, the Department amended the permit. The amended 2011 permit was issued to PSFM. The amended permit lists "Mike Hashem PSFM Limited Partnership" as the owner and lists PSFM Limited Partnership as the operator. (Ex. A7 at 1.) The permit expires on August 31, 2021. The 2011 permit contains the following relevant sections and conditions:

**7.2 Post-closure plan**

> The permittee must prepare an updated post-closure operations and maintenance plan and submit the plan to DEQ for review and approval by no later than October 15, 2012. The post-closure plan must describe in detail how the permittee intends to carry out all activities identified in sections 7.4 to 7.12 of this permit as well as other requirements of this permit and must be prepared and stamped by a registered engineer with current Oregon registration.
>
> The permittee must revise the post-closure plan as necessary to keep it reflective of current facility conditions and procedures. Plan revisions must be submitted to DEQ for approval.
>
> Reference: *Solid Waste Landfill Guidance,* September 1996, provides information on applicable elements of a post-closure plan.

**Section 7.4 Landfill gas control system**

> The permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Refer to methane compliance limits in permit Section 9.4.
>
> The permittee must notify DEQ about any damaged, defective, or worn-out gas-system equipment, replace or repair such equipment immediately, and provide a written description of any such work in the annual post-closure maintenance and monitoring report.

**Section 8.2 LFG monitoring plan**

The permittee must update the landfill gas (LFG) monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-required monitoring procedures. The current plan, dated April 3, 2009, was prepared by Hart Crowser, Inc. By March 31, 2012, the permittee must submit an updated plan to DEQ for review and approval. The plan updates must be prepared and stamped by a registered geologist or registered engineer with current Oregon registration.

**Section 9.5 Methane exceedance**

If methane levels exceed the specified compliance limits, the permittee must:

1. Immediately take all necessary steps to ensure protection of human health and safety and report the exceedance to DEQ;

2. Within 7 days of the detection (unless DEQ approves an alternative schedule), notify DEQ in writing about the exceedance and describe measures taken to protect human health and safety;

3. Immediately increase the frequency of monitoring at the affected compliance monitoring probe or probes to a weekly testing schedule, or more frequently if DEQ requires, until methane concentrations return to levels below the compliance limits for a period of at least two weeks;

4. Adjust or modify the landfill gas control system as needed to increase vacuum levels (suction pressure) and gas extraction rates in the affected area;

5. Within 60 days of the exceedance, submit to DEQ for review and approval a written report plan describing the corrective actions implemented.

**Section 8.9 Quality assurance testing**

Each year the permittee must retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. The consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee must submit the quality assurance test results to DEQ as an attachment to the annual maintenance and

monitoring report.

**Section 9.4 Methane compliance limits**

The concentration of methane must not exceed:

- 25 percent of the Lower Explosive Limit for methane in onsite structures (excluding gas control structures or gas recovery system components); and
- The Lower Explosive Limit for methane in soil gas at the facility boundary.

Note: The Lower Explosive Limit for methane is 5 percent by volume.

**Section 10.2 Financial Assurance Plan**

Prior to May 31, 2013, the permittee must prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval. The plan also needs to propose a financial assurance mechanism. The permittee must revise the financial assurance plan in the future as necessary to reflect current post-closure and corrective action costs and the current financial assurance mechanism. The permittee must submit any future plan revisions to DEQ for review and approval and maintain an up-to-date copy of this plan in the permitted-facility administrative records.

Reference: The plan must be prepared in accordance with OAR 340-095-0090. Acceptable mechanisms are described in OAR 340-095-0095.

**Section 10.4 Recertification of financial assurance**

The permittee must annually review and update financial assurance requirements. The permittee must submit the annual update to DEQ prior to May 31 of each year, beginning in 2014.

Note: The permittee must prepare the annual review according to OAR 340-095-0090(6)(d)(A).

**Section 11.3 Evaluation**

Prior to February 15 of each year, the permittee must evaluate the facility's status and submit to DEQ, as part of the annual post-closure maintenance and monitoring report, the following information:

- a discussion of implementation of the post-closure plans
- a description of unanticipated occurrences and any changes to the post-closure plans

**Section 12.1 Summary**

| Due Date | Activity | See section… |
|---|---|---|
| Each calendar quarter by March 15, June 15, September 15, and December 15, beginning in 2012, for each year the permit is in effect | Submit landfill gas test data for the preceding three months | 8.11 Summary of LFG probe monitoring procedures 8.12 Landfill gas monitoring |
| By March 31, 2012 | Submit updated landfill gas monitoring plan | 8.2 Landfill gas monitoring plan |
| Within 180 days of issuance of this permit | Submit existing or modified property deed record | 11.6 Deed record |
| By February 15, beginning in 2013, for each year the permit is in effect | Submit an annual post-closure maintenance and monitoring report | 7.17 Annual reporting requirements 11.3 Evaluation |
| By May 31, 2013 | Submit financial assurance plan | 10.2 Financial assurance plan |
| By May 31 of each year, beginning in 2014 | Submit annual financial assurance update | 10.4 Recertification of financial assurance |

(Ex. A7 at 8-9, 12-18; emphasis in original.)

***The Department's 2009 Order and ongoing monitoring***

17. On February 25, 2009, the Department issued to Hashem, M. Hashem Limited partnership/PSFM Limited Partnership an Order Requiring Investigation and Removal and Remedial Actions (Unilateral Order). (Ex. A10.) The Unilateral Order stated, in relevant part:

> **1. <u>Purpose</u>**
> The purpose of this Unilateral Order (Order) is to protect public health, safety, and welfare and the environment by requiring investigation and removal and/or remedial actions at the H.G. LaVelle Landfill Site in accordance with ORS 465.200 through 465.420 and regulations promulgated there under.

## 2. Findings of Fact

A. Mr. Mike Hashem is the current owner of the property at the southeast corner of NE 82nd Avenue and NE Siskiyou Street in Portland, Oregon (the Property). The landfill occupies tax lots 100 and 400. The "site", referenced in DEQ files as H.G. LaVelle Landfill or LaVelle Landfill site, includes the Property and all places where contamination from the Property, including but not limited to landfill gases, has come to be located. * * *.

* * * * *

D. Methane gas concentrations in excess of the lower explosive limits have been detected at several locations on the landfill property. Methane readings have shown 45 percent by volume in a monitoring probe MW-30 located at the southern property boundary within 100 feet north of the Madison Place Subdivision, 36.5 percent by volume in monitoring probe MW-34 near the landfill's northeast boundary and approximately 60 percent by volume in passive vents located near the landfill's northern boundary, within 100 feet of off-site residences on N.E. Siskiyou Street. Because Respondent has not provided information on methane gas readings for over two years, DEQ is concerned that gas could have migrated to offsite residences.

E. Current requirements for operation and maintenance of the landfill are specified in the Solid Waste Disposal Site Closure Permit No. 211. The permit expired on April 4, 2004, and was not renewed because a change in ownership of the Property was anticipated by DEQ and Respondent. That transfer of the Property did not occur. However, because DEQ has not terminated the expired permit, its conditions still apply as specified in OAR 340-93-070(7)(b)(iii).

F. The permit requires, among other things, that the Respondent measure methane concentrations at all the gas monitoring wells at least twice each month, and submit this information to DEQ every three months. DEQ has not received monitoring data in over two years. Recent inspections indicate that the active venting system is operating. However, DEQ has not received data to indicate whether it is operating properly.

G. During DEQ's March 16, 2007 inspection of the landfill site the Respondent indicated that methane monitoring and reporting to DEQ would resume consistent with the requirements of the solid waste closure permit. Following the inspection, however, the Respondent did not submit any methane monitoring results during the calendar years 2007 and 2008. When DEQ contacted the Respondent by phone regarding methane monitoring requirements, in follow-up to the March 16, 2007, inspection,

the Respondent refused to conduct methane monitoring or to provide any information required under the solid waste closure permit.

* * * * *

Based on the above Findings of Fact and Conclusions of Law and Determinations, DEQ Orders:

**5. Work to Be Performed**

A. Work plan. Within 20 calendar days of issuance of this Order, Respondent shall submit a work plan describing activities * * *. This Work Plan shall describe all equipment and methods used, and the contents of reports submitted to document these activities. * * *.

B. Gas Monitoring. Respondent shall record the barometric pressure and measure methane, carbon dioxide, and oxygen concentrations and gas pressure at all existing monitoring probes a minimum of once every week for one month immediately following the issuance of this order and once every two weeks, thereafter, until DEQ determines that a lower monitoring frequency is acceptable. Results will be described in reports submitted monthly to DEQ, except that the respondent must report results for the initial one-month period of monitoring in the Evaluation Report described in paragraph C below. * * *.

C. Evaluation of gas management and monitoring system. Respondent shall conduct a thorough evaluation of the gas management and monitoring system and prepare a report describing the observations, conclusions and recommendations. This report shall also provide a summary and analysis of the initial methane monitoring results collected in accordance with Paragraph B above. The evaluation shall address the condition of all extraction and monitoring equipment (including perimeter monitoring probes), system performance, and recommendations for modifications to system components and operation. This report shall be submitted within 30 days of DEQ approval of the work plan.

(*Id.* at 1-5.)

18. In January 2010, the Department measured landfill gas concentrations in key gas monitoring wells, and compared readings using the Department's monitor and the landfill owner's monitor. As a result, the Department made the following recommendations:

1. All wells should be equipped with caps with quick-connect fittings for attaching the gas meter. DEQ concluded that wells on the east side of the landfill do not require further monitoring. The following wells are

therefore excluded from this requirement (listed from north to south): MW-20, 28, 27, 19, 26, 25, 18, 24, 23, and 33.

2. Landfill gas should be measured at all monitoring wells on the north, west and south sides of the landfill.

3. The extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continue to be elevated along the landfill's south side.

4. The next round of readings should be done in February 2010. DEQ should collect readings from selected wells also, to provide additional information on how well the two meters correlate.

5. MW-30 is adjacent to a home and high methane readings have been recorded there in the past. It should therefore be pumped out so that it can be sampled from now on. A pump with sufficient capacity should be used so that water can be removed quickly.

(Declaration of Hashem in Support of Motion for Summary Determination Ex. 6 at 3.)

19. In 2012, M. Hashem Limited Partnership and Skidmore did a lot line adjustment. After the lot line adjustment, Skidmore retained 12.5 acres and M. Hashem Limited Partnership owned 13.7 acres. Following the lot line adjustment, M. Hashem Limited Partnership entered into an agreement to sell all of the 13.7 acre parcel to Northwest Zen Sangha, dba Dharma Rain Zen Center (Dharma). (Declaration of Hashem in Support of Motion for Summary Determination at 5.)

20. In October 2012, Dharma entered into an Order on Consent – PPA (Prospective Purchaser Agreement) with the Department. The purpose of the PPA was to "(a) protect public health, safety, and welfare of the environment in accordance with applicable provisions of ORS 465.200 through 465.420 and regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Respondent [Dharma] with protection from potential liabilities in accordance with applicable law." (Declaration of Hashem in Support of Motion for Summary Determination Ex. 11 at 3.) The PPA requires Dharma to grant access to its purchased property to the Department, its contractors, the permittee, or the permittee's successors, to perform the continued operation and oversight of the Facility. (*Id.* at 9.)

21. On March 14, 2014, the Department notified PSFM that monitoring well 29 was showing elevated methane readings, and asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. (Declaration of Hashem in Support of Motion for Summary Determination at 5 and Exhibit 12.) That same day, PSFM notified the Department of a problem it had with the gas blower extraction system a couple of months earlier and speculated that this was the likely cause of the higher than normal reading. PSFM also informed the Department that the extraction blower system had been repaired. PSFM agreed to follow the Department's recommendations and to retest the monitoring wells that were

producing the high readings. By March 20, 2014, PSFM was reporting that well 29 was in compliance. (Declaration of Hashem at 5.)

22. On June 5, 2014, Department staff reviewed the condition of some of the monitoring wells and found that some of the wells were in poor condition. In an email dated June 10, 2014 and addressed to Hashem, the Department asked PSFM to repair certain monitoring wells. Hashem responded on June 11, 2014 that PSFM would send out its technician to check the wells and make the necessary repairs. (Declaration of Hashem in Support of Motion for Summary Determination at 5-6 and Ex. 14.)

23. On June 26, 2014, Hashem emailed the Department and indicated that the monitoring wells were in good working order except for monitoring well 31, which had been placed in a manhole and was inundated with water. Monitoring well 29 showed methane gas levels within compliance limits. Hashem again emailed the Department on June 30, 2014 with information that Bennett had removed some dirt and gravel from the MW-31 casing, and replaced the valves on MW-29, 31, 32, 3, 4, and 5. (Declaration of Hashem in Support of Motion for Summary Determination at 6 and Ex. 15.)

24. Tim Spencer is employed by the Department as an environmental engineer and solid waste project manager. He has worked in this or in similar positions for 27 years. (Ex. A4 at 1.) Mr. Spencer has managed the Department's oversight of the landfill for approximately 20 years. During the course of his oversight, Mr. Spencer has communicated directly with Hashem regarding the statutory, rule, and permit requirements that pertain to the landfill. Hashem has been Spencer's primary point of contact for his oversight of the landfill's operations. Spencer has communicated with Hashem via telephone or email regarding the landfill's operation since at least 1998. (*Id.* at 2, 11-12.) Spencer has consistently witnessed Hashem act as a manager of the landfill, directing funds and resources for remedial improvements, operations, maintenance, and monitoring. (*Id.* at 1-2.)

25. In 2014, Mr. Spencer reviewed the LFGCS monitoring results for the Facility. The results indicated that methane levels exceeded five percent from the following wells on the following dates:

- Wells MW-29, MW-3S, and MW-4S on January 13, 2014
- Wells MW-29 and MW-4S on January 24, 2014
- Well MW-29 on May 27, 2014

(Ex. A4 at 2, 4-7.) MW-29 and MW-30 are located approximately 10 to 15 feet from residential buildings. (*Id.* at 2.)

26. On May 27 and June 5, 2014, the Department performed inspections of the landfill. At the time of the inspections, the landfill's gas monitoring probes demonstrated the following deficiencies:

- MW-30 was plugged with water;

- MW-31 was filled with soil and gravel and fittings for attaching the gas meter were defective and would not provide an air tight seal;

- Bolts used to secure flush mounted vault lids on all seven gas probes checked by the Department were missing or damaged;

- MW-32 appeared to be plugged with unknown foreign material and did not function properly.

(Ex. A4 at 2, 8.)

27. In a June 10, 2014 email to Hashem, Mr. Spencer informed him about the June 5, 2014 site visit. The email detailed the findings from the site visit and outlined which wells had methane levels in excess of five percent. The email stated, in part:

> Because of the public safety risks associated with methane gas it is extremely important that PSFM maintain all the gas monitoring wells in good working order. Accurate monitoring-well readings are the only way to determine if the gas control system is doing an adequate job of preventing off-site migration of landfill gas beneath neighboring properties.
>
> Please submit to DEQ a plan for evaluating the gas monitoring wells and restoring those that are in poor condition. In addition, we would like to schedule a site visit with you within the next 3 weeks to a month to conduct split PSFM-DEQ testing of the gas monitoring wells.

(Ex. A4 at 9-10.)

28. As of June 27, 2016, PSFM has not submitted to the Department a financial assurance plan or annual updates to the financial assurance plan, a post-closure operations and maintenance plan, an updated landfill gas monitoring plan, or a post-closure evaluation report for any of the years of operation under the permit. (Ex. A4 at 2.)

29. From 2012 to 2015, PSFM did not submit, to the Department, quality assurance testing results conducted by an independent Department-approved consultant. (Ex. A4 at 3.)

***The Economic Benefit***

30. The economic benefit portion of the civil penalty formula is the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay a penalty than to pay the costs of compliance. (Ex. A8 at 1.)

31. The Department determined Respondents should have spent $15,000 to repair three probes and monitors from these probes since January 13, 2014. (Ex. A1 at 9.) Additionally, the Department concluded Respondents avoided spending $25,000 to develop and maintain a financial assurance plan. (*Id.* at 11.)

32. The Department relies on the EPA's "BEN" computer model to determine economic benefit. The BEN model relies on income-tax rates, inflation rates, and discount rates. The model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the years of the violation, the state where the violation occurred and the entity's legal and profit status (*e.g.,* C-corporation, other for-profit, non-profit, municipality, or federal facility). The BEN model calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. (Ex. A8 at 2.)

## CONCLUSIONS OF LAW

1. Respondents Hashem and Skidmore are not entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Whether Respondents Hashem and Skidmore are not responsible for performance of the Permit.

b. Whether the Department has the authority to assess a civil penalty against Respondents Hashem and Skidmore.

2. The Department is entitled to a favorable ruling as a matter of law with regard to the following issues:

a. Respondents are jointly liable for all violations cited in the Second Amended Notice.

b. Respondents failed to maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits.

c. Respondents failed to submit to the Department a financial assurance plan and annual updates.

d. Respondents failed to submit to the Department an updated post-closure operations and maintenance plan.

f. Respondents failed to provide the Department an updated landfill gas monitoring plan.

g. Respondents failed to conduct quality assurance testing.

h. Respondents failed to submit to the Department an annual post-closure evaluation report.

i. The Department's proposed civil penalty is appropriate.

## OPINION

*Standard of Review for Motion for Summary Determination*

OAR 137-003-0580 addresses motions for summary determination. It provides, in relevant part:

> (6) The administrative law judge shall grant the motion for a summary determination if:
>
> (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
>
> (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
>
> (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
>
> (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.
>
> * * * * *
>
> (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling * * *.

Pursuant to OAR 137-003-0580, the various motions, responses, replies, and the supporting declarations, affidavits, and exhibits were considered. Hashem and Skidmore move for partial summary determination, while the Department moves for summary determination on all issues. For the reasons set forth below, Hashem and Skidmore's Motion for Summary Determination is denied, and the Department's Motion for Summary Determination is granted.

*Whether the Department may enforce the Permit and assess a civil penalty*

Respondents Skidmore and Hashem contend that the post closure care period for the former landfill is 30 years and that more than 30 years have passed between the closure of the landfill and the alleged violations. Respondents Skidmore and Hashem assert the Department

lacks the authority to enforce the Permit and to assess a civil penalty. In support of their position, Respondents Skidmore and Hashem rely on OAR 340-095-0050(4),[5] which provides:

> The Department shall terminate closure permits for non-municipal land disposal sites not later than 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

Respondents Skidmore and Hashem assert that the Department made no formal finding that the landfill posed a significant health or safety risk and that the permit was not formally extended beyond the 30-year termination date. Therefore, Respondents argue, the Department lacks the authority assess a civil penalty for conduct that occurred after the statutory termination of the permit.

The Department disagrees, arguing that OAR 340-095-0050(4) requires the Department to take affirmative action to terminate the permit, unless there is a public health need to maintain the permit. The Department further argues that OAR 340-095-0050(6) explicitly states that a closure permit "remains in effect and is a binding obligation of the permittee until the Department terminates the permit," again implying termination of a closure permit requires an affirmative act by the Department.

Here, the Department has not affirmatively terminated the permit. In addition, the evidence establishes that the Department has, on numerous occasions, found that there is a public health need to maintain the permit. In 2009, the Department issued the Unilateral Order because of the ongoing failure of Hashem and PSFM to properly manage the landfill. Moreover, in 2011, the Department renewed the permit, explicitly setting a permit expiration date of August 31, 2021. The renewal of the permit further supports the Department's argument that it intended to continue to regulate the landfill until at least 2021 because it found a significant public health need that required such continued regulation.

For these reasons, Skidmore's and Hashem's argument is not persuasive. Respondents Skidmore and Hashem are not entitled to a favorable ruling as matter of law that the Department lacks the authority to enforce the permit conditions and to assess a civil penalty for permit violations.

*Whether Respondents are jointly liable for all of the violations cited in the Amended Notice*

Respondent Hashem argues that he is not the permittee, the operator, or the owner of the real property and has not assumed the permit. Therefore, Hashem contends, he is not liable for the alleged permit violations. Respondent Skidmore argues that it is not the permittee or the

[5] Respondents Skidmore and Hashem also rely on ORS 459.270(2), which provides:

> Unless the department finds a need to protect against a significant hazard or risk to the public health, safety or environment, the department shall terminate any permit for an active supervision of a land disposal site 30 years after the site is closed.

operator, is not named on the permit, and has not assumed the responsibilities of the permit. Skidmore further argues that it has no liability for permit compliance. Respondents Skidmore and Hashem move for summary determination that they should be dismissed as Respondents in this matter.

The Department contends that as either owners or operators demonstrating control over the facility, all three Respondents are responsible for the violations cited in the Amended Notice. The Department moves for summary determination on this issue. The Department relies on ORS 459.205(2) in support of its position, which provides:

> The person who holds or last held the permit issued under subsection (1) of this section, or, if that person fails to comply, then the person owning or controlling a land disposal site that is closed and no longer receiving solid waste must continue or renew the permit required under subsection (1) of this section after the site is closed for the duration of the period in which the department continues to actively supervise the site, even though solid waste is no longer received at the site.

In addition, ORS 459.268 provides:

> When solid waste is no longer received at a land disposal site, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of this chapter, any applicable rule adopted by the Environmental Quality Commission under ORS 459.045 and any requirement imposed by the Department of Environmental Quality as a condition to renewing or issuing a disposal site permit.

ORS 174.100 provides, in part:

> As used in the statute laws of this state, unless the context or a specially applicable definition requires otherwise:
>
> * * * * *
>
> (5) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies.

ORS 174.127 provides:

> As used in the statute laws of this state:
>
> (1) The singular number may include the plural and the plural number, the singular.

> (2) Words used in the masculine gender may include the feminine and the neuter.

ORS 459.205(2) provides that when the permittee fails to comply with any applicable statute, rule, or permit condition, the burden of the proper operation of the landfill is placed on the person or persons that either own or control the property.

*Webster's Third New Int'l Dictionary* 496 (unabridged ed 2002) defines "control" as follows:

> [T]he act or fact of controlling * * * power or authority to manage: directing or restraining domination * * *.

The statutes do not define the terms "control" or "controlling." It is therefore necessary to consider the analytical approach set forth in *PGE v. Bureau of Labor and Industries,* 317 Or 606 (1993) and *State v. Gaines,* 346 Or 160, (2009) to discern the meaning of the phrase, as it is used in ORS 459.205(2) and 459.268. In *PGE*, the Oregon Supreme Court explained that to determine legislative intent, a court begins by examining a statute's text, and its statutory context, giving words of common usage their plain, natural, and ordinary meaning. If the legislative intent is unambiguous, the court stops at that first level of analysis. *PGE*, 317 Or at 610-11.[6]

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[6] The Court in *PGE* stated:

> In this first level of analysis, the text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature's intent [citations omitted]. In trying to ascertain the meaning of a statutory provision, and thereby to inform the court's inquiry into legislative intent, the court considers rules of construction of the statutory text that bear directly on how to read the text. Some of those rules are mandated by statute, including, for example, the statutory enjoinder "not to insert what has been omitted, or to omit what has been inserted." ORS 174.010. Others are found in the case law, including, for example, the rule that words of common usage typically should be given their plain, natural, and ordinary meaning [citations omitted].
>
> Also at the first level of analysis, the court considers the context of the statutory provision at issue, which includes other provisions of the same statute and other related statutes [citations omitted]. Just as with the court's consideration of the text of a statute, the court utilizes rules of construction that bear directly on the interpretation of the statutory provision in context. Some of those rules are mandated by statute, including, for example, the principles that "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all," ORS 174.010, and that "a particular intent shall control a general one that is inconsistent with it," ORS 174.020. Other such rules of construction are found in case law, including, for example, the rules that use of a term in one section and not in another section of the same statute indicates a purposeful omission, *Emerald PUD v. PP&L,* 302 Or. 256, 269, 729 P2d 552 (1986), and that use of the same term throughout a statute indicates that the term

In the Final Contested Case Hearing Order *In the Matter of Kinzua Resources, LLC, ATR Services, Inc., Gregory M. Demers, and Frontier Resources LLC* (herein Kinzua) (OAH Case No. 1403637, Agency Case No. LQ/SW-ER-11-108) 2015, the Environmental Quality Commission (EQC) articulated the public health policy that supports the statutes' placement of liability for the operation of a landfill on multiple parties. The EQC stated that "the proper control and management of landfills is a matter of great significance to public health and the environment." *Kinzua* at 10. The EQC further stated that "ORS 459 establishes detailed and comprehensive regulation of these activities, including placing regulatory burdens on both the permittee, and in the event of the failure of the permittee to comply, those persons controlling the property." *Id.*

On its face, the 2011 permit was issued to PSFM as the permittee, and listed Mike Hashem, PSFM Limited Partnership as the owner and PSFM Limited Partnership as the operator. The overwhelming evidence in this case establishes that Hashem exercised direct control over the landfill. Hashem has been the primary individual with whom the Department has communicated for numerous years. Hashem has acted as a manager of the landfill, directed funds and resources for remedial improvements, operations, maintenance, and monitoring. Therefore, the Department has established that Hashem is liable for the violations as a person controlling the landfill pursuant to ORS 459.205 and ORS 459.268.

The evidence also establishes that Skidmore Limited Partnership is the record owner of 12.51 acres located at 2800 NE 82nd Avenue in Portland, the landfill's location. Skidmore Limited Partnership's sole partner is Skidmore Management Corporation, and Skidmore Management Corporation's president is Mike Hashem. Skidmore argues that a reasonable reading of the statute is that the owner must own all of the property or control all of the property in order to have liability and that neither the statute nor the regulations impose liability on an owner of just a portion or just a piece of a former landfill, unless the owner controls the landfill. Skidmore further argues that "[w]hat is relevant is whether or not Skidmore owned all of the former landfill property when the alleged non-compliance occurred in 2013 and 2014. It is undisputed that at the time of the alleged permit violations, Skidmore only owned about one-third of the site." Reply to DEQ's Response to Hashem and Skidmore's Motion for Summary Determination at 4. Skidmore contends that the Department cannot impose full or even partial liability on an owner of only a fraction of the former landfill.

In response, the Department argues that the statute does not contain limiting language, and that Skidmore's interpretation would "create an absurd result, allowing any owner to escape liability under the statute simply by selling off any portion of the closed landfill site." DEQ's Reply to Respondents' Response to DEQ's Motion for Summary Determination at 6. I agree with the Department. Skidmore's interpretation of the controlling statutes would require inserting what has been omitted from the statute's text.

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has the same meaning throughout the statute, *Racing Com. v. Multnomah Kennel Club,* 242 Or. 572, 586, 411 P2d 65 (1966).

*PGE,* 317 Or at 610-11.

For these reasons, Hashem and Skidmore are liable for the permit violations addressed below. Hashem and Skidmore's Motion for Summary Determination on this issue is denied, and the Department's Motion for Summary Determination on this issue is granted.

*Failure to maintain the LFGCS in effective working order*

The Department alleges Respondents failed to maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits.

OAR 340-095-0020 provides, in part:

> (9) Gas Control:
>
> (a) No person shall operate or maintain a non-municipal land disposal site except in conformance with the provisions for gas control in OAR 340-095-0030(4).

OAR 340-095-0030 provides, in part:

> (4) Gas Control. No person shall establish, expand or modify a non-municipal land disposal site such that:
>
> (a) The concentration of methane (CH4) gas at the landfill exceeds 25 percent of its lower explosive limit in facility structures (excluding gas control or gas recovery system components) or its lower explosive limit at the property boundary.

Respondents Skidmore and Hashem argue that they did maintain the LFGCS in effective working order, specifically by having Jason Bennett make all the repairs required to the LFGCS as requested by DEQ. However, Respondents presented no evidence to support this assertion.[7] The evidence in this record establishes that methane concentrations exceeded compliance limits at monitoring wells MW-29, MW-30, and MW-3S on January 13, 2014, at monitoring wells MW-29 and MW-4S on January 24, 2014; and at monitoring well MW-29 on May 27, 2014. In addition, on March 14, 2014, Respondents reported to DEQ that its gas blower system had malfunctioned. In May and June 2014, some of Respondents' landfill gas monitoring probes were malfunctioning. In addition, DEQ's inspection revealed certain probe lids would not close, had stripped bolts, and/or were plugged with gravel and soil. This violated the above-cited administrative rules, as well as section 7.4 of the permit. Therefore, the Department has established Respondents failed to maintain the LFGCS in effective working order.

*Failure to submit to the Department a financial assurance plan and annual updates to the plan*

OAR 340-095-0090(1) provides:

[7] As noted above, Respondent PSFM joined in the arguments presented by Skidmore and Hashem but presented no independent evidence.

> Financial Assurance Required. The owner or operator of a non-municipal land disposal site shall maintain a financial assurance explain with detailed written cost estimates of the amount of financial assurance that is necessary and shall provide evidence of financial assurance for the costs of:
>
> (a) Closure of the non-municipal land disposal site;
>
> (b) Post-closure maintenance of the non-municipal land disposal site; and
>
> (c) Any corrective action required by the Department to be taken at the non-municipal land disposal site, pursuant to OAR 340-095-0040(3).

OAR 340-095-0050 provides, in part:

> (3) While a closure permit is in effect, the permittee shall submit a report to the Department within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department, which contains but it not limited to:
>
> * * * * *
>
> (b) A copy of the annual update of financial assurance as required by OAR 340-095-0090(6)(d). If the financial mechanism used is a trust fund, the permittee shall include an evaluation of the financial assurance plan documenting an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance. This evaluation must also assess the adequacy of the financial assurance and justify any changes in the plan[.]

The evidence establishes that Respondents failed to submit to the Department a financial assurance plan and annual updates to the plan, in violation of the above-cited administrative rules and section 10.2 of the permit.

*Failure to submit to the Department an updated operations and maintenance plan*

Section 7.2 of the permit requires the permittee to prepare an updated post-closure operations and maintenance plan and submit the plan to the Department for review and approval by no later than October 15, 2012. The permit also requires the permittee to revise the post-closure plan as necessary to keep it reflective of the current facility conditions and procedures, and to submit those revisions to the Department for approval. PSFM, as the permittee, failed to comply with this requirement. Hashem, as a listed owner of the landfill, and Skidmore, as the legal owner of the landfill, are responsible for compliance under the aforementioned statutes. As such, the preponderance of the evidence establishes that Respondents violated section 7.2 of the permit.

*Failure to submit to the Department an updated landfill gas monitoring plan*

Section 8.2 of the permit requires Respondents to update the landfill gas monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-required monitoring procedures. Section 8.2 also required the permittee to submit an updated plan to DEQ for review and approval by March 31, 2012. The evidence establishes that, to date, the permittee, PSFM, has not done so. Because the Respondents are liable for the permittee's failure to comply with the permit requirements, the Department established that Respondents failed to submit to the Department an updated landfill gas monitoring plan.

*Failure to conduct quality assurance testing during each year of operation*

Section 8.9 of the permit requires the permittee to retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. Pursuant to the conditions set forth in Section 8.9, the consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee is required to submit the quality assurance test results to the Department as an attachment to the annual maintenance and monitoring report.

Respondents Skidmore and Hashem argue that PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and that Mr. Bennett was to provide the readings to the Department. However, Respondents provided no evidence to support a finding that they complied with the conditions set forth in Section 8.9, specifically that the consultant performed the monitoring side by side with the permittee's representative; that both sets of data were cross-checked for accuracy; or that the permittee submitted the quality assurance test results to the Department as an attachment to the annual maintenance and monitoring report.

For these reasons, the Department has established that Respondents violated Section 8.9 of the permit.

*Failure to submit to the Department an annual post-closure evaluation report by February 15 of each year of permit coverage*

Section 11.3 of the permit requires the permittee to evaluate the facility's status and submit to the Department, as part of the annual post-closure maintenance and monitoring report, a discussion of implementation of the post-closure plans and a description of unanticipated occurrences and any changes to the post closure plans. As of June 27, 2016, Respondents have not submitted to the Department a post-closure evaluation report for any of the years of operation covered by the permit. In the absence of PSFM's compliance, Respondents Skidmore and Hashem are responsible for compliance with this condition. Therefore, the Department has established that all Respondents violated section 11.3 of the permit.

*Civil Penalties*

The Department proposes to impose a civil penalty only for the violations of failing to operate and maintain the LFGCS in effective working order and for failing to submit to the Department a financial assurance plan and annual updates to the plan.

OAR 340-012-0045 sets forth the criteria for calculating civil penalties as follows:

> DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB.
>
> (1) BP is the base penalty and is determined by the following procedure:
>
> (a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.
>
> (b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.
>
> (c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.
>
> (2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.
>
> (3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

The values of the various aggravating or mitigating factors are set forth in OAR 340-012-0145, which provides, in relevant part:

> (1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.
>
> (2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first formal enforcement action ( FEA) in which it is cited is issued.
>
> (a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:

(A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.

(B) 1 if the PSAs included one Class II violation or two Class III violations; or

(C) 2 if the PSAs included one Class I violation or Class I equivalent.

(D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.

(b) The value of "P" will not exceed 10.

(c) If any of the PSAs were issued under ORS 468.996, the final value of "P" will be 10.

(d) In determining the value of "P," DEQ will:

(A) Reduce the value of "P" by:

(i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.

(ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.

(B) Include the PSAs:

(i) At all facilities owned or operated by the same respondent within the state of Oregon; and

(ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.

(e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.

(f) PSAs that are more than ten years old are not included in determining the value of "P."

(3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:

(a) -2 if the respondent corrected all prior violations cited as PSAs.

(b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or

(c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

(d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.

(4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding that supports each are as follows:

(a) 0 if there was only one occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

(b) 2 if there were more than one but less than seven occurrences of the violation.

(c) 3 if there were from seven to 28 occurrences of the violation.

(d) 4 if there were more than 28 occurrences of the violation.

(e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:

(a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

(b) 2 if the respondent had constructive knowledge (reasonably should have known) of the requirement.

(c) 4 if the respondent's conduct was negligent.

(d) 8 if the respondent's conduct was reckless or the respondent acted or failed to act intentionally with actual knowledge of the requirement.

(e) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:

(a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.

(b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.

(c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.

(d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.

(e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.

(f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.

(g) 2 if the respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

***Failure to operate and maintain LFGCS in effective working order***

Pursuant to OAR 340-012-0065(1)(f), this is a Class I violation. Pursuant to OAR 340-012-0130(1), the magnitude of the violation is "moderate" because there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation.

The Base Penalty for a Class I moderate violation is $6,000. OAR 340-012-0140(2)(b)(A)(ii) and OAR 340-012-0140(2)(a)(Q)(i).

**P factor:** The Department proposed a value of 0 (zero) for the "P" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**H factor:** The Department proposed a value of 0 (zero) for the "H" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**O factor:** The Department proposed a value of 4 for the "O" factor because there were more than 28 occurrences of the violation. The Department considers each day of the violation to constitute a separate occurrence. Pursuant to OAR 340-012-0145(4)(d), a value of 4 is appropriate.

**M factor**: The Department proposed a value of 4 for the "M" factor because Respondents' conduct was negligent. On February 24, 2009, the Department issued a Unilateral Order requiring evaluation of the LFGCS. In addition, the Unilateral Order required the submission progress reports on the administration of the LFGCS. Moreover, the permit required Respondents to maintain the LFGCS in effective working order. Respondents failed to take reasonable care to avoid the risk that its failure to maintain an effective LFGCS would result in a violation. Therefore, a value of 4 is appropriate.

**C factor:** The Department proposed a value of 2 for the "C" factor because Respondents did not address the violation. A value of 2 is appropriate.

**EB:** The Department proposed the EB for this violation should be $8,720. The Department determined that Respondents avoided spending $15,000 to repair and maintain the landfill gas control system in effective working order. The Department calculated the EB pursuant to OAR 340-012-0150(1). This amount is appropriate.

The above factors are applied to the following penalty calculation:

BP + [(0.1 x BP) x (P + H + O + M + C)] + EB = penalty

$6,000 + [(0.1 x $6,000) x (0 + 0 +4 +4 +2)] + $8,720

$6,000 + [($600 x 10)] + $8,720

$6,000 + $600 + $8,720 = $20,720

Therefore, the appropriate civil penalty for this violation is $20,720.

***Failure to submit to the Department a financial assurance plan and annual updates to the plan***

Pursuant to OAR 340-012-0065(1)(i), this is a Class I violation. Pursuant to OAR 340-012-0130(1), the magnitude of the violation is "moderate" because there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation.

The Base Penalty for a Class I moderate violation is $6,000. OAR 340-012-0140(2)(b)(A)(ii) and OAR 340-012-0140(2)(a)(Q)(i).

**P factor:** The Department proposed a value of 0 (zero) for the "P" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**H factor:** The Department proposed a value of 0 (zero) for the "H" factor. Because there is no evidence of a history of past violations, this value is appropriate.

**O factor:** The Department proposed a value of 4 for the "O" factor because there were more than 28 occurrences of the violation. The Department considers each day of the violation to constitute a separate occurrence. The 2011 permit requires Respondents to submit a financial assurance plan by May 31, 2014. As of the date of the Amended Notice, Respondents had not submitted the financial assurance plan. Pursuant to OAR 340-012-0145(4)(d), a value of 4 is appropriate.

**M factor**: The Department proposed a value of 4 for the "M" factor because Respondents' conduct was negligent. On October 5, 2011, the Department wrote to Respondents and highlighted that the new permit would require financial assurance. The 2011 permit expressly requires Respondents to prepare and maintain a financial assurance plan. On August 14, 2014, the Department provided Respondents with additional information on how to obtain financial assurance. Considering these facts, a value of 4 is appropriate.

**C factor:** The Department proposed a value of 2 for the "C" factor because Respondents did not address the violation. A value of 2 is appropriate.

**EB:** The Department proposed the EB for this violation should be $25,873. The Department concluded that Respondents avoided spending $25,000 to develop and maintain a financial assurance plan. The Department calculated the EB pursuant to OAR 340-012-0150(1). This amount is appropriate.

The above factors are applied to the following penalty calculation:

BP + [(0.1 x BP) x (P + H + O + M + C)] + EB = penalty

$6,000 + [(0.1 x $6,000) x (0 + 0 +4 +4 +2)] + $25,873

$6,000 + [($600 x 10)] + $25,873

$6,000 + $600 + $25,837 = $37,873

Therefore, the appropriate civil penalty for this violation is $37,873.

The civil penalties of $20,720 for Respondents' failure to maintain the LFGCS in effective working order and $37,873 for Respondents' failure to submit to the Department a financial assurance plan and annual updates to the plan total $58,593.

## RULING

Respondent Hashem and Skidmore's Motion for Summary Determination is DENIED.

The Department of Environmental Quality's Motion for Summary Determination is GRANTED.

## ORDER

I propose the Department of Environmental Quality issue the following order:

Respondents PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem:

- Failed to operate and maintain the Landfill Gas Control System in effective working order such that methane concentrations did not exceed compliance limits;
- Failed to submit to the Department a financial assurance plan and annual updates to the plan;
- Failed to submit to the Department an updated post-closure operations and maintenance plan by no later than October 15, 2012;
- Failed to submit to the Department an updated landfill gas monitoring plan by March 31, 2012;
- Failed to conduct quality assurance testing during each year of operation; and
- Failed to submit to the Department an annual post-closure evaluation report by February 15 of each year of permit coverage.

Respondents must pay a civil penalty in the amount of $58,593.

**NOTE: The hearing scheduled for September 19 and 20, 2016 is hereby cancelled.**

/s/ Monica A. Whitaker
Monica A. Whitaker
Senior Administrative Law Judge
Office of Administrative Hearings

## APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission (Commission). To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you.

Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

Environmental Quality Commission
c/o Dick Pedersen, Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204.

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

If the Petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. *See* ORS 183.480 et. seq.

## CERTIFICATE OF MAILING

On August 24, 2016, I mailed the foregoing CONSOLIDATED RULINGS ON CROSS MOTIONS FOR SUMMARY DETERMINATION AND PROPOSED AND FINAL ORDER issued on this date in OAH Case No. 1604492**.**

By: First Class Mail

Richard Senders
Rose, Senders & Bovarnick, LLC
1205 NW 25th Avenue
Portland, OR 97210

PSFM Limited Partnership
c/o Johnny Kondilis, Registered Agent
4891 Willamette Falls Dr. Suite 1
West Linn OR 97068

PSFM Limited Partnership
c/o Jeffrey Abbot, Registered Agency
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068

Kieran O' Donnell
Dept. of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Lucy for Alesia Vella
Administrative Specialist
Hearing Coordinator

Oregon
Kate Brown, Governor

Department of Environmental Quality
Headquarters
811 SW 6th Ave
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(503) 229-5696
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July 22, 2016

CERTIFIED MAIL No. 7014 2120 0001 8302 8609
Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

CERTIFIED MAIL No. 7014 2120 0001 8302 8593
Rose, Senders & Bovarnick, LLC
c/o Richard Senders, Attorney for Skidmore Limited Partnership and Mike Hashem
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CERTIFIED MAIL No. 7014 2120 0001 8302 8586
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CERTIFIED MAIL No. 7014 2120 0001 8302 8579
PSFM Limited Partnership
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West Linn, OR 97068

Re: Reply to Respondents' Response to DEQ's Motion for Summary Determination
In the Matter of: PSFM Limited Partnership, Skidmore Limited Partnership, & Mike Hashem
OAH Case No. 1604492, Agency Case No. LQ/SW-NWR-15-048

Dear Judge Greene Webster, Mr. Senders, and Mr. Kondilis:

Please find enclosed DEQ's Reply to Respondents' Response to DEQ's Motion for Summary Determination in the above referenced case.
Sincerely,

Kieran O'Donnell
Environmental Law Specialist

cc: Tim Spencer, NWR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | |
|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTNERSHIP, &<br>MIKE HASHEM<br><br>Respondents. | DEQ'S REPLY TO RESPONDENTS' RESPONSE TO DEQ'S MOTION FOR SUMMARY DETERMINATION<br><br>OAH Case No. 1604492<br>DEQ Case No. LQ/SW-NWR-15-048 |

## INTRODUCTION

On May 13, 2015, DEQ issued Notice of Civil Penalty Assessment and Order No. LQ/SW-NWR-15-048 (the Order) to the Respondents for alleged violations at a closed construction and demolition waste landfill with the tax roll description if Section 28, T1N, R2E, WM, and located at or around 2800 NE 82nd Ave., Portland, Oregon 97220 (the Facility). On June 27, 2016, DEQ submitted its Motion for Summary Determination (DEQ's MSD) pursuant to OAR 137-003-0580.

On July 14, 2016, Respondent Skidmore Limited Partnership (Respondent Skidmore) and Respondent Mike Hashem (Respondent Hashem) submitted a response to DEQ's motion (Respondents' Response). Respondents' response is insufficient to defeat DEQ's motion because it 1) fails to raise a genuine issue of material fact by incorrectly applies the summary determination analysis and confusing fact and law, and 2) incorrectly applies the law to the relevant undisputed material facts. Therefore, DEQ respectfully requests that the Administrative Law Judge grant DEQ's motion in its entirety because, under the undisputed facts, DEQ is entitled to a favorable ruling as a matter of law.

### 1. Respondents fail to raise a genuine issue of fact by misapplying the summary determination analysis and confusing fact and law.

Respondents failed to argue that DEQ's motion is inappropriate under the proper summary determination analysis as proscribed by OAR 340-003-0580. A motion for summary determination is appropriate when 1) the parties agree on the relevant facts, but disagree on the

interpretation or application of law, or 2) under any asserted version of the facts there is only one answer to the legal question. Respondents correctly assert that DEQ moved for summary determination, "contending that there are no material facts in dispute and that it is entitled to prevail as a matter of law." *Respondents' Response, p. 2.* Respondents argue that there are "numerous material facts in dispute including… whether PSFM violated the permit…, whether Hashem controls the former disposal site, [and] whether Skidmore can be held liable as the owner of the landfill[.]" Id. Ostensibly, Respondents argue that the parties do not agree on material facts. However, each of the "material facts in dispute," that Respondents list are legal conclusions, not material facts, and therefore not fatal to DEQ's motion for summary determination.

For example, a material fact asserted by DEQ in this case, and supported by evidence in the Record, is that MW-29 emitted landfill gas consisting of 15.2% methane on January 24, 2014. *Exhibit A1, pg. 2,* and *Exhibit A4, pg. 7.* Respondents do not dispute this fact. *Respondents' Response, pg. 7.* The legal conclusion in dispute is whether this undisputed material fact supports DEQ's legal conclusion that Respondents violated OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Condition 7.4 by failing to operate and maintain the LFGCS in effective working order such that methane concentrations do not exceed Compliance Limits. *Exhibit A1, pg. 3.* DEQ's position, and interpretation of its own rule and the Permit condition, is that an exceedance of a Compliance Limit is a violation of Permit Condition 7.4 because of the explicit prohibitive language in the condition. Specifically the condition states that the LFGCS must be operated in effective working order "such that methane concentrations *do not exceed* regulatory compliance limits." *Exhibit A7, pg.9.* Respondent has not offered an alternative application of the law. Therefore, as a matter of law, the undisputed facts support DEQ's legal conclusion that Respondents violated OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Condition 7.4 of the Permit.

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For each of the violations asserted in DEQ's Order, the material facts remain undisputed. Violations Nos. 2 through 6 of the Order are based on Respondents' failure to submit to DEQ a plan, report, or proof of independent monitoring. *Exhibit A1, pg.4.* To support these violations, DEQ offers the declaration of Tim Spencer, stating that Respondents have not submitted the appropriate plans, reports, or proof of independent monitoring. *Exhibit A4, pg. 2.* Respondents have not offered any evidence to the contrary. For Violation No. 1, Respondents have either not disputed DEQ's findings of fact or offered insufficient factual assertions without supporting evidence. For example, as stated above, DEQ and Respondents agree that MW-29 emitted landfill gas consisting of 15.2% methane on January 24, 2014. *Exhibit A4, pg. 7* and *Respondents' Response, pg. 7.* This is an undisputed material fact. However, Respondents have also offered contrary factual assertions without supporting evidence. For example, Respondents state that, "[b]etween December 8, 2013 and July 11, 2014, all the monitoring wells were in compliance except for wells 29 and 4 which exceeded compliance levels only on January 24, 2014." *Respondents' Response, pg. 7.* However, Respondents do not support this assertion with a citation to the Record. Yet, this assertion is contrary to DEQ's own evidence that demonstrate, for example, methane levels above 5% from MW-4s and MW-29 on January 13, 2014. *Exhibit A4, pg. 5 and 6.* Respondents have failed to present evidence that demonstrates a genuine issue as to the material fact that MW-4s and MW-29 exceeded compliance levels on January 13, 2014.

As stated in DEQ's motion, it is not sufficient to defeat a motion for summary determination by simply denying facts alleged by DEQ. Respondents must present evidence that demonstrates there is a genuine issue as to the material fact requiring a fact-finding hearing. Therefore, the Administrative Law Judge should review DEQ's motion for summary determination because Respondents fail to present evidence denying any of the material facts alleged by DEQ.

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**2. Respondents' misapply the law to the undisputed material facts.**

After failing to defeat DEQ's motion with evidence of genuine issue as to any material fact, Respondents provide several arguments that are either wholly unsupported by any plain meaning analysis of the applicable, statute, rule, and Permit condition or contradictory to basic principles of administrative law.

a. Respondents' erroneously interpret the law requiring the maintenance of the LFGCS such that methane concentrations do not exceed Compliance Limits.

As stated above, Respondents' do not deny DEQ's factual assertions of specific methane concentration readings above compliance limits. These readings are either undisputed, as is the case for the January 24, 2014, reading at MW-29, or they are denied without supporting evidence, as is the case for the January 13, 2014 reading at MW-29 and MW-4s.

Respondents' argue that they did not violate OAR 340-095-0020(9)(a), OAR 340-095-0030(4)(a) because the evidence suggests they did maintain the LFGCS in effective working order. *Respondents' Response, pg. 14.* This argument seems to rest primarily on the Declaration of Jason Bennett, who states that he "made all the repairs required to the [LFGCS] as requested by DEQ" and "the landfill gas control system was maintained in effective working order." *Bennett Declaration, pg. 1.*[1] However, this argument completely ignores the relevant language of the Permit condition requiring effective maintenance of the LFGCS "such that methane concentrations *do not exceed* regulatory compliance limits." *Exhibit A7, pg.9.* (emphasis added0. DEQ interprets the plain meaning of this condition as prohibiting the release of landfill gas with methane concentration above the Compliance Limit. By ignoring a portion of the language of the requirement, Respondents' have failed to offer a reasonable interpretation contrary to that of DEQ.

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[1] In its Response to Respondents' Motion for Summary Determination DEQ raised Respondents' failure to properly cite to the Record and label its exhibits. These failures continued in Respondents' Response.

b. Respondents' erroneously interpret the law requiring the submittal of a financial assurance plan to DEQ.

Respondents do not deny the fact that they have not obtained financial assurance and have not provided a financial assurance plan to DEQ. In addition, Respondents do not deny that OAR 340-095-0091(1), OAR 340-0095-0050(3)(b) and Conditions 10.2 and 10.4 of the Permit require the submittal of a financial assurance plan. Rather, Respondents seem to argue that 1) financial assurance had previously not been required, 2) Respondents requested that financial assurance be waived, and 3) a reasonable trier of fact could conclude that DEQ should waive the financial assurance requirement. *Respondents' Response, pg. 14.* However, Respondents' arguments are wholly unsupported by any citation to statute, rule, or Permit condition language and therefore fail on their face. However, perhaps even more importantly, these arguments contradict a basic principal of administrative rulemaking. Respondents essentially ask that this Administrative Law Judge determine that DEQ should have invalidated a rule requirement as applied to Respondents. However, neither DEQ nor an Administrative Law Judge, has the authority to waive or invalidate a rule on a case-by-case basis. *See Don't Waste Oregon Com. v. Energy Facility Siting*, 320 Or 132, 881 P2d 119 (1994). Such an act would be an illegal rulemaking without the proper public input. Furthermore, the non-existence of a rule in the past has no bearing on whether it is required in the present. Therefore, Respondents' offered no reasonable argument in opposition to DEQ's conclusion that the Respondents are required, and failed, to submit to DEQ a financial assurance plan.

c. Respondents erroneously interpret the law imposing liability for the violations alleged in the Order on all three Respondents.

Respondents misapply the law regarding the liability of Respondent Hashem and Respondent Skidmore by failing to analyze the plain meaning of statutory, rule and Permit condition language or inserting additional restrictive language to a requirement.

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Respondents' misinterpret ORS 459.205 by reading words into the statute that do not exist. Specifically, Respondents' argue that because Respondent Skidmore does not own the *entirety* of the real property once occupied by the landfill, it cannot be held liable under ORS 459.205. *Respondents' Response, pg. 16.* However, there is no such limiting language in the statute. In addition, this interpretation would create an absurd result, allowing any owner to escape liability under the statute simply by selling off any portion of the closed landfill site. Such an interpretation is absurd because it contracts the clear purpose of the statute, which is to insure that the public is not responsible for the potentially dangerous failures of closed landfill owners and operators. *Final Order in the Matter of: Kinzua Resources, LLC; ATR Services, Inc.; Gregory M. Demers; and Frontier Resources, LLC*, OAH Case No. 1403637, 2015, pg. 10

Respondents' incorrectly argue that Respondent Hashem does not control the Facility because other owners are preventing Respondent Hashem from controlling the Facility. Respondents state that "DEQ has produced no agreement or agreements between the property owners that gives Hashem, PSFM or Skidmore control over the property of other owners." *Respondents' Response, pg. 16.* However, Respondents' own evidence in the Record includes a Prospective Purchaser Agreement that clearly requires one of the purchasers of a portion of the landfill to continue to allow access to the permittee, among others, for the continued operation and oversite of the Facility. *Respondents' MSD, Hashem Exhibit 11, pg 9.* Furthermore, Respondents do not deny the factual findings by DEQ regarding Respondent Hashem's control of the Facility. Including the material facts that Respondent Hashem 1) is the president of Skidmore Management Company, the sole partner of Respondent Skidmore, 2) has been DEQ's point of contact for the Facility since 1998 and 3) has communicated with DEQ via email demonstrating his decision-making power over the Facility. *Exhibit A6*; *Exhibit A4, pg. 1,2, and 9-12.*

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Finally, Respondents claim Condition 3.4 of the Permit states that "*only* the permittee is responsible for compliance with the provision of the permit and liable for any omissions." *Respondents' Response, pg. 6* (emphasis added). Again, Respondents' interpretation requires an insertion of words into the language that do not exist. *Exhibit A7, pg. 5*. Furthermore, such an interpretation would undermine ORS 459.205 and portions of OAR 340, Division 095, which impose liability for landfill closure operations onto the person owning or controlling the Facility. It is an established principal of administrative that an agency cannot promulgate or rule or impose a permit condition that so blatantly contradicts an existing statutory requirement.

CONCLUSION

Respondents have failed to provide any evidence that demonstrates that there is a genuine issue as to any material fact alleged by DEQ. In addition, Respondents have failed to provide any rational legal argument, supported by a plain meaning interpretation of the statues, rules, or Permit conditions, contrary to DEQ's legal conclusions. Therefore, the Department respectfully requests that the Administrative Law Judge find that there is no genuine issue as to any material fact relevant to resolution of the legal issues in this matter, and that the Department is entitled to a favorable ruling as a matter of law on all violations alleged in the Order.

7/22/16
Date

Kieran O'Donnell
Environmental Law Specialist
Department of Environmental Quality

# ROSE, SENDERS AND BOVARNICK, LLC

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**Admitted in Oregon and Washington*
***Admitted in Oregon, Washington and Montana*

July 20, 2016

***Sent Via Email to alison.g.webster@oregon.gov***
***and by First Class Mail***

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

Re: In the Matter of PSFM Limited Partnership,
Skidmore Limited Partnership, and Mike Hashem
OAH Case No. 1604492
Agency Case No. LQ/SW-NWR-15-048

Dear Judge Webster:

This law firm represents Respondents Skidmore Limited Partnership and Mike Hashem in the above-referenced case. Enclosed for your consideration is Respondents Hashem and Skidmore's Reply to DEQ's Response to Respondents Hashem and Skidmore's Motion for Summary Determination.

The Hearing in this case is currently scheduled for September 19 and September 20, 2016.

Thank you for your consideration in this matter.

Sincerely,

Richard D. Senders

RDS:dms
Enclosure
cc: Hearings Coordinator (Via Email and First Class Mail)
Kieran O'Donnell (Via Email and First Class Mail)
Johnny Kondilis (Via Email and First Class Mail)
Mike Hashem (Via Email and First Class Mail)
Skidmore Limited Partnership (Via Email and First Class Mail)

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **RESPONDENTS HASHEM AND SKIDMORE'S REPLY TO DEQ'S RESPONSE TO THE HASHEM AND SKIDMORE'S MOTION FOR SUMMARY DETERMINATION** |
| Respondents. | ) | |
| | ) | |

**Mike Hashem Is Not Personally Liable for the Alleged Noncompliance of PSFM.**

It is undisputed that Mike Hashem ("Hashem") is not the permittee, operator, or owner of the Lavelle Landfill. There is no factual dispute that Mike Hashem's involvement with DEQ was in his capacity as president of M.M.D.F. Inc. which was the general partner of PSFM. It is undisputed that at the time of the alleged permit violations, PSFM had no ownership interest in the LaVelle Landfill and there were five separate parcel owners within the boundaries of the former landfill.

The legal question is whether there is a statutory or regulatory basis to impose vicarious liability on Hashem. DEQ relies on ORS 459.268. This statue says that if the person holding the permit for a landfill which no longer receives solid waste, "fails to comply with this section, the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of this chapter..." Unfortunately there is no appellate case law interpreting this statute.

As explained in Respondents' Memorandum of Facts and Law in Opposition to DEQ's Motion for Summary Determination, the statutory law in Oregon provides that a

shareholder of a corporation may not be liable for the acts or omissions of the corporation merely by reason of being a shareholder. ORS 60.151(2). Similarly, an officer or director of a corporation may not be liable if the person performs his duties in good faith, with the care of an ordinarily prudent person, and in a manner that the person reasonably believes to be in the best interest of the corporation. ORS 60.377(1) and (4); ORS 60.357 (1) and (4). An officer is not personally liable to third parties for the acts of a corporation unless the officer himself engaged in tortous conduct or unless there is a common law or an express statutory exemption to the privilege that shields a corporate officer from liability, such as the statute holding corporate officers liable for employee withholding taxes under certain circumstances.

The common law in Oregon is that an officer of a corporation who acts within the scope of his authority, discloses his representative capacity to the other party, and makes a contract in the corporation's name is not liable for the breach of that contract. Kahn v. Weldon, 60 OR App. 365, 377, 653 P.2d 1268 (1982).

If a statute is going to make a corporate officer personally liable for the responsibilities or liabilities of the corporation, in contravention to an officer's statutory and common law privilege, the statute must expressly waive the corporate officer's general privilege. The language in ORS 459.268 does not do that. The fact that Hashem was an officer of M.M.D.F. Inc. and communicated with DEQ in that capacity does not mean that Hashem is personally liable for the permittee or even for the general partner M.M.D.F. Inc.

There is simply no evidence that Hashem personally controlled the former landfill in 2013 or 2014, the dates of the alleged non-compliance. It can be argued by DEQ that PSFM was in control of the landfill by virtue of its permit and M.M.D.F Inc. was in control of PSFM as its general partner. Hashem, personally, had no control over the

former landfill, since he is not a permittee, the general partner of the permittee, the controlling owner of the site, nor was there any agreement with PSFM or with the owners of the site that gave Hashem personal responsibility for the former landfill. DEQ had not re-issued the permit into Hashem's name personally. There is simply no legal basis for holding Hashem personally liable for the responsibilities of PSFM.

**Skidmore Is Not Liable for the Alleged Noncompliance of PSFM.**

It is undisputed that Skidmore is not the permittee or operator of the LaVelle Landfill, nor is it named as an owner on the permit. It is also an undisputed fact that Skidmore owns only one of the five separate parcels within the former landfill. Skidmore's parcel is approximately 12.5 acres in size. The former landfill is approximately 33 acres in size. There is no agreement among the landowners that gives Skidmore control over the landfill site.

DEQ relies on ORS 459.268 and its associated rules to impose liability on Skidmore. The statue imposes liability on "the person owning or controlling the property." A reasonable reading of the statute is that the owner must own all of the property or control all of the property in order to have liability. Neither the statute nor the regulations impose liability on an owner of just a portion or just a piece of a former landfill, unless the owner controls the landfill. This makes perfect sense, since one landowner cannot trespass on the property of another to administer the permit, absent an agreement among the various landowners giving permission. DEQ offers no evidence of any such agreement.

DEQ's history of how and when the various parcels were sold, though inaccurate, is not relevant. What is relevant is whether or not Skidmore owned all of the former landfill property when the alleged non-compliance occurred in 2013 and 2014. It is

undisputed that at the time of the alleged permit violations, Skidmore only owned about one-third of the site.

As explained in Respondents' memorandum in opposition to DEQ's motion for summary determination, DEQ could have named the owners of all five parcels in the Notice of Civil Penalty Assessment and Order, but elected not to do so. Had it done so, then there might have been an issue as to whether the group as a whole could be liable and what might be an equitable apportionment of the liability. Instead DEQ named just an owner of one of the five parcels. DEQ cannot impose full or even partial liability on an owner of only a fraction of the former landfill. There is no legal basis for holding Skidmore liable for the responsibilities of PSFM.

**The Permit expired 30 years after the Landfill Closed.**

It is an undisputed fact that the LaVelle Landfill closed at the end of 1982. It is also an undisputed fact that DEQ took no action at the end of 2012 to extend the permit beyond 30 years nor did it make any express findings at the end of 2012 that the landfill, at that time, posed a significant health or safety risk after 30 years.

DEQ makes the argument that it must take some action to affirmatively terminate the permit after 30 years, otherwise the permit can go on indefinitely. This argument is contrary to a common-sense reading of the statute and regulations. DEQ must take some affirmative action to extend a permit beyond the 30 year termination date by making a finding that "there is a need to protect against a significant hazzard or risk to public health or safety or the environment." Absent such a finding, the permit terminates according to the law and the regulations. See OAR 340.095.0050(4) and ORS 459.270(2).

Assuming for the sake of argument that permits of a certain age cannot terminate on their own and that DEQ must affirmatively terminate the permit, this would effectively allow DEQ to enforce permits well beyond 30 years for no reason or any reason by simply ignoring the statutory mandate. This is contrary to the express intent of the legislature.

DEQ argues that it is not obligated to make a formal finding to extend the life of a landfill permit beyond 30 years. However, the statute and the rule both require the agency to make a finding. Presumably, this would allow the permittee notice and an opportunity to be heard on the subject. Assuming for the sake of argument that a formal finding is unnecessary, DEQ offers no evidence that it made any written findings in or around 2012 (the 30 year anniversary of the closure of the landfill) that the landfill, at that point in time, continued to be a significant risk or hazard to the public health, safety or environment. The permit that was issued in 2011 contains no such finding. While the 2011 permit was issued for a maximum of 10 years, there is nothing on the face of the permit that waives OAR 340.095.0050(4) or ORS 459.270(2).

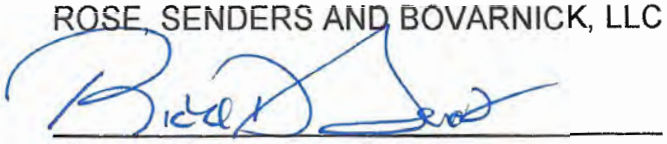
DEQ's final argument is that the violations took place within 30 years of the issuance of the 1984 closure permit. However, the clocks starts running from the date that the landfill closed, not from the date of the issuance of a permit relating to the closed landfill. Neither the statute nor the regulation makes mention of a permit. According to the DEQ's own records, the LaVelle Landfill closed in 1982. Senders Declaration Exhibits 1 and 2. It is undisputed that the alleged violations took place in 2013 and 2014, which would be more than 30 years after the site was closed as a landfill at the end of 1982.

## CONCLUSION

The motion for summary determination should be granted and Hashem and Skidmore dismissed as respondents.

DATED this 20th day of July, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



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## CERTIFICATE OF SERVICE

On July 20, 2016, Respondents Hashem and Skidmore's Reply to DEQ's Response to Hashem and Skidmore's Motion for Summary Determination, in OAH Case No.1604492, was sent both electronically and by First Class Mail to the following:

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
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7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Referral@oregon.gov*

Hearings Coordinator
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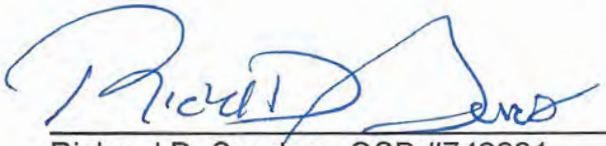
*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 20th day of July, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



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Oregon
Kate Brown, Governor

Department of Environmental Quality
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July 15, 2016

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Re: Response to Respondents' Motion for Summary Determination
In the Matter of: PSFM Limited Partnership, Skidmore Limited Partnership, & Mike Hashem
OAH Case No. 1604492, Agency Case No. LQ/SW-NWR-15-048

Dear Judge Greene Webster, Mr. Senders, and Mr. Kondilis:

Please find enclosed DEQ's Response to Respondents' Motion for Summary determination in the above referenced case. In addition, pursuant to OAR 340-003-0580(2) I have attached Exhibit A-10, as support for DEQ's Response to Respondents' Motion for Summary Determination.

Sincerely,

Kieran O'Donnell
Environmental Law Specialist

cc: Tim Spencer, NWR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | |
|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTNERSHIP, &<br>MIKE HASHEM<br><br>Respondents. | DEQ'S RESPONSE TO RESPONDENTS' MOTION FOR SUMMARY DETERMINATION<br><br>OAH Case No. 1604492<br>DEQ Case No. LQ/SW-NWR-15-048 |

## INTRODUCTION

On May 13, 2015, DEQ issued Notice of Civil Penalty Assessment and Order No. LQ/SW-NWR-15-048 (the Order) to the Respondents for alleged violations at a closed construction and demolition waste landfill with the tax roll description if Section 28, T1N, R2E, WM, and located at or around 2800 NE 82nd Ave., Portland, Oregon 97220 (the Facility). On June 23, 2016, Respondent Skidmore Limited Partnership (Respondent Skidmore) and Respondent Mike Hashem (Respondent Hashem), submitted Respondents' Motion for Summary Determination (Respondents' MSD). The Department of Environmental Quality (DEQ) submits this Response to Respondents' MSD pursuant to OAR 137-003-0580(2).

Respondents' MSD argues the following: 1) Respondent Hashem is not liable for the violations alleged in the Notice because he is not the permittee, the operator, or the owner of the real property; 2) Respondent Skidmore has no liability for Permit compliance because it is not the permittee or the operator; and 3) DEQ lacks the authority to enforce the permit because more than 30 years have passed between the closure of the landfill and the alleged violations. Furthermore, Respondents' MSD states that it is limited to the "narrow issue of whether [Respondent Skidmore and Respondent Hashem] are responsible for performance of the Permit and whether DEQ has authority to assess a civil penalty against them," and specifically "does not address the issues of whether or not there was non-compliance or what would be the correct penalty if there was non-compliance." *Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination, pg. 2.*

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DEQ respectfully requests that the Administrative Law Judge deny Respondents' MSD because it misapplies the law to the relevant and undisputed facts. Furthermore, Respondents' MSD impermissibly failed to include citations to the Record. The "Facts" section of Respondents' MSD is a compilation of factual assertions without any reference to supporting evidence in the Record. Although ORS 183; OAR 137, Division 003; and OAR 340, Division 11 do not proscribe a specific form or style for citations in motions, Respondents' almost complete omission of citations in its motion, which was prepared by legal counsel, fails to comport with a basic standard of legal writing.[1] Finally, Respondents' MSD is limited to the three narrow issues listed above and does not present evidence that demonstrates that there is a genuine issue of fact regarding the occurrence of the violations alleged in the Order.

ARGUMENT

1. Respondent Hashem is liable for the violations alleged in the Order because he is an operator, demonstrating control over the Facility.

Respondents argue that Respondent Hashem is not liable for the violations alleged in the Order because he is not the "permittee or operator" and "is not the owner of the real property." *Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination, pg. 9.* However, Respondents' MSD fails to cite to any document in the Record to support this assertion. In addition, Respondents' MSD misapplies the relevant facts to the law.

As argued in DEQ's Motion for Summary Determination, Respondent Hashem is liable for the violations alleged in the Notice pursuant to ORS 459.268 because he has demonstrated a long

[1] Respondents' MSD also failed to comply with the form of labeling exhibits. First, Respondents failed to label their exhibits as "R1," "R2," "R3," and so on. Instead, Respondents labeled exhibits with only a number. Second, Respondents submitted exhibits attached to the Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination and two different declarations; the Declaration of Mike Hashem and the Declaration of Richard D. Senders. However, Respondents did not use sequential numbering for these exhibits, effectively submitting three different Exhibits 1, 2 and 3, and two different Exhibits 4, 5, and 6. These extreme failures to basic filing form excessively burdened DEQ in drafting this response to Respondents' Motion for Summary Determination. In order to attempt to reduce confusion, DEQ will refer to Respondents' Exhibits as Memorandum Exhibit [#]", "Hashem Exhibit [#]," and "Senders Exhibit [#]," corresponding to the document to which they are attached.

history of control over the operations of the Facility. Furthermore, this assignment of liability to an individual for asserting control over a closed landfill facility's operations is consistent with past agency practice. *See Final Order in the Matter of: Kinzua Resources, LLC; ATR Services, Inc.; Gregory M. Demers; and Frontier Resources, LLC*, OAH Case No. 1403637, 2015.

Respondent Hashem has demonstrated a long history of control over the Facility in the following ways. First, Respondent Hashem has acted as a facility manager, consistently communicating with DEQ regarding the operations of the Facility. *Hashem Exhibit 14, Hashem Exhibit 15*, and *Exhibit A4, pg. 9-12*. Specifically, Respondent Hashem stated in an email dated October 10, 2011, "my goal is to maintain the site as I have done for the last 14 years and as you know I stepped up and spent the money and extended the extraction system[.]" *Hashem Exhibit 9, pg. 1*. Second, Respondent Hashem has allowed his name to be attached to the permit and he has signed the permit application. *Exhibit A7, pg. 1 and 2; Hashem Exhibit 5, pg. 2*. Finally, Respondent Hashem's own declaration states that he has "personal knowledge" of complex and detailed matters related to the operation and ownership history of the Facility, including, but not limited to, Respondent PSFM's employment of Jason Bennett "to take monthly samples of methane" and a lot line adjustment between M. Hashem Limited Partnership and Respondent Skidmore. *Declaration of Mike Hashem in Support of Motion for Summary Determination, pg. 4*. The Record, including Respondents' own exhibits, demonstrates that Respondent Hashem has continuously exercised control over the Facility in a manner that reflects his individual power to guide and manage the operations of the Facility. Therefore, pursuant to ORS 459.286 and OAR 340, Division 95, Respondent Hashem is liable for violations alleged in the Order.[2]

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[2] Respondents' MSD completely ignores that DEQ alleged violations of rule and permit condition in the Order. *Exhibit A1, pg.3 and 4.* Specifically, DEQ assessed a penalty and alleged a violation of OAR 340-095-0020(9)(a), which applies to any person "operating or maintaining," the Facility, and OAR 340-095-0090(1), which applies to the "owner or operator," of the Facility. The rules explicitly impose liability for the maintenance of the landfill gas control system and financial assurance on persons beyond just the named permittee.

For additional argument on this issue, please consider DEQ's Motion for Summary Determination, pages 5 through 7, which argue that the uncontested facts demonstrate that all three Respondents are liable for the violations alleged in the Order.

2. Respondent Skidmore is liable for the violations alleged in the Order because it is an owner of the Facility.

Respondents argue that Respondent Skidmore is not liable for the violations alleged in the Order because it is not, "named as an owner on the Permit[,]" "has not contractually assumed the responsibilities of the permittee[,]" and "has not been designated as the permittee because of the permittee's noncompliance." *Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination, pg. 9.* In addition, Respondents admit that Respondent Skidmore owns a portion of the real property formally occupied by the landfill, along with four other owners. *Id.* However, Respondents arguments misapply the relevant facts to law and fail to recognize clear statutory authority placing liability for the violations alleged in the Order on the owner of Facility.

As argued in DEQ's Motion for Summary Determination, Respondent Skidmore is liable for the violations alleged in the Order, pursuant to ORS 459.286 and OAR 340, Division 95, because it owns the real property associated with the Facility. As cited in the Order, OAR 340-095-0090(1) places the obligation to maintain financial assurance on the "owner or operator" of a Facility.[3] In addition, ORS 459.286 states that if permittee fails to comply with the law, "the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of this chapter," or any applicable rule or permit condition. As demonstrated by the Record the permittee has failed to comply with the law. *Exhibit A1, Exhibit*

[3] Financial assurance is essentially an insurance policy that the law requires owners or operators to possess. It insures that funds will be available for the proper and safe closure and post-closure of a solid waste disposal site regardless of the financial condition of the permittee, the owner, or the operator. OAR 340-095-0090. In this way, financial assurance is an essential mechanism to protect the public against the risk that it will have to pay for the closure and post-closure of a Facility. Respondents' complete failure to obtain financial assurance is currently placing the public's interests at risk. And, it is precisely for this reason that the law imposes this obligation on several persons, not just the permittee.

*A10*. Therefore, as an undisputed owner of the real property, Respondent Skidmore is liable for the violations alleged in the Order.

Respondents' attempt to muddy Respondent Skidmore's liability with the fact that there are other owners where the former disposal was located. However, this attempt completely ignores the purpose of DEQ's Prospective Purchaser Program and the benefits it has bestowed upon Respondents. The purpose of a Prospective Purchaser Agreement (PPA) is to 1) protect the public health, 2) facilitate productive reuse of the property, and 3) protect the prospective purchaser from potential liability.[4] *Hashem Exhibit 11, p.3*. Respondent PSFM purchased the real property in 1997 and subsequently divided the property and sold portions to different buyers, including Respondent Skidmore and M Hashem Limited Partnership, which in turn sold a portion to Dharma Rain Zen Center. *See Exhibit A5 and Declaration of Mike Hashem.* Dharma Rain Zen Center entered into a PPA with DEQ. *Hashem Exhibit 11*. This PPA benefitted M. Hashem Limited Partnership by allowing it to sell a property unencumbered by some environmental liabilities. In addition, the PPA requires the buyer (Dharma Rain Zen Center) to grant access to its purchased property to DEQ, its contractors, the permittee, or the permittee's successors, to perform the continued operation and oversight of the facility. *Hashem Exhibit 11, pg. 9*. Therefore PPA allowed Dharma Rain Zen Center to contact with DEQ out of the liability imposed by ORS 459.286, to the benefit of the seller, and the seller's successor, Respondent Skidmore, while maintaining the permittee's obligation to maintain the Facility with the access condition.

For additional argument on this issue, please consider DEQ's Motion for Summary Determination, pages 5 through 7, which argue that the uncontested facts demonstrate that all three Respondents are liable for the violations alleged in the Order.

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[4] For additional information on DEQ's Prospective Purchaser Program see: http://www.deq.state.or.us/lq/cu/ppa.htm

3. DEQ has the authority to enforce the Permit because DEQ has not terminated the Permit.

The Permit has not terminated because DEQ has not affirmatively acted to terminate the permit and the rules do not automatically terminate a closure permit after 30 years from closure. In addition, even if this ALJ finds that the rules do automatically terminate the Permit, DEQ has affirmed the continued public health need to operate the Facility under a permit, including the landfill gas control system (LFGCS), by issuing a unilateral order in 2009 and renewing the Permit for ten years in 2011. Finally, even if this ALJ finds that the permit expired after 30 years of issuance and DEQ has not effectively determined an ongoing need for permit coverage, the violations alleged in the Order occurred prior to the alleged 30 year expiration date.

Respondent argues that DEQ has no authority to enforce the Permit because the Permit terminated automatically by rule after 30 years from closure. *Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination, pg 9.* In order to support this erroneous legal conclusion, Respondent relies primarily on OAR 340-095-0050(4) and offers evidence that the Permit was initially issued on December 1, 1984. *Hashem Exhibit 2, pg. 1.*[5]

DEQ's rules, when read together and so as not to be in conflict, do not require closure permits to terminate automatically after 30 years of issuance without any action by DEQ. OAR 340-095-0050(4) states that "[t]he Department *shall* terminate closure permits… not later than 30 years after the site is closed *unless* the Department finds that *there is a need* to protect against a significant hazard or risk to public health or safety or the environment." (emphasis added). The use of the phrase "[DEQ] shall terminate," indicates that DEQ must take an affirmative action to terminate the permit, unless there is a public health need to maintain the permit. In addition, OAR 340 Division

[5] Page 2 of Respondents' MSD and page 2 of the Declaration of Mike Hasham state that "[t]he landfill closed in 1982." However, these statements do not cite any document in the Record. To the contrary, DEQ issued the closure permit on December 1, 1984. *Hashem Exhibit 2, pg. 1.* Closure permits are issued "to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the department." OAR 340-093-0030(20). Therefore, the Facility "closed," for regulatory purposes, on December 1, 1984, when it was issued a closure permit.

095 allows the permittee to petition DEQ to take the affirmative act of permit termination. OAR 340-095-0050(5). OAR 340-095-0080(2) proscribes a minimum period of thirty years of post-closure care, unless the permittee requests DEQ act to terminate the permit under OAR 340-095-0050(4) and (5). Finally, OAR 340-095-0050(6) explicitly states that a closure permit "remains in effect and is a binding obligation of the permittee until the Department terminates the permit," again, implying termination of a closure permit requires an affirmative act by DEQ. Therefore, since DEQ has not affirmatively acted to terminate the Permit, it remains effective and binding on Respondents.

Even if the Administrative Law Judge finds that the first part of OAR 340-095-0050(4) automatically terminates a closure permit after thirty years, DEQ's actions demonstrate its finding that the Permit is needed to protect against a significant public health risk. Respondents' MSD states that "DEQ has not issued formal findings that the Lavelle Landfill after 30 years of closure possess a significant hazard or risk to public health." *Memorandum of Facts and Law in Support of Respondents' Motion for Summary Determination, pg 7.* However, the rule does not require a "formal finding." OAR 340-095-0050. In addition, Respondents' unsupported conclusory statement ignores the tumultuous history of this Facility and the actions DEQ has taken to attempt to inspire the Respondents to manage the Facility responsibly. In 2009, DEQ took the extraordinary step of issuing Respondent Hashem, M. Hashem Limited Partnership and Respondent PSFM a unilateral Order Requiring Investigation and Removal and Remedial Actions (Unilateral Order), pursuant to ORS 465.260(4). *Exhibit A10.* DEQ issued the Unilateral Order because of the ongoing failure of the responsible parties, including Respondent Hashem and Respondent PSFM, to properly manage the Facility, demonstrated in part by methane readings showing concentrations of 30, 45, and 60 percent by volume.[6] *Exhibit A10, pg. 2.* In addition, in 2011, DEQ renewed the Permit, explicitly setting a permit expiration date of August 31, 2021. *Exhibit A7, pg. 1 and 2.* The renewal of the

[6] Recall that the compliance limit for methane emissions is 5 percent by volume. *Exhibit A7, pg. 14.*

Permit demonstrates that DEQ intended to continue to regulate the Facility until at least 2021 because it found a significant public health need to do so.

Finally, even if the ALJ finds that the permit automatically expired and DEQ has not effectively determined an ongoing need for permit coverage, the violations alleged in the Order occurred prior to the alleged 30 year expiration date. The permit was issued on December 1, 1984. *Hashem Exhibit 2 Pg. 1.* Therefore, thirty years from closure would have occurred on December 1, 2014. The violations alleged in the Order each occurred prior December 1, 2014. *Exhibit A1, pg. 3 and 4.* For example, DEQ alleged that violation No. 1, the failure to operate and maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits, occurred between at least the months of January through May of 2014. *Exhibit A1, pg. 3.* In addition, DEQ alleged that Respondents failed to submit the financial assurance plan by the required date of May 31, 2013, well before the supposed December 1, 2014 expiration of the Permit. *Exhibit A1, pg. 4.* Therefore, all the alleged violations occurred prior to the purported termination of the Permit.

## CONCLUSION

Respondents' MSD demonstrates Respondent Hashem and Respondent Skidmore's attempt to shirk responsibility for the safe operation of the Facility, and place it entirely on the back of Respondent PSFM, an asset-less entity without the resources to pay for compliance or a civil penalty. The Record demonstrates that the Facility was controlled by Respondent Hashem and all three Respondents have acted in concert, speaking with essentially one voice.[7] In essence, Respondents are playing a dangerous shell game while trying to hide the pea, resulting in a Facility

[7] Memorandum Exhibit 3 is a letter from Respondent PSFM to DEQ "re: Request for Hearing." Curiously, this document is not dated and DEQ's Office of Compliance and Enforcement had not received this document until June 23, 2016, when it was submitted along with Respondent Hashem and Respondent Skidmore's Motion for Summary Determination. It appears that Respondent Hashem and Respondent Skidmore's attorney obtained this document directly from Respondent PSFM. In addition, this exhibit closely resembles, both in format and language, Respondent Hashem and Respondent Skidmore's revised request for a contested case hearing, submitted and signed by Mr. Senders. Memorandum Exhibits 2 and 3.

with a history of mismanagement and excessive methane releases within close proximity to a residential neighborhood.

Under the authority of statute, rule, and permit condition, DEQ's Order endeavors to hold the responsible parties accountable for their actions and protect the public from the risks derived from the continued mismanagement of the Facility. Therefore, DEQ respectfully requests that the administrative law judge deny Respondents' motion for summary determination because it lacks a rational application of the relevant facts to the law.

7/15/16
Date

Kieran O'Donnell
Environmental Law Specialist
Department of Environmental Quality

# STATE OF OREGON
# DEPARTMENT OF ENVIRONMENTAL QUALITY

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|---|---|
| In the Matter of<br><br>Mike Hashem<br>M. Hashem Limited Partnership /<br>PSFM Limited Partnership<br>P.O. Box 1587<br>Clackamas OR 97015<br><br>**Respondent** | **DEQ No. LQSR-NWR-08-16**<br>ORDER REQUIRING INVESTIGATION AND REMOVAL AND REMEDIAL ACTIONS |

Pursuant to ORS 465.260(4), the Director, Oregon Department of Environmental Quality (DEQ), issues this Unilateral Order to Mike Hashem (Respondent).

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## 1. Purpose

The purpose of this Unilateral Order (Order) is to protect public health, safety, and welfare and the environment by requiring investigation and removal and/or remedial actions at the H.G. LaVelle Landfill Site in accordance with ORS 465.200 through 465.420 and regulations promulgated there under.



EXHIBIT A10
Item N 000154
PAGE 1

2. Findings of Fact

A. Mr. Mike Hashem is the current owner of the property at the southeast corner of NE 82nd Avenue and NE Siskiyou Street in Portland, Oregon (the Property.) The landfill occupies tax lots 100 and 400. The "site", referenced in DEQ files as H.G. LaVelle Landfill or LaVelle Landfill site, includes the Property and all places where contamination from the Property, including but not limited to landfill gases, has come to be located. A site location and layout map are attached hereto as Attachment A.

B. The site is a former quarry pit that was excavated to a depth of up to 80 feet. It was subsequently used as a demolition debris landfill, from 1972 until 1982. The landfill, which covers 23 acres, contains approximately 2 million cubic yards of solid waste, including biodegradable waste that has resulted in generation of methane and other landfill gases.

C. An active gas extraction and venting system was installed at the site around 1980. This system included extraction wells along the north and west sides of the landfill perimeter. In addition, landfill gas (LFG) monitoring probes were installed along the entire site perimeter. The extraction wells are connected by horizontal header pipes to a blower station. The original design called for future expansion of the system that was to include extraction wells along the east and south sides of the landfill. These additional extraction wells were never installed.

D. Methane gas concentrations in excess of the lower explosive limit have been detected at several locations on the landfill property. Methane readings have shown 45 percent by volume in a monitoring probe beneath Building B of the Asian American Plaza Development, 30 percent by volume in perimeter monitoring probe MW-30 located at the southern property boundary within 100 feet north of the Madison Place Subdivision, 36.5 percent by volume in monitoring probe MW-34 near the landfill's northeast boundary and approximately 60 percent by volume in passive vents located near the landfill's northern boundary, within 100 feet of off-site residences on N.E. Siskiyou Street. Because Respondent has not provided information on methane gas readings for over two years, DEQ is concerned that gas could have migrated to offsite residences.

E. Current requirements for operation and maintenance of the landfill are specified in the Solid Waste Disposal Site Closure Permit No. 211. This permit expired on April 4, 2004, and was not renewed because a change in ownership of the Property was anticipated by DEQ and Respondent. That transfer of the Property did not occur. However, because DEQ has not terminated the expired permit, its conditions still apply as specified in OAR 340-93-070(7)(b)(iii).

F. The permit requires, among other things, that the Respondent measure methane concentrations at all the gas monitoring wells at least twice each month, and submit this information to DEQ every three months. DEQ has not received monitoring data in over two years. Recent inspections indicate that the active venting system is operating. However, DEQ has not received data to indicate whether it is operating properly.

G. During DEQ's March 16, 2007 inspection of the landfill site the Respondent indicated that methane monitoring and reporting to DEQ would resume consistent with the requirements of the solid waste closure permit. Following the inspection, however, the Respondent did not submit any methane monitoring results during the calendar years 2007 and 2008. When DEQ contacted the Respondent by phone regarding methane monitoring requirements, in follow-up to the March 16, 2007, inspection, the Respondent refused to conduct methane monitoring or to provide any information required under the solid waste closure permit.

**3. Conclusions of Law and Determinations**

Based on the above Findings of Fact and the administrative record, DEQ determines that:

A. Methane from a historic solid waste landfill is a "hazardous substance," as defined in OAR 340-122-115(30).

B. The presence of hazardous substances in soil at and near the Site constitutes a "release" or threat of "release" into the environment within the meaning of ORS 465.200(22).

C. The Site and contaminated soil and potentially contaminated groundwater at and near the Site are a "facility" within the meaning of ORS 465.200(13).

D. Respondent is a "person" within the meaning of ORS 465.200(21).

E. As the owner and operator of the facility, Respondent is liable under ORS 465.255, and therefore may be required by DEQ to conduct any removal or remedial action necessary to protect public health, safety, and welfare and the environment, pursuant to ORS 465.260(4).

F. The activities required by this Order are necessary to protect public health, safety, and welfare and the environment.

Based on the above Findings of Fact and Conclusions of Law and Determinations,

DEQ ORDERS:

4. **Notice of Intent to Comply**

No later than 10 calendar days after issuance of this Order, Respondent shall provide written notice to DEQ of Respondent's intent to comply with this Order.

5. **Work to Be Performed**

A. Work plan. Within 20 calendar days of issuance of this Order, Respondent shall submit a work plan describing activities required under paragraphs B and C of this section. This Work Plan shall describe all equipment and methods used, and the contents of reports submitted to document these activities. The work plan shall include the items listed in Attachment B of this Order.

B. Gas monitoring. Respondent shall record the barometric pressure and measure methane, carbon dioxide, and oxygen concentrations and gas pressure at all existing monitoring probes a minimum of once every week for one month immediately following the issuance of this order and once every two weeks, thereafter, until DEQ determines that a lower monitoring frequency is acceptable. Results will be described in reports submitted monthly to DEQ, except that the respondent must report results for the initial one-month period of monitoring in the Evaluation Report described in paragraph C

below. Based on these results, DEQ may determine that additional landfill gas monitoring may be needed on and near the landfill property. Respondent shall expand the scope of gas monitoring as determined by DEQ.

C. Evaluation of gas management and monitoring system. Respondent shall conduct a thorough evaluation of the gas management and monitoring system and prepare a report describing the observations, conclusions and recommendations. This report shall also provide a summary and analysis of the initial methane monitoring results collected in accordance with paragraph B above. The evaluation shall address the condition of all extraction and monitoring equipment (including perimeter monitoring probes), system performance, and recommendations for modifications to system components and operation. This report shall be submitted within 30 days of DEQ approval of the work plan.

D. Additional measures. In addition to the measures required to address releases of methane, DEQ may determine that additional removal and/or remedial measures are necessary to protect public health and the environment. These may include, but are not limited to, site grading, storm water management, leachate seep management, landfill cover maintenance and repair, and groundwater monitoring. In addition, Respondent may elect at any time during the term of this Order to undertake measures, beyond those required under this Order, necessary to address the release or threatened release of hazardous substances at the facility. Such additional measures (including but not limited to engineering or institutional controls and other removal or remedial measures) shall not be implemented without prior approval by DEQ.

E. DEQ may determine that, in addition to work specified in the approved work plan, additional removal and/or remedial action work is necessary to address threats to human health or the environment at the site. DEQ may require that such additional work be incorporated into the work plan by modification. Respondent shall modify the work plan and/or implement the additional work in accordance with DEQ's directions or the DEQ-approved work plan.

6. General Provisions

A. Qualifications of Personnel

(1) All work required by this Order shall be performed under the supervision of a qualified environmental professional experienced with landfill gas monitoring and collection and control. The qualified environmental professional shall be either an Oregon licensed professional engineer or registered geologist. All documents required under this Order must be signed and stamped by the qualified environmental professional. Within 15 calendar days of issuance of this Order, Respondent shall provide DEQ, in writing, the name, title, and qualifications of such supervising personnel and of contractors and subcontractors to be used in performance of work. Qualifications of such personnel shall be subject to DEQ review and, at DEQ's election, DEQ written approval or disapproval. If DEQ disapproves, in writing, the qualifications of any personnel, Respondent shall provide DEQ, in writing, the name, title, and qualifications of replacement personnel, subject to DEQ's review and approval as described above, within 15 calendar days of DEQ's issuance of written disapproval. If DEQ subsequently disapproves the replacement personnel, DEQ reserves its right under ORS 465.260 to perform the work required under this Order and to seek reimbursement of its costs from Respondent.

(2) If Respondent changes supervisory or key contractor personnel during the course of work under this Order, the qualifications of the new personnel shall be subject to DEQ review and approval in accordance with Paragraph (1) above.

(3) DEQ approval of the qualifications of an environmental professional selected by Respondent does not constitute DEQ endorsement of that professional or that professional's work product, and Respondent remains responsible for each professional's work and work product.

B. DEQ Approvals

(1) Respondent shall not proceed to implement any plan or activity required under this Order, and shall not proceed with any other investigative or remedial activity concerning hazardous substances released to the environment at or near the Site, until DEQ

review and written approval of the activity is received. Any reports, plans, specifications, schedules, or other deliverables required by the Order, upon approval by DEQ, are incorporated into this Order. Any noncompliance with such DEQ-approved deliverables shall be considered a violation of this Order.

(2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Order, DEQ will:

(a) Approve the deliverable in whole or in part; or

(b) Disapprove the deliverable in whole or in part and notify Respondent of deficiencies and/or request modifications to cure the deficiencies.

(3) In the event of DEQ's disapproval or request for modification of a deliverable, Respondent shall correct the deficiencies and resubmit the revised report or other item for approval within 10 calendar days of receipt of the DEQ notice or within such other time specified in the notice.

(4) In the event of two deficient submittals of the same deliverable, DEQ may modify the submission to cure the deficiencies. DEQ reserves its right to seek reimbursement of its costs from Respondent.

(5) In the event of approval or modification of a deliverable by DEQ, Respondent shall implement the action(s) required by the plan, report, or other item as approved or modified by DEQ.

C. DEQ Access and Oversight

(1) Respondent shall allow DEQ to enter and move freely about all portions of the Site at all reasonable times for the purposes, among other things, of inspecting records relating to work under this Order, observing Respondent's progress in implementing this Order, conducting such tests and taking such samples as DEQ deems necessary under this Order, verifying data submitted to DEQ by Respondent, and using camera, sound recording, or other recording equipment for these purposes.

(2) Respondent shall notify DEQ of any excavation, drilling, sampling, construction, and surveying to be conducted under this Order, as well as any other on-site activities for which DEQ requests advance notice, at least five calendar days before such activity. Upon DEQ's verbal request, Respondent shall make available to DEQ a split or duplicate of any sample taken in connection with this Order.

D. Project Managers

(1) All reports, notices, and other communications required under or relating to this Order shall be directed to:

Bob Schwarz
Oregon DEQ
400 E. Scenic Drive, Suite 307
The Dalles, Oregon 97058
Phone: 541-298-7255, ext. 30
Fax: 541-298-7330
Email: Schwarz.bob@deq.state.or.us

(2) Within five calendar days of notification of intent to comply under Section 4 of this Order, Respondent shall provide DEQ with written designation of a Project Manager for purposes of this Order and receipt of notices and other communications. Respondent's designated project manager must be authorized to make day to day decisions necessary to accomplish the work required by this Order. Respondent shall notify DEQ of any change in its designated project manager, in writing, within 48 hours of the change.

E. Quality Assurance

The initial scope of work focuses primarily on field measurement of methane, carbon dioxide and oxygen, and therefore does not involve laboratory analysis. The work plan may be expanded, however, to include laboratory analysis and other activities, and quality assurance and quality control (QA/QC) measures associated with these activities. In that case, the Respondent shall conduct all sampling, sample transport, and sample analysis in

accordance with the QA/QC provisions approved by DEQ in the work plan. Respondent shall ensure that each laboratory used by Respondent for analysis performs such analysis in accordance with the approved QA/QC provisions. Respondent shall also ensure that DEQ and its authorized representatives are allowed access at reasonable times to laboratories and personnel used by Respondent for sample analysis.

F. Records

Respondent shall retain all records and documents within its possession or control, including without limitation, those in the possession of Respondent's employees, agents, and contractors, relating in any way to activities conducted under this Order, for at least 10 years after termination of this Order pursuant to Section 7 below. Upon DEQ's request, Respondent shall provide copies of such records to DEQ.

G. Progress Reports

During each month of this Order, Respondent shall deliver to DEQ on or before the 10th of each month a progress report containing:

(1) Actions taken under this Order during the previous month;

(2) Actions scheduled to be taken in the next two months;

(3) Sampling, test results, and any other data generated or received during the previous month; and

(4) A description of any problems experienced during the previous month and actions taken to resolve them.

H. Other Laws

(1) Subject to ORS 465.315(3), all actions under this Order shall be performed in accordance with all applicable Federal, State, and local laws and regulations.

(2) Without limiting the foregoing, all action under this Order shall be performed in accordance with any applicable federal, state and local laws and regulations related to archeological objects and sites and protection thereof. If archeological objects or human remains are discovered during any investigation, removal or other remedial activities at the Site, Respondent shall, at a minimum, (a) stop work immediately in the vicinity of the find, (b) provide any notifications required by ORS 97.745 and ORS 358.920, (c) notify the DEQ Project Manager within 24 hours of the discovery, and (d) use best efforts to ensure that Respondent and its employees, contractors, counsel and consultants keep the discovery confidential, including but not limited to, refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public.

7. **Satisfaction of Order**

Upon completion of work under this Order, Respondent shall submit to DEQ a written notice of completion. This Order shall be deemed satisfied and terminated upon DEQ's issuance of a certification of satisfactory completion of activities required by this Order.

This Unilateral Order is deemed satisfied upon completion of work required under this Unilateral Order and payment by Respondent of any outstanding oversight costs and penalties. DEQ shall determine whether work under this Unilateral Order is satisfactorily completed and the Unilateral Order terminated, by letter issued within 60 days of DEQ's approval of the last deliverable required from Respondent under this Unilateral Order, or as soon thereafter as reasonably practicable.

IT IS SO ORDERED:

By: Nina DeConcini Date: 2/25/09

Nina Deconcini
Regional Administrator,
Northwest Region
Oregon Department of
Environmental Quality

NOTICE REGARDING FAILURE TO COMPLY:

1. Upon Respondent's failure to comply with this Order, DEQ may seek any available remedy to enforce this Order, including but not limited to civil penalties and injunctive relief. ORS 465.260, 465.900.

2. Upon Respondent's failure to comply with this Order, Respondent may be liable for any costs incurred by the State of Oregon in conducting the work required under this Order and for punitive damages of up to three times the amount of the state's costs. ORS 465.260(8)

3. Respondent may not seek an administrative appeal or judicial review of this Order. ORS 465.260(6).

NOTICE REGARDING DEQ COSTS:

Pursuant to ORS Chapter 465, the Respondent named in this Order is liable for costs incurred by DEQ in issuing and overseeing implementation of this Order. DEQ will issue the Respondent a monthly invoice of DEQ costs and request payment by check payable to the "State of Oregon, Hazardous Substance Remedial Fund." Any amounts not paid within 30 calendar days of issuance of the invoice will be subject to a nine-percent (9%) per annum interest charge. Any amounts that remain unpaid will be subject to recovery by DEQ pursuant to ORS 465.330 through 465.335 and other applicable law.

CERTIFICATE OF SERVICE BY MAIL

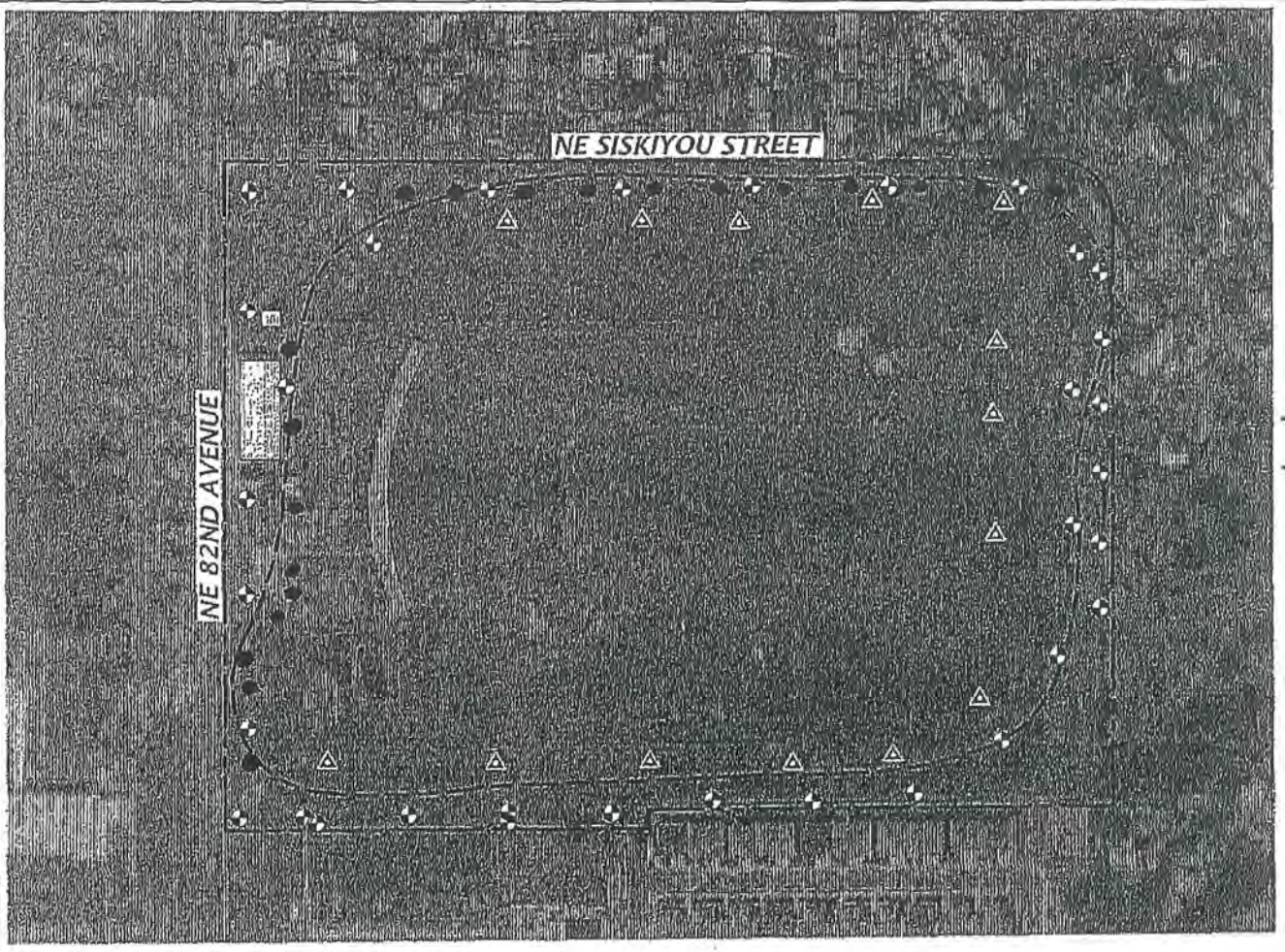
I certify that on Feb 25, 2009, I served the foregoing ORDER by certified mail, postage prepaid, upon:

Mike Hashem
M. Hashem Limited Partnership /
PSFM Limited Partnership
P.O. Box 1587
Clackamas OR 97015

Bob Schwarz, Project Manager, DEQ

CERTIFICATE OF SERVICE

May 25, 2006 - 12:37:05 DWG Name: FirstPro-1-01-LANDFILL-FIGURE-1.dwg Updated By: kt




Unilateral Order
Attachment A

EXPLANATION:

- PROJECT SITE BOUNDARY
- APPROXIMATE EXTENT OF LANDFILL
- EXISTING EXTRACTION WELL
- EXISTING BLOWER HOUSE
- EXISTING MONITORING WELL
- EXISTING PASSIVE VENT

N

NOT TO SCALE

IMAGE OBTAINED FROM PORTLAND MAPS

| | | |
|---|---|---|
| GEODESIGN INC<br>15575 SW Sequoia Parkway - Suite 100<br>Portland OR 97224<br>Off 503.968.8787 Fax 503.968.3068 | FIRSTPRO-1-01 | EXISTING SITE CONDITIONS |
| | MAY 2006 | PROSPECTIVE DEVELOPMENT - LAVELLE LANDFILL SITE<br>PORTLAND, OR — FIGURE 1 |

EXHIBIT A10
PAGE 13

## Attachment B
## Work Plan Outline

1. Landfill gas monitoring
   - 1.1. Sampling procedures and equipment
   - 1.2. Sampling frequency
   - 1.3. Monthly report contents

2. Evaluation of gas management system
   - 2.1. Project approach
   - 2.2. Testing procedures and equipment
   - 2.3. Observations
   - 2.4. Conclusions and recommendations
     - 2.4.1. recommended equipment modifications
     - 2.4.2. recommended operation modifications

3. Project personnel, including roles of each person and their qualifications

4. Schedule of project activities

5. Attachments
   - 5.1. Field data forms for landfill gas sampling
   - 5.2. Field data forms for gas management system testing
   - 5.3. Site map

EXHIBIT 14-10
Item N 000167
PAGE 14

RECEIVED
JUL 15 2016
Office of Administrative Hearings
Tualatin

Before the office of administrative hearing
State of Oregon
For the
Dept. Of Environmental Quality

In the matter of: ) OAH CASE NO 1604492
PSFM LP LIMITED PARTNERSHIP ) AGENCY CASE NO LQ/SW-NWR-15-048
SKIDMORELOMITED PARTNERSHIP ) RESPONDANT PDFM LP IN OPPOSITION TO
& MIKE HASHEM )DEQ MOTION FOR A SUMMARY
) ) DETERMINATION

PSFM LP opposes DEQ motion for a summary determination. PSFM LP adopts as its own the facts and arguments submitted by Skidmore LP and Mike Hashem in their opposition to DEQ 's motion for summary determination.

PSFM LP 7/8/16
By Johnny kondilis its president.

Attachment D 5

# ROSE, SENDERS AND BOVARNICK, LLC

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*(Retired)*
**Richard D. Senders***
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**Admitted in Oregon, Washington and Montana

RECEIVED
JUL 18 2016
Office of Administrative Hearings
Tualatin

July 14, 2016

***Sent Via Email to alison.g.webster@oregon.gov and by First Class Mail***

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

Re: In the Matter of PSFM Limited Partnership, Skidmore Limited Partnership, and Mike Hashem
OAH Case No. 1604492
Agency Case No. LQ/SW-BWR-140948

Dear Judge Webster:

This law firm represents Skidmore Limited Partnership and Mike Hashem in the above-referenced case. Enclosed for your consideration are Respondents Skidmore and Hashem's Memorandum of Facts and Law in Opposition to Dept. of Environmental Quality's Motion for Summary Determination, together with the declarations of Mike Hashem, Jason Bennett, and Richard Senders.

Thank you for your consideration in this matter.

Sincerely,

Richard D. Senders

RDS:dms
Enclosures
cc: Kieran O'Donnell (Via Email and First Class Mail)
Johnny Kondilis (Via Email and First Class Mail)
Hearings Coordinator (Via Email and First Class Mail)
Mike Hashem (Via Email and First Class Mail)
Skidmore Limited Partnership (Via Email and First Class Mail)

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **RESPONDENTS SKIDMORE AND HASHEM'S MEMORANDUM OF FACTS AND LAW IN OPPOSITION TO DEPT. OF ENVIRONMENTAL QUALITY'S MOTION FOR SUMMARY DETERMINATION** |
| Respondents. | ) | |

## INTRODUCTION

The Department of Environmental Quality ("DEQ") has issued a Notice of Civil Penalty Assessment and Order (the "Order") against PSFM Limited Partnership ("PSFM"), Skidmore Limited Partnership ("Skidmore") and Mike Hashem ("Hashem"). The Order alleges that PSFM, Skidmore, and Hashem have violated the Solid Waste Closure Permit (the "Permit") for the facility known as the Lavelle Landfill. Specifically, the Order claims that the respondents failed to operate and maintain the landfill gas control system (the "LFGCS") in effective working order between January 13, 2014 and June 30, 2014. DEQ is assessing a civil penalty of $20,720. The Order also alleges that respondents failed to submit a financial assurance plan by May 31, 2013, and DEQ is assessing a civil penalty of $37,873 for this violation.

The respondents denied the factual allegations, claims, and conclusions in the Order. After the parties were unable to agree on a negotiated resolution, the

respondents timely requested a contested hearing before an administrative law judge. Attached as Exhibit 1 is Skidmore and Hashem's request for a contested hearing. Attached as Exhibit 2 is PSFM's request for a contested hearing.

DEQ has filed a motion for summary determination contending that there are no material facts in dispute and that it is entitled to prevail as a matter of law. Respondents contend in this Response that are numerous material facts in dispute including, but not necessarily limited to, whether PSFM violated the permit, whether third parties with the consent of DEQ were responsible for the alleged violations, whether Hashem controls the former disposal site, whether Skidmore can be held liable as the owner of the landfill, and whether the civil penalties were correctly assessed. The motion for summary determination should be denied because of the factual disputes and because DEQ is not entitled to prevail as a matter of law.

**FACTS**

The Lavelle Landfill is a former quarry pit that was operated by Rose City Sand & Gravel Co. Rose City mined the property for sand and gravel to a depth of up to 80 feet. Beginning in 1972, mining operations ceased, and the quarry pit was operated as a demolition landfill. The landfill was permitted to receive building and demolition debris, wood products, metals, heavy industrial debris, and similar materials. The landfill closed in 1982. As part of the closure, the landfill was covered with a soil cover. The landfill encompasses approximately 33 acres.

The landfill has a landfill gas control system ("LFGCS") that was designed and

constructed along the landfill's north and west boundaries in 1979 to monitor and to extract methane gas from the landfill. The LFGCS was installed by Rose City Sand & Gravel Co., the permit holder, with the approval of DEQ. The system includes a network of extraction wells connected to a header pipe running along the perimeter of the landfill. The header pipe is connected to an extraction blower. The system also included approximately 34 monitoring wells that allow the sampling of methane gas levels at various locations and passive vents. The permit issued to Rose City Sand & Gravel required it to take methane gas readings at each monitoring well and report them to DEQ, The permittee was also required to keep the LFGCS in good working order so that "methane concentration does not exceed 1.25 percent within on site structures...or exceed 5 percent of the soil atmosphere beyond the landfill property boundary." The permit stated that financial assurance requirements are not applicable to the site.

The methane gas levels within the former landfill are not static. The gas concentrations can change with the decomposing of debris within the landfill and with activities on the surface. For this reason, the LFGCS system was designed so that the number of hours that the extraction blower system is run per day can be increased as methane gas levels increase.

Rose City Sand & Gravel Co. subdivided the 33 acre landfill into five parcels and put the property on the market for sale. In or about 1997, PSFM acquired Parcel No. 4, which was approximately 21 acres. At about the same time, M. Hashem Limited Partnership acquired Parcel 2, which was 1.5 acres, and Parcel 3, which was approximately 4.5 acres. The General Partner of M. Hashem Limited Partnership was N.M.B. Corp. Parcel 1, which is approximately one-half acre, was sold to an individual

who built a carpet store. Parcel 5, which amounted to approximately five acres, was sold to a developer who built the Madison Place Apartments.

In 1998, PSFM assumed the solid waste disposal site closure permit that had previously been issued to Rose City Sand & Gravel Co. PSFM is an Oregon limited partnership. The general partner of PSFM was M.M.D.F. Corp. Mike Hashem was the president of M.M.D.F. Corp. DEQ issued an amended solid waste disposal site closure permit on June 30, 1998 that names PSFM as the permitee, owner, and operator. DEQ erroneously included Mike Hashem's name on the Permit. The Permit should have identified the permittee as PSFM Limited Partnership, in care of Mike Hashem, rather than identifying the permittee as Mike Hashem PSFM Limited Partnership.

In March of 2000, PSFM sold its 21-acre parcel to Skidmore on contract. The contract was satisfied in 2004. Skidmore is an Oregon limited partnership with Skidmore Management Corp. as its general partner. According to DEQ's Exhibit 5 the sales price was $1,250,000.

The Permit was scheduled to expire on March 31, 2004. On September 1, 2003, PSFM submitted an application to renew the Permit. The application was signed by Mike Hashem, in his capacity as president.

In 2004 or 2005, M Hashem Limited Partnership sold Parcel 2, which is approximately 1.5 acres, to Asian American Plaza LLC.

PSFM's application to renew the permit languished at DEQ for over seven years. During this time Skidmore made efforts to sell all or a major portion of its property to a big box retailer. The sale never materialized.

In February of 2009, DEQ issued PSFM an order requiring it to investigate and

to take remedial action at the landfill due to high methane readings, even though its closure permit had expired. A work plan was prepared by PSFM's engineers and approved by DEQ. The work plan called for expansion of the active gas extraction and passive ventilating system that was installed at the landfill in 1979. Pursuant to the work plan, four new extraction wells were added to the system as well as additional low grade piping. This work was completed by the end of September 2009.

In January of 2010, DEQ conducted a series of tests. DEQ concluded that the wells on the east side of the landfill did not require further monitoring, and it excluded monitoring wells 20, 28, 27, 19, 26, 25, 18, 24, 23, and 33 from the monitoring requirements. It was also recommended that the extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continued to be elevated along the landfill's south side where monitoring well 29 is located.

In or about late September or early October 2011, DEQ submitted a draft of a new solid waste disposal site closure permit to PSFM for its review and comments. The draft permit listed Mike Hashem, M Hashem Limited Partnership and PSFM as the permit holders. Mr. Hashem objected to being named as a permittee. He also objected to M. Hashem Limited Partnership being named as a permit holder. DEQ corrected the draft and issued the permit naming PSFM as the sole permittee. The operator was also PSFM. Under owner, DEQ put both Mike Hashem's name and PSFM. This again was in error. PSFM, at the time, had no ownership interest in any of the property and neither did Mike Hashem.

The 2011 permit provides that PSFM, the permittee, must maintain legal control of the disposal site property. DEQ Exhibit 7,Section 1.9. Only the permittee is

responsible for compliance with the provisions of the permit and liable for any omissions. DEQ Exhibit 7,Section 3.4. The permit requires the permitee to maintain the LFGCS in effective working order. The LFGCS is to function such that methane concentrations do not exceed regulatory compliance levels. The permittee must immediately repair and replace any damaged LFGCS equipment. DEQ Exhibit 7,Section 7.4. The permittee must also maintain and repair or modify any damaged or non-functional probes. DEQ Exhibit 7,Section 7.5. The LFGCS and monitoring wells must be physically inspected at least once a month. DEQ Exhibit 7,Section 7.11. The permittee is required to test methane concentrations at the monitoring wells at least once a month. DEQ Exhibit 7,Section 8.7. The test results are to be reported every three months. DEQ Exhibit 7,Section 8.12. If methane levels exceed specified compliance levels, the permittee must notify DEQ of the event within 7 days of detection, increase the frequency of monitoring until compliance levels are reached, and adjust the LFGCS as needed to increase gas extraction levels in the affected area. DEQ Exhibit 7,Section 9.5.

Nothing in the permit imposes any compliance responsibility or liability on Skidmore or Hashem.

PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and provide the readings to DEQ. Mr. Bennett was trained by DEQ on how to sample methane gas levels. Mr. Bennett uses DEQ approved equipment for testing methane gas levels.

In 2012, M. Hashem Limited Partnership and Skidmore did a lot line adjustment. Skidmore retained 12.5 acres. M Hashem Limited Partnership increased its parcel to 13.7 acres. Following the lot line adjustment, M Hashem Limited Partnership entered

into an agreement to sell all of its 13.7 acre parcel to Northwest Zen Sangha, dba Dharma Rain Zen Center ("Dharma"). In October 2012, Dharma and DEQ entered into a Consent Order and Prospective Purchase Agreement which allows Dharma to redevelop the property without liability for prior releases. As part of the redevelopment, Dharma is allowed to surcharge the soil, monitor methane gasses, and build structures on its property. Dharma is also authorized to modify the extraction system and monitoring wells in order to build a street. PSFM was not a party to the negotiations or to the agreement between Dharma and DEQ. The sale of the 13.7 acres from M. Hashem Limited Partnership to Dharma closed in 2012.

Dharma's engineers surcharged the soil and took methane readings near where the surcharging was taking place in November 2013, December 2013, and January of 2014. Surcharging the soil involved adding dirt to the landfill to increase the cover and compacting the dirt. DEQ expected that the surcharging would likely have some effect on the methane readings. PSFM was not notified of the surcharging, nor did it participate in the methane readings at the monitoring wells near the surcharging area. It is not known whether Dharma's engineers used the right methane measuring equipment or followed the right procedures.

During these months, PSFM continued to take monthly methane readings at the various monitoring wells. Between December 8, 2013 and July 11, 2014, all the monitoring wells were in compliance except for wells 29 and 4 which exceeded compliance levels only on January 24, 2014. At about the same time in January, PSFM discovered a problem with the LFGCS which they initially suspected was an act of vandalism and promptly repaired the system. After the repair, monitoring wells 29 and 4 were retested and found to be within compliance limits. On March 20, 2014,

monitoring well 29 read high. The fuse for the extraction pump had been tripped. The pump was restarted, and by that afternoon, well 29 was in compliance. A short was discovered in the extraction pump electrical system.

On March 14, 2014, DEQ received a copy of Dharma's methane readings during its surcharging operations. On the same day, DEQ notified PSFM that monitoring well 29 was showing high methane readings, and it asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. That same day, PSFM notified DEQ of a problem it had with the gas blower extraction system a couple of months earlier, and PSFM speculated that this was the likely cause of the higher than normal readings. In the same email, PSFM reported to DEQ that the extraction blower system had been repaired. PSFM agreed to follow DEQ's recommendations and to retest the monitoring wells that were producing the high readings. By the afternoon of March 20, 2014, PSFM was reporting that monitoring well 29 was in compliance.

On May 29, 2014, DEQ tested monitoring well 29 and found it slightly over the compliance level. However, the meter used by DEQ was old and was experiencing problems that day. Monitoring well 29 was retested again by DEQ on June 5, 2014 presumably using a better meter, and the methane gas concentration was at 1.8 percent and well within the compliance limit. Senders Declaration, Exhibit 5, page 3. The target compliance level for a monitoring well is no more than 5 percent methane by volume.

On June 5, 2014, DEQ staff reviewed the condition of some of the monitoring wells. The staff found that a few of the wells were dirty and their valves needed to be checked. In an email dated June 10, 2014, DEQ asked PSFM to examine, clean, and if

needed repair five of the monitoring wells. PSFM responded on June 11, 2014 that it would send out its technician to check the wells and to make any needed repairs. On June 26, 2014, PSFM emailed DEQ that the monitoring wells were in good working order except for monitoring well 30, which had been placed in a manhole and was constantly inundated by water. Monitoring well 29 showed methane gas levels within compliance limits.

On July 30, 2014, DEQ issued a Pre-Enforcement Notice. The Notice alleges that PSFM alone is in violation of the Permit. PSFM replied to the Notice and denied violating the permit. PSFM asked that all five current property owners take responsibility for the permit moving forward. DEQ was not willing to make the owners responsible for permit compliance. PSFM also asked that the financial assurance requirement be waived, since financial assurance had not been required for 30 years and PSFM had been maintaining the LFGCS and monitoring methane gas for the last 18 years.

In May of 2015, DEQ issued the Order. Without any warning or due process, DEQ sought to hold Hashem and Skidmore liable for permit compliance in 2013 and 2014.

All the monitoring wells on Skidmore's property showed methane gas levels within compliance limits. Skidmore owns just 12.5 acres within the 33-acre landfill. Monitoring well 29 is on property belonging to the Madison Apartments and is close to the Dharma property line. The blower and extraction pump for the LFGCS is located on property belonging to the carpet store.

Neither Hashem or Skidmore have applied to DEQ to assume PSFM's responsibilities under the Permit. Neither Hashem nor Skidmore have entered into a

contract with PSFM whereby either accepts responsibility for the performance of PSFM's obligations under the Permit. DEQ has never substituted either Hashem or Skidmore as the permittee for PSFM.

DEQ's has assessed a penalty of $20,720 for failure to maintain the LFGCS in good working order. The penalty is based on the assumption, unsupported by evidence, that PSFM avoided $15,000 to repair three probes and monitor the probes. DEQ Exhibit 8, page 10. PSFM has presented documents that it immediately repaired the probes, even though they were functional, and monitored the probes at least monthly. There was no cost avoidance.

DEQ has assessed a penalty of $37,833 for failure to maintain a financial assurance plan. DEQ provides no evidence to support this figure.

**LAW**

A summary determination may only be granted if the motion, affidavits, and supporting documents show that there is no genuine issue as to any material fact that is relevant to the resolution of the legal issue raised in the motion and that the moving party is entitled to a favorable ruling as a matter of law. OAR 137-003-0580(6). The administrative judge must consider all evidence in a manner most favorable to the non-moving party. OAR 137-003-0580(7). The administrative judge must draw all inferences of fact from the supporting documents against the moving party and in favor of the non-moving party.

DEQ's rules on non-municipal solid waste land disposal sites are found in OAR 340-095-0001 through 340-095-0090. The rules pertaining to closure and post closure care of disposal sites are found OAR 340-095-0050. This rule requires the person holding the disposal site permit to apply for a permit to cover the closure of the site and

all or part of the time that active post closure site maintenance is required by the Department. The rule goes on to say that the person who holds the disposal site permit, or if that person fails to comply, then the person owning or controlling the disposal site that is closed and is no longer receiving solid waste must continue or renew the disposal site permit after the site is closed for the duration of the period in which the Department continues to actively supervise the site, even though solid waste is no longer received at the site. OAR 340-095-0050(1)(b). The rule further provides that if someone other than the permittee assumes responsibility for post-closure activities, there must be a written contract between the permittee and the other party or parties that are assuming responsibility. OAR 340-095-050(2)(d).

OAR 340-095-0090 deals with the issue of financial assurance plans. The rule begins by requiring the "owner or operator" of the disposal site to develop and maintain a financial assurance plan and to provide evidence of financial assurance to cover the costs of closure of the site, post-closure maintenance, and for corrective action required by DEQ. OAR 340-095-0090(1). The permittee is then required to annually review and update the financial assurance during the post-closure period. OAR 340-095-0090(6)(d).

Closure permits are generally to terminated no later than 30 years after the closure of the landfill. OAR 340.095.0050(4) states:

> "Department shall terminate closure permits for non municipal land disposal sites not later than 30 years after the site is closed, unless the Department finds there is a need to protect against a significant hazzard or risk to public health or safety or the environment."

OAR 340.095.0080(2) reiterates that post closure care permits are generally to terminate 30 years after the closure of the non-municipal land disposal site. See also

ORS 459.270(2).

A permit holder may apply for an early termination of the permit or to be released from one or more of the permit requirements if certain conditions are met. OAR 340.095.0050(5).

The statutory law in Oregon states that a shareholder of a corporation may not be liable for the acts or omissions of the corporation merely by reason of being a shareholder. ORS 60.151(2). Similarly, an officer or a director of a corporation may not be liable if the person performs his duties in good faith, with the care of an ordinarily prudent person, and in a manner that the person reasonably believes to be in the best interest of the corporation. ORS 60.377(1) and (4); ORS 60.357 (1) and (4). An officer is not personally liable to third parties for the acts of a corporation unless the officer himself engaged in tortous conduct or unless there is an express statutory exemption to immunity from liability as a corporate officer, such as the statute holding corporate officers liable for employee withholding taxes under certain circumstances.

**ARGUMENT**

Respondents have produced evidence in the supporting documentation and have demonstrated questions of fact on the key issues in this case.

**1. Did PSFM Breach the Provisions of the Permit Relating to the LFGCS and the Monitoring of Methane Gases.**

Evidence has been presented that PSFM tested the monitoring wells on a monthly basis as required by the permit, supplied its data to DEQ on a monthly basis, and responded in an appropriate and timely fashion to any concerns raised by DEQ. The monitoring wells were in good enough condition to allow PSFM's contractor to conduct tests using the equipment approved by DEQ according to the procedures set

forth in the permit. PSFM had a high reading on well 29 in January 2014 and again in March 2014. In both instances, PSFM took prompt corrective action to repair the LFGCS, repeatedly tested the monitoring well, and had readings within compliance levels thereafter. PSFM properly operated the LFGCS in effective working order.

The evidence presented by DEQ is that just before and during surcharging work on the Dharma property, Dharma's contractor obtained high methane gas readings from monitoring well 29. There is no evidence that the contractor was using measuring equipment approved by DEQ or following DEQ approved procedures.

Assuming for the sake of argument that the Dharma contractor was following approved testing procedure, there is no evidence that the higher than normal methane readings at monitoring well 29 were the result of some problems with the maintenance and operation of the LFGCS. It can be inferred from the evidence that the high readings which fluctuated from 23.6 percent to 1.2 percent methane were a response to the activities of Dharma's contractor who was surcharging in the area.

Even if the readings were correct, as soon as PSFM received the information from DEQ about well 29, PSFM began to closely monitor the well, as required by the permit, and increased the blower time as suggested by DEQ. All readings after March 20, 2014 were within compliance levels, except for one reading obtained by DEQ on May 27, 2014 which at 6.3 was slightly over the 5 percent target. However the meter used was old and had problems that day. When the well was retested by DEQ on June 5, 2014 the methane reading was at 1.8 percent.

As for the condition of the monitoring wells, PSFM, Dharma, and DEQ were all able to take periodic readings. Even on June 5, 2014 when DEQ noted the condition of the monitoring wells, it obtained readings from all of the wells tested except for well 30.

Monitoring well 30 was located in a manhole with the approval of DEQ, and this is the reason for the water problem.

DEQ notified PSFM on June 10, 2014 that, in its opinion, a few of the monitoring wells needed to be cleaned and the valves checked. PSFM promptly cleaned the monitoring wells and replaced the valves to the satisfaction of DEQ. There is ample evidence from which a reasonable trier of fact could determine that PSFM complied with the provisions of the permit to operate and maintain the LFGCS in effective working order.

**2. Did PSFM Breach the Provisions of the Permit Relating to Financial Assurance.**

PSFM did not provide a financial assurance plan. No financial assurance plan had been required for over 30 years. PSFM had been operating and maintaining the LFGCS and monitoring the methane gasses for 18 years, even though it no longer had a financial interest in the landfill and it's permit was expired for nearly eight of those years. PSFM asked that this new permit requirement for financial assurance be waived. It also asked that DEQ terminate its responsibilities under the permit and make the five property owners within the former landfill the permitees. A reasonable trier of fact could conclude that DEQ should have waived this requirement under the circumstances. Moreover, a reasonable trier of fact could conclude that the permit was unenforceable as of January 1, 2013 because 30 years had passed since the closure of the landfill and that DEQ had not made a finding or declared that there was a need to continue or extend the permit beyond 30 years in order to protect against a significant hazzard or risk to public health or safety or the environment.

**3. Does Hashem have personal liability for the alleged omissions of PSFM.**

There is ample evidence from which a reasonable trier of fact could conclude that Hashem did not control the property on which the disposal site is located and has no personal liability to DEQ.

First, in order to shift liability under ORS 459.205(2), the trier of fact must first find that the permittee failed to comply with the provisions of the permit. As explained above in detail, there is a question of fact whether or not there was non-compliance.

Second, according to a reasonable reading of the statute and the applicable rules, DEQ is required to issue the permit in the name of the person controlling the property before that person can be held liable for non-compliance. Hashem was not the permittee or operator at the time of the alleged violations. Hashem was not even named as a responsible party when the Pre-Enforcement Notice was issued.

Third, there is no evidence that Hashem was personally in control of the property where the disposal site is located. The general partner of PSFM is M.M.D.F. Corp. Assuming for the sake of argument that PSFM was in control of the property when the alleged violations took place, then M.M.D.F. Corp would be the "controlling" party, not Hashem. Hashem interacted with DEQ only in his capacity as president of M.M.D.F. Corp. He did not act in his personal capacity. The statutory and case law in Oregon is clear that a person cannot be liable for the acts of a corporation merely for acting in the capacity as a corporate officer.

Fourth, Hashem was not in control of the property comprising the former landfill. Unlike the *Kinzua* case, the Lavelle Landfill is owned by five separate property owners. Hashem is an officer of Skidmore Management Corporation. Skidmore Management Corporation is the general partner of Skidmore. Skidmore in turn owns roughly one-third of the former landfill. Four other property owners own and control approximately

two-thirds of the former landfill. DEQ has produced no agreement or agreements between the property owners that gives Hashem, PSFM or Skidmore control over the property of the other owners. There are no such agreements. In fact, the actions of Dharma and its contractors demonstrate that PSFM lacked control over the Dharma parcel.

Finally, the regulations regarding financial assurance apply to the permitee. There is no provision in the financial assurance regulations for transferring responsibility for financial assurance to the owner or controlling party.

**4. Does Skidmore Have Liability for the Alleged Omissions of PSFM.**

As previously explained, Skidmore owns approximately one-third of the former landfill site. It has never been named as a permittee, operator, or owner on any permit. The monitoring wells on the Skidmore parcel are in compliance. Monitoring well 29 is on property belonging to another. The LFGCS extraction equipment and blower are on someone else's property. The evidence is undisputed that Skidmore does not own or control all of the property, or even a majority of the property, on which the disposal site is located. Absent total ownership or proof of control, Skidmore cannot possibly be held liable for the permittee's noncompliance. ORS 459.205 does not impose liability on a person or entity who owns merely a portion of the former landfill. The statute and regulations imposes liability on the person or entity who owns all the property on which the disposal site is located. DEQ is not entitled to prevail against Skidmore as a matter of law.

DEQ could have named the owners of all five parcels in the Order, but elected not to do so. Had it done so, then there might have been an issue of the equitable apportionment of the liability. Instead DEQ named just one of the owners of the five

parcels. DEQ cannot impose full or even partial liability on an owner of only a part of the former landfill.

Assuming for the sake of argument that Skidmore may be held liable for the permittee's noncompliance, there are still questions of fact or law regarding whether there was non-compliance, whether Skidmore was required to be first named as a permittee or given prior notice of any violation before it could be held liable, whether the permit should have been modified, whether the permit expired after 30 years, and whether penalties are properly calculated.

**5. Did DEQ properly calculate the penalties.**

DEQ has imposed a penalty of $20,720 for the alleged failure to keep the LFGCS in effective working order. According to Agency Exhibit 8, page 10, the penalty is based on an assumption that PSFM avoid costs of $15,000. DEQ has provided no evidence to support this figure. The monitoring wells were in effective working condition, and PSFM's contractor was able to measure methane level using equipment and techniques approved by DEQ. As explained above, PSFM promptly repaired the monitoring probes after being notified by DEQ that minor repairs were requested, and PSFM continued to monitor the probes, thereby avoiding no costs. If there was a violation, the violation was de minimis. There is a question of fact as to whether any penalty should be imposed, and if so, what is the appropriate penalty.

DEQ has assessed a penalty of $37,833 for failure to maintain a financial assurance plan. Once again, DEQ provides no evidence to support this figure. There are questions of fact as to whether a financial assurance plan should have been required or waived, whether the permit expired before the alleged violations, and if a penalty is imposed, what is the appropriate penalty.

## CONCLUSION

There are material facts in dispute. DEQ is not entitled to prevail as a matter of law. DEQ's motion for summary determination should be denied in its entirety.

DATED this 14th day of July 2016.

ROSE, SENDERS AND BOVARNICK, LLC

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Attorney for Hashem and Skidmore
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Portland, OR 97210
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## CERTIFICATE OF SERVICE

On July 14, 2016, I sent the foregoing Respondents Skidmore and Hashem's Memorandum of Facts and Law in Opposition to Dept. of Environmental Quality's Motion for Summary Determination in OAH Case No.1604492 by Email and by First Class Mail to:

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
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7995 SW Mohawk St.
Tualatin, OR 97062

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PSFM Limited Partnership
Johnny Kondilis
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West Linn, OR 97068

DATED this 14th day of July, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **DECLARATION OF JASON BENNETT IN OPPOSITION TO DEQ'S MOTION FOR SUMMARY DETERMINATION** |
| | ) | |
| Respondents. | ) | |
| | ) | |

I, Jason Bennett, do hereby declare as follows:

I was employed by PSFM to maintain the landfill gas control system at the Lavelle Landfill site. I have maintained the system and have taken monthly readings of methane gas levels at the monitoring wells for over seven years. I was trained by DEQ on how to take samples. I was also trained by Energyneering, the company that expanded the extraction system in or about 2009.

Whenever I took samples at the monitoring well, I followed DEQ required procedures and used DEQ approved equipment. I reported my sampling on a monthly basis.

To the best of my knowledge and belief, I made all the repairs required to the landfill gas control system as requested by DEQ. Whenever a problem was discovered with the extraction system or a monitoring well, repairs were promptly made. To the best of my knowledge, the landfill gas control system was maintained in effective working order throughout 2014.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF**

**MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

DATED this 8 day of July, 2016.

Jason Bennett

## CERTIFICATE OF SERVICE

On July 14, 2016, I sent the foregoing Declaration of Jason Bennett in Opposition to DEQ's Motion for Summary Determination in OAH Case No.1604492 by Email and by First Class Mail to:

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Referral@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*Kieran.ODONNELL@state.or.us*

Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 14th day of July, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **DECLARATION OF RICHARD D. SENDERS IN OPPOSITION TO DEQ'S MOTION FOR SUMMARY DETERMINATION** |
| Respondents. | ) | |
| | ) | |

I, Richard D. Senders, do hereby declare as follows:

I am a the attorney for respondents Skidmore Limited Partnership and Mike Hashem in the above-captioned case. I am over the age of 21 and have personal knowledge of the matters stated herein. This declaration is submitted in support of respondents Hashem and Skidmore's motion for summary determination.

Attached hereto and marked as Exhibit 1 is a true and correct copy of a Fact Sheet prepared by DEQ about the Lavell Landfill that I obtained from DEQ pursuant to a records request. The Fact Sheet states that the landfill closed in 1982.

Attached hereto and marked as Exhibit 2 are true and correct copies of a DEQ documents that I obtained from DEQ pursuant to a records request pertaining to when the Lavelle Landfill closed. The documents reflect that the landfill was closed on or before December 31, 1982.

Attached hereto and marked as Exhibit 3 is a true and correct copy of the Methane Monitoring Work Plan Building Surcharge Activities prepared by GeoDesign for Dharama that I obtained from DEQ pursuant to a records request.

Attached hereto and marked as Exhibit 4 is a true and correct copy of an email sent by GeoDeasign to DEQ with its surcharge monitoring data that I obtained from DEQ pursuant to a records request.

Attached hereto and marked as Exhibit 5 is a true and correct copy of a DEQ field report from a June 5, 2014 inspection and testing of certain monitoring wells, including monitoring well 29 that I obtained from DEQ pursuant to a records request.

Attached hereto and marked as Exhibit 6 is a true and correct copy of a the Pre-Enforcement Notice issued by DEQ on July 30, 2014 that I obtained from DEQ pursuant to a records request. DEQ finds only PSFM Limited Partnership in violation the closure permit.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THAT IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO THE PENALTY OF PERJURY.**

DATED: this 9 day of July 2016

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Hashem and Skidmore

## CERTIFICATE OF SERVICE

On July 14, 2016, I sent the foregoing Declaration of Richard D. Senders in Opposition to DEQ's Motion for Summary Determination in OAH Case No.1604492 by Email and by First Class Mail to:

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Referral@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*Kieran.ODONNELL@state.or.us*

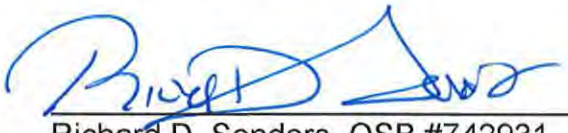
Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 14th day of July, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
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Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **DECLARATION OF MIKE HASHEM IN OPPOSITION TO DEQ'S MOTION FOR SUMMARY DETERMINATION** |
| | ) | |
| Respondents. | ) | |
| | ) | |

I, Mike Hashem, do hereby declare as follows:

I am a respondent in the above-captioned case. I am over the age of 21 and have personal knowledge of the matters stated herein. This declaration is submitted in opposition to DEQ's motion for summary determination.

In 1996, I participated in the formation of PSFM Limited Partnership ("PSFM"). The general partner of PSFM is M.M.D.F. Corp. I was the president of M.M.D.F. Corp. Attached hereto as Exhibit 1 is PSFM's Certificate of Limited Partnership. In my capacity as the president of M.M.D.F. Corp., I was involved in the acquisition of a portion of the 33-acre site known as the Lavelle Landfill, and I was involved in PSFM's administration of the closure permit issued to PSFM.

Rose City Sand & Gravel Co., the owner and operator of the former landfill, had subdivided the 33-acre tract into five parcels and put the property on the market for sale. In or about 1997, PSFM acquired Parcel No. 4, which was approximately 21 acres. At about the same time, M. Hashem Limited Partnership acquired Parcel 2, which was 1.5 acres, and Parcel 3, which was approximately 4.5 acres. The General

Partner of M. Hashem Limited Partnership was N.M.B. Corp. I was the president of N.M.B. Corp. Parcel 1, which is approximately one-half acre, was sold by Rose City Sand & Gravel Co. to an individual who built a carpet store. Parcel 5, which amounted to approximately five acres, was sold by Rose City Sand & Gravel Co. to a developer who built the Madison Place Apartments.

At the time that PSFM made its purchase, I was informed that the Lavelle Landfill was a former quarry pit that was operated by Rose City Sand & Gravel Co. Rose City had mined the property for sand and gravel to a depth of up to 80 feet. Beginning in 1972, mining operations ceased, and the quarry pit was operated as a demolition landfill. The landfill was permitted to receive building and demolition debris, wood products, metals, heavy industrial debris, and similar materials. The landfill closed in 1982. As part of the closure, the landfill was covered with a soil cover.

I was also informed that the landfill had a landfill gas control system that was designed and constructed along the landfill's north and west boundaries in 1979 to monitor and to extract methane gas from the landfill. The system includs a network of extraction wells connected to a header pipe running along the perimeter of the landfill. The header pipe is connected to an extraction blower. The system also includes monitoring wells that allow the sampling of methane gas levels at various locations and vents.

In 1998, PSFM assumed the solid waste disposal site closure permit that had previously been issued to Rose City Sand & Gravel Co. DEQ issued an amended solid waste disposal site closure permit on June 30, 1998 that names PSFM as the prermittee, owner, and operator. A copy of the 1984 permit issued to Rose City Sand & Gravel Co. Is attached as Exhibit 2. A copy of the 1994 extension of the permit is

attached as Exhibit 3. A copy of PSFM's assumption of the permit is attached as Exhibit 4. DEQ erroneously included my name on the permit. The permit should have identified the permittee as PSFM Limited Partnership, in care of Mike Hashem, rather than identifying the permittee as Mike Hashem PSFM Limited Partnership.

In March of 2000, PSFM sold its 21-acre parcel to Skidmore on contract. The contract was paid off in 2004. Skidmore is an Oregon limited partnership with Skidmore Management Corp. as its general partner. I was the president of Skidmore Management Corp. at that time.

The Lavelle Landfill closure permit was scheduled to expire on March 31, 2004. At the request of DEQ, PSFM submitted an application to renew the Permit on September 1, 2003. The application was signed by me, in my capacity as president. A copy of the application is attached hereto as Exhibit 5.

In 2004 or 2005, M Hashem Limited Partnership sold Parcel 2, which is approximately 1.5 acres, to Asian American Plaza LLC.

PSFM's application to renew the permit languished at DEQ for over seven years. During this time Skidmore made efforts to sell all or a major portion of its property to a big box retailer. The sale never materialized.

In February of 2009, DEQ issued PSFM an order requiring it to investigate and to take remedial action at the landfill due to high methane readings, even though its closure permit had expired. A work plan was prepared by PSFM's engineers and approved by DEQ. The work plan called for expansion of the active gas extraction and passive ventilating system that was installed at the landfill in 1979. Pursuant to the work plan, four new extraction wells were added to the system as well as additional low grade piping. This work was completed by the end of September 2009.

PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and provide the readings to DEQ. Mr. Bennett was trained by DEQ on how to sample methane gas levels.

In January of 2010, DEQ conducted a series of tests. DEQ concluded that the wells on the east side of the landfill did not require further monitoring, and it excluded monitoring wells 20, 28, 27, 19, 26, 25, 18, 24, 23, and 33 from the monitoring requirements. It was also recommended that the extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continued to be elevated along the landfill's south side where monitoring well 29 was located. A copy of DEQ's email regarding the monitoring wells is attached as Exhibit 6.

In or about late September or early October 2011, DEQ submitted a draft of a new solid waste disposal site closure permit to PSFM for its review and comments. The draft listed myself, M. Hashem Limited Partnership, and PSFM as the permit holders. Attached as Exhibit 7 is the DEQ's Permit Evaluation dated September 29, 2011. Attached as Exhibit 8 is the draft permit. I objected to myself and M. Hashem Limit Partnership being named as permit holders. PSFM should have been named the sole permittee. Attached as Exhibit 9 is an email from me to Tim Spencer at DEQ and the Department's response. DEQ corrected the draft and issued the permit naming PSFM as the only permittee. The operator was also PSFM. Under owner, DEQ put both Mike Hashem's name and PSFM. This again was in error. PSFM, at the time, had no ownership interest in any of the property and neither did myself. A copy of the permit dated November 18, 2011 is attached as Exhibit 10.

In 2012, M. Hashem Limited Partnership and Skidmore did a lot line adjustment. After the lot line adjustment, Skidmore retained 12.5 acres, and M. Hashem Limited

Partnership owned 13.7 acres. Following the lot line adjustment, M Hashem Limited Partnership entered into an agreement to sell all of the 13.7 acre parcel to Northwest Zen Sangha, dba Dharma Rain Zen Center ("Dharma"). In October 2012, Dharma and DEQ entered into a Consent Order and Prospective Purchase Agreement which allows Dharma to redevelop the property without liability for prior releases. As part of the development, Dharma is allowed to surcharge the soil, monitor methane gasses, and build structures on its property. It was also authorized to modify the extraction system and monitoring wells in order to build a street. PSFM was not a party to the negotiations or to the agreement. A copy of Consent Order and Prospective Purchase Agreement is attached as Exhibit 11.

PSFM was not notified when Dharma was surcharging the soil on its property. PSFM was not notified that Dharma's contractor was taking readings of the monitoring wells nearby or turning off the extractor blower. Dharma's contractor never consulted PSFM or Mr. Bennett on how to take readings or what equipment to use. Mr. Bennett was not involved in the methane sampling conducted by Dharma's contractor.

Jason Bennett continued to take his monthly readings of the monitoring wells using DEQ approved procedures and equipment. Copies of the monthly methane readings obtained by Jason Bennett and supplied to DEQ each month for December 2013 through July 2014 are attached hereto as Exhibit 16. PSFM had higher than normal readings on monitoring well 29 on two occasions: January 24, 2014 and on the morning of March 20, 2014. The first reading was thought to be caused by an act of vandalism and the system was quickly repaired. The second instance was due to the pump being off due to an electrical short that was promptly fixed. All other readings were within compliance levels.

On March 14, 2014, DEQ notified PSFM that monitoring well 29 was showing elevated methane readings, and it asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. A copy of the email is attached as Exhibit 12. That same day, PSFM notified DEQ of a problem it had with the gas blower extraction system a couple of months earlier, and PSFM speculated that this was the likely cause of the higher than normal reading. In the same email, PSFM reported to DEQ that the extraction blower system had been repaired. PSFM agreed to follow DEQ's recommendations and to retest the monitoring wells that were producing the high readings. A copy of PSFM's email to DEQ is part of Exhibit 12. By the afternoon of March 20, 2014, PSFM was reporting that well 29 was in compliance. Attached as Exhibit 13 is an email chain between DEQ and PSFM.

On June 5, 2014, DEQ staff reviewed the condition of some of the monitoring wells. The staff found that a few wells were dirty and that some valves might need to be replaced. In an email dated June 10, 2014, DEQ asked PSFM to clean and check a handful of monitoring wells. PSFM responded on June 11, 2014 that it would send out its technician to check the wells and make needed repairs. A copy of the email chain is attached as Exhibit 14. On June 26, 2014, PSFM emailed DEQ that the monitoring wells had been cleaned, valves replaced where recommended, and the system was in good working order except for monitoring well 31, which had been placed in a manhole (with DEQ approval) and was constantly inundated by water. Monitoring well 29 showed methane gas levels within compliance limits. A copy of the email is attached Exhibit 15.

On July 30, 2014, DEQ issued its Pre-Enforcement Notice. PSFM replied to the Notice and denied any violations of the closure permit. A copy of the reply is attached as Exhibit 17. PSFM asked that the five property owners become the permittee and

that the financial assurance requirement be waived.

In May of 2015, DEQ issued the Notice of Civil Penalty Assessment and Order (the "Order").

At all material times, the monitoring wells on Skidmore's property all showed methane gas levels within compliance limits. Monitoring well 29 is on property belonging to the Madison Apartments and is close to the Dharma property line. The blower and extraction pump for the LFGCS is located on property belonging to the carpet store.

Neither Skidmore nor I have ever applied to DEQ to assume PSFM's responsibilities under the closure permit. Neither Skidmore nor I have ever entered into a contract with PSFM by which either one of us assumes responsibility or liability for the performance of PSFM's obligations under the closure permit. At no time prior to the issuance of the Order had DEQ notified PSFM, Skidmore, or myself that either Skidmore or I personally were expected to perform PSFM's responsibilities contained in the permit that we could be held personally liable for PSFM's non-compliance. At no time were either Skidmore or I substituted as the permittee.

Since the issuance of the permit in 2011, DEQ has never notified PSFM or me that it intended to issue or had issued formal findings that the Lavelle Landfill after 30 years of closure possess a significant hazard or risk to public health, safety or the environment. At no time has DEQ formally notified PSFM or me that the closure permit issued to PSFM will not expire 30 years after the Lavelle Landfill closed.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

DATED this 8th day of July, 2016.

Mike Hashem

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 12/8/2013 | 0 | 0 | 20.5 | | |
| **MW-4 D** | 21.96 | 12/8/2013 | 0 | 0 | 20.2 | | |
| **MW-10** | 21.68 | 12/8/2013 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 12/8/2013 | 0 | 0 | 20.9 | | |
| **MW-12 S** | 5.47 | 12/8/2013 | 0 | 0 | 19.2 | | |
| **MW-12 D** | 19.9 | 12/8/2013 | 0 | 0 | 20.1 | | |
| **MW-13** | 21.25 | 12/8/2013 | 0 | 0 | 20.5 | | |
| **MW-14** | 21.91 | 12/8/2013 | 0 | 0 | 20.2 | | |
| **MW-15** | 36.16 | 12/8/2013 | 0 | 0 | 20.1 | | |
| **MW-16** | 18.83 | 12/8/2013 | 0 | 0 | 20.2 | | |
| **MW-17** | 38.94 | 12/8/2013 | 0 | 0 | 20.0 | | |
| **MW-29** | 11.07 | 12/8/2013 | 3 | 3 | 17.7 | | |
| **MW-30** | 22.52 | 12/8/2013 | 0 | 0 | 14.2 | | |
| **MW-31** | 10.92 | 12/8/2013 | 0 | 0 | 20.2 | | |
| **MW-32** | 20.85 | 12/8/2013 | 0 | 0 | 11.6 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 01/24/14 | 8.4 | 6.1 | 15.1 | | |
| **MW-4 D** | 21.96 | 01/24/14 | 0 | 0 | 20.1 | | |
| **MW-10** | 21.68 | 01/24/14 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 01/24/14 | 0 | 0 | 20.9 | | |
| **MW-12 S** | 5.47 | 01/24/14 | 0 | 0 | 19.5 | | |
| **MW-12 D** | 19.9 | 01/24/14 | 0 | 0 | 20.3 | | |
| **MW-13** | 21.25 | 01/24/14 | 0 | 0 | 20.4 | | |
| **MW-14** | 21.91 | 01/24/14 | 0 | 0 | 18.1 | | |
| **MW-15** | 36.16 | 01/24/14 | 0 | 0 | 20.3 | | |
| **MW-16** | 18.83 | 01/24/14 | 0 | 0 | 19.1 | | |
| **MW-17** | 38.94 | 01/24/14 | 0 | 0 | 15.8 | | |
| **MW-29** | 11.07 | 01/24/14 | 15.3 | 15.2 | 4.2 | | |
| **MW-30** | 22.52 | 01/24/14 | 0 | 0 | 19.7 | | |
| **MW-31** | 10.92 | 01/24/14 | 0 | 0 | 20 | | |
| **MW-32** | 20.85 | 01/24/14 | 2.1 | 2.1 | 5.2 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 02/18/14 | 1.3 | 1.1 | 18.2 | | |
| **MW-4 D** | 21.96 | 02/18/14 | 0 | 0 | 20.3 | | |
| **MW-10** | 21.68 | 02/18/14 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 02/18/14 | 0 | 0 | 20.9 | | |
| **MW-12 S** | 5.47 | 02/18/14 | 0 | 0 | 19.4 | | |
| **MW-12 D** | 19.9 | 02/18/14 | 0 | 0 | 20.5 | | |
| **MW-13** | 21.25 | 02/18/14 | 0 | 0 | 20.5 | | |
| **MW-14** | 21.91 | 02/18/14 | 0 | 0 | 18.6 | | |
| **MW-15** | 36.16 | 02/18/14 | 0 | 0 | 20.1 | | |
| **MW-16** | 18.83 | 02/18/14 | 0 | 0 | 19 | | |
| **MW-17** | 38.94 | 02/18/14 | 0 | 0 | 16 | | |
| **MW-29** | 11.07 | 02/18/14 | 3.2 | 3.2 | 9.7 | | |
| **MW-30** | 22.52 | 02/18/14 | 0 | 0 | 19.5 | | |
| **MW-31** | 10.92 | 02/18/14 | 0 | 0 | 20.2 | | |
| **MW-32** | 20.85 | 02/18/14 | 0.4 | 0.4 | 10.1 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 03/20/14 | 0.4 | 0.4 | 18.7 | | |
| **MW-4 D** | 21.96 | 03/20/14 | 0 | 0 | 20.2 | | |
| **MW-10** | 21.68 | 03/20/14 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 03/20/14 | 0 | 0 | 20.8 | | |
| **MW-12 S** | 5.47 | 03/20/14 | 0 | 0 | 19.6 | | |
| **MW-12 D** | 19.9 | 03/20/14 | 0 | 0 | 20.9 | | |
| **MW-13** | 21.25 | 03/20/14 | 0 | 0 | 20.1 | | |
| **MW-14** | 21.91 | 03/20/14 | 0 | 0 | 18.8 | | |
| **MW-15** | 36.16 | 03/20/14 | 0 | 0 | 20.3 | | |
| **MW-16** | 18.83 | 03/20/14 | 0 | 0 | 19.7 | | |
| **MW-17** | 38.94 | 03/20/14 | 0 | 0 | 15.9 | | |
| **MW-29** | 11.07 | 03/20/14 | 12 | 0 | 8.8 | | |
| **MW-30** | 22.52 | 03/20/14 | 0 | 0 | 19.7 | | |
| **MW-31** | 10.92 | 03/20/14 | 0 | 0 | 20.9 | | |
| **MW-32** | 20.85 | 03/20/14 | 4 | 4 | 8.9 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 04/25/14 | 0 | 0 | 18.9 | | |
| **MW-4 D** | 21.96 | 04/25/14 | 0 | 0 | 20.3 | | |
| **MW-10** | 21.68 | 04/25/14 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 04/25/14 | 0 | 0 | 20.8 | | |
| **MW-12 S** | 5.47 | 04/25/14 | 0 | 0 | 19.5 | | |
| **MW-12 D** | 19.9 | 04/25/14 | 0 | 0 | 20.9 | | |
| **MW-13** | 21.25 | 04/25/14 | 0 | 0 | 20.2 | | |
| **MW-14** | 21.91 | 04/25/14 | 0 | 0 | 18.9 | | |
| **MW-15** | 36.16 | 04/25/14 | 0 | 0 | 20.4 | | |
| **MW-16** | 18.83 | 04/25/14 | 0 | 0 | 19.5 | | |
| **MW-17** | 38.94 | 04/25/14 | 0 | 0 | 15.7 | | |
| **MW-29** | 11.07 | 04/25/14 | 3 | 2 | 10.8 | | |
| **MW-30** | 22.52 | 04/25/14 | 0 | 0 | 19.8 | | |
| **MW-31** | 10.92 | 04/25/14 | 0 | 0 | 20.9 | | |
| **MW-32** | 20.85 | 04/25/14 | 1 | 0 | 9.1 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 05/17/14 | 0 | 0 | 19 | | |
| **MW-4 D** | 21.96 | 05/17/14 | 0 | 0 | 20.3 | | |
| **MW-10** | 21.68 | 05/17/14 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 05/17/14 | 0 | 0 | 20.9 | | |
| **MW-12 S** | 5.47 | 05/17/14 | 0 | 0 | 19.3 | | |
| **MW-12 D** | 19.9 | 05/17/14 | 0 | 0 | 20.9 | | |
| **MW-13** | 21.25 | 05/17/14 | 0 | 0 | 20.3 | | |
| **MW-14** | 21.91 | 05/17/14 | 0 | 0 | 18.7 | | |
| **MW-15** | 36.16 | 05/17/14 | 0 | 0 | 20.4 | | |
| **MW-16** | 18.83 | 05/17/14 | 0 | 0 | 19.4 | | |
| **MW-17** | 38.94 | 05/17/14 | 0 | 0 | 15.5 | | |
| **MW-29** | 11.07 | 05/17/14 | 2 | 2 | 10.9 | | |
| **MW-30** | 22.52 | 05/17/14 | 0 | 0 | 20 | | |
| **MW-31** | 10.92 | 05/17/14 | 0 | 0 | 20.6 | | |
| **MW-32** | 20.85 | 05/17/14 | 1 | 1 | 8.9 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 06/26/14 | 0 | 0 | 19.2 | | |
| **MW-4 D** | 21.96 | 06/26/14 | 0 | 0 | 20.1 | | |
| **MW-10** | 21.68 | 06/26/14 | 0 | 0 | 20.9 | | |
| **MW-11** | 20.65 | 06/26/14 | 0 | 0 | 20.8 | | |
| **MW-12 S** | 5.47 | 06/26/14 | 0 | 0 | 19.2 | | |
| **MW-12 D** | 19.9 | 06/26/14 | 0 | 0 | 20.8 | | |
| **MW-13** | 21.25 | 06/26/14 | 0 | 0 | 20.2 | | |
| **MW-14** | 21.91 | 06/26/14 | 0 | 0 | 18.6 | | |
| **MW-15** | 36.16 | 06/26/14 | 0 | 0 | 20.6 | | |
| **MW-16** | 18.83 | 06/26/14 | 0 | 0 | 19.3 | | |
| **MW-17** | 38.94 | 06/26/14 | 0 | 0 | 15.7 | | |
| **MW-29** | 11.07 | 06/26/14 | 4.2 | 3.5 | 10.4 | | |
| **MW-30** | 22.52 | 06/26/14 | 0 | 0 | 20 | | |
| **MW-31** | 10.92 | 06/26/14 | 0 | 0 | 20.5 | | |
| **MW-32** | 20.85 | 06/26/14 | 1 | 0 | 9.2 | | |

| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| **MW-4 S** | 6.35 | 07/11/14 | 0 | 0 | 19.3 | | |
| **MW-4 D** | 21.96 | 07/11/14 | 0 | 0 | 20 | | |
| **MW-10** | 21.68 | 07/11/14 | 0 | 0 | 20.8 | | |
| **MW-11** | 20.65 | 07/11/14 | 0 | 0 | 20.7 | | |
| **MW-12 S** | 5.47 | 07/11/14 | 0 | 0 | 19.2 | | |
| **MW-12 D** | 19.9 | 07/11/14 | 0 | 0 | 20.9 | | |
| **MW-13** | 21.25 | 07/11/14 | 0 | 0 | 20 | | |
| **MW-14** | 21.91 | 07/11/14 | 0 | 0 | 18.5 | | |
| **MW-15** | 36.16 | 07/11/14 | 0 | 0 | 20.7 | | |
| **MW-16** | 18.83 | 07/11/14 | 0 | 0 | 19.5 | | |
| **MW-17** | 38.94 | 07/11/14 | 0 | 0 | 16 | | |
| **MW-29** | 11.07 | 07/11/14 | 2.6 | 2.6 | 10.6 | | |
| **MW-30** | 22.52 | 07/11/14 | 0 | 0 | 19.8 | | |
| **MW-31** | 10.92 | 07/11/14 | 0 | 0 | 20.5 | | |
| **MW-32** | 20.85 | 07/11/14 | 0 | 0 | 9.3 | | |

# PSFM LP

P O BOX 707 Beavercreek, OR 97004

August 15 2014

Tim Spencer

Department of Environmental quality

2020 SW 4Th Ave suite 400

Portland, OR 97201

RE: Pre-Enforcement Notice PEN NWR-SW-14-01

H.G La Velle Landfill

Solid Waste Disposal permits 211

Multnomah County

Dear Mr. Spencer:

I am in receipt of your letter dated July 30 2014. I respectfully disagree with the listed violations stated in your letter. In 2011 we have extended a whole year of our time and DEQ staff time revaluating the extraction system at this site, employed two engineering consultant and provided a plan for modification, and operation of the system. The plan was reviewed, approved, and operation was overseen by DEQ for an additional year by Tim Spencer, and Bob Schwartz. This plan has not changed.

As to **violation 1,** we continue to operate under the same plan, and provide a monthly updates, including readings of the monitoring wells. The majority of the wells have shown zero readings for years now, only well 29 have had any reading and have always been below the allowable limits. As to **Violation 2,** a breakdown of the blower was handled diligently and the system was placed on line fairly quick. The system is functioning well, and no major issues to report, and no need to change the approved plan.

The problem as we see it:

1- The site is owned and operated by 5 owners yet the permit and responsibility is placed on the shoulders of PSFM LP. DEQ has repeatedly interfered in the permit operation without consulting with

the permit holder, and without its knowledge including authorizing changes to the extraction system for dharma Rain, and authorizing consultant employed by Dharma rain to do testing and modification the system without informing the permit holder( this caused **Violation 4** , because DEQ authorized Dharma Rain to pre load the site without proper consultation with the permit holder which caused an increase in the level of methane generated . PSFM LP made the needed adjustment, repairing the blower, and increased the extraction the time the blower is operated, which resulted in normalizing of the methane levels to below 5%). On June 5th DEQ authorized an environmental scientist of its own to visit the site and test number of wells without our permission or knowledge. **(Violation 3,)**this scientist equipments was not compatible to the fittings we installed and utilized in 2011 which Tim, and Bob's used for their equipments , and it appear that some of those wells being exposed to third and fourth parties accessing them were soiled with dirt, and gravel, yet PSFM LP is being held responsible for something outside their control. (PSFM LP cleaned, and replaced the fitting for the indicated wells as per DEQ Tim Spencer's instructions). PSFM LP has access to the monitoring wells on other owner's properties once a month, and it is obvious that neither the owners nor DEQ perceived or treat PSFM LP as the responsible parties for operation of the system. **we believe it is time to re-evaluate the permit** , and make sure all the owners of the landfill properties are included in a comprehensive work plan to make sure they are all part of the solution, and everyone are kept informed on activities and progress made at the site. Any modification or changes on the site affect all the owners.

I suggest an owner association be created to oversee the operation and maintenance of the system, and to share information, and share costs as well. Tim suggested that DEQ has other means to accomplish this task through a consent agreement. This is the best way going forward as ownership change the consent agreement will continue to be in effect and the information, cost, and responsibilities will continue to be shared by all.

PSFM LP is willing and able to continue to operate the extraction system, monitor the wells, and provide monthly report as required by the current permit, until all necessary changes are made to the existing permit.

**As to violation 5-6** PSFM LM, seeks a *relief from this condition since* PSFM LP is carrying the burden of financing the operation and the maintenance of the extraction system on behave of all the other owners. This condition place a financial strain on PSFM LP finance, and makes it very difficult to be able to finance the operation of the system as it has done for the past 18 years, with or without permits. PSFM LP borrowed money, and still financing the extraction system addition DEQ demanded to be installed in 2011. PSFM LP seeks relief or help from DEQ to accomplish this requirement including forming an owner association to share the responsibility of operation and maintaining the system.

**Violation 7:** PSFM LP provided monthly and quarterly reports, on the monitoring and update on the operation of the system, and did not see the needs to provide an annual report of the same things. PSFM LP is willing to provide an annual report instead of the monthly, if DEQ so desire.

**Violation 8:** the plan provided by the two engineering firm employed in 2011 to upgrade and operate the system, has worked very well .PSFM LP does not see the wisdom in spending money needed for the

maintenance and operation of the system, to generate a report which helps no one and waist needed resources.

**Violation 9:** DEQ have done its own monitoring regularly on the site, and authorized various independent private companies to do the same like the Geo design employed by Dharma Rain to do the same. PSFM LP still retains Energyneering as a consultant for any changes or problem which requires a consultant help. This site has been closed for 40 years. It has been tested and retested for the past 40 years. In 2011, DEQ and PSFM LP extended a 1.5 years testing monitoring modifying the extraction system. The system have worked well, and the monitoring wells have shown 0 reading for the majority of the wells, the only activities still recorded is on the south side where the new extraction wells have been installed in 2011 . All reading since the new wells have been installed has been below 5%, and only well 29 still register any readings. The recent increase recorded was as a result of the pre load of the site by Dharma Rain, and the brief break down of the blower. The system is back operating and all wells are within the allowable limits.

I look forward to hearing from you, and would like us to take the time to brain storm, and find a long term comprehensive arrangement to insure all owners are represented and take responsibilities in making sure things are done right.

Thank you.

Mike Hashem

Manger

## CERTIFICATE OF SERVICE

On July 14, 2016, I sent the foregoing Declaration of Mike Hashem in Opposition to DEQ's Motion for Summary Determination in OAH Case No.1604492 by Email and by First Class Mail to:

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Referral@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*Kieran.ODONNELL@state.or.us*

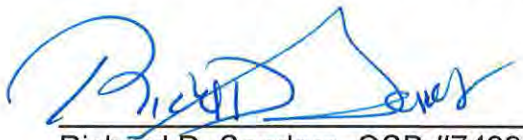
Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 14th day of July, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



Richard D. Senders, OSB #742931
Attorney for Respondents Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

Oregon
Kate Brown, Governor

Department of Environmental Quality
Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

June 27, 2016

CERTIFIED MAIL No. 7014 2870 0001 3373 5951
Alison Greene Webster, Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

CERTIFIED MAIL No. 7014 2870 0001 3373 5937
Rose, Senders & Bovarnick, LLC
c/o Richard Senders, Attorney for Skidmore Limited Partnership and Mike Hashem
1205 NW 25th Avenue
Portland, OR 97210

CERTIFIED MAIL No. 7014 2870 0001 3373 5920
PSFM Limited Partnership
c/o Johnny Kondilis
4891 Willamette Falls Dr., Suite 1
West Linn, OR 97068

CERTIFIED MAIL No. 7014 2870 0001 3373 5944
PSFM Limited Partnership
c/o Jeffrey Abbot, Registered Agent
4891 Willamette Falls Dr., Suite 1
West Linn, OR 97068

Re: Motion for Summary Determination and
Amended Notice of Civil Penalty Assessment and Order
In the Matter of: PSFM Limited Partnership, Skidmore Limited Partnership, & Mike Hashem
OAH Case No. 1604492
Agency Case No. LQ/SW-NWR-15-048

Dear Judge Greene Webster, Mr. Senders, and Mr. Kondilis:

Please find enclosed DEQ's motion for summary determination in the above referenced case. Please also find copies of authorities cited in the motion, my OAR 340-003-0630(2) declaration, and Motion Exhibits A1-A7.

DEQ hereby amends Notice of Civil Penalty Assessment and Order, Case No. LQ/SW-NWR-15-048 (the Order). *See motion Exhibit A1*. The Order alleged compliance limit exceedances from the following monitoring locations on the following dates: MW-29, MW-30, MW-3S, MW-4S, MW5d on January 13, 2014; MW-29 on May 27, 2012. The attached Amended Notice of Civil Penalty Assessment and Order, Case No. LQ/SW-NWR-15-048 (Amended Order) alleged compliance limit

exceedances from the following monitoring located on the following dates: MW-29, MW-3S, and MW-4S on January 13, 2014; MW-29 and MW-4S on January 24, 2014; and MW-29 on May 27, 2014. All other findings of fact and all conclusions of law remain unchanged by the Amended Order. DEQ's penalty calculation remains unchanged by the Amended Order.

DEQ hereby accepts Respondents' previous requests for a contested case hearing as applicable to this amended order. No subsequent request for a contested case hearing is necessary. However, Respondents may amend their requests for a contested case hearing in response to this amended order.

If you have any questions, please call me at (505) 229-5012.

Sincerely,

Kieran O'Donnell
Environmental Law Specialist

Enclosures

cc: Tim Spencer, NWR, DEQ

BEFORE THE OREGON ENVIRONMENTAL

QUALITY COMMISSION

| | | |
|---|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTNERSHIP, &<br>MIKE HASHEM<br>Respondents. | )<br>)<br>)<br>)<br>) | DECLARATION OF<br>KIERAN O'DONNELL<br><br>OAH Case No. 1604492<br>DEQ Case No. LQ/SW-NWR-15-048 |

I, KIERAN O'DONNELL, declare under penalty of perjury that the following is true to the best of my knowledge:

1. I am currently employed by the Oregon Department of Environmental Quality (DEQ) as an Environmental Law Specialist.

2. In the course of my employment, I have reviewed the files held by DEQ regarding the above-named Respondents.

3. Attached to this declaration as Exhibits A1 through A8 are true and accurate copies of the following documents, which I obtained during the course of my review of the files referenced in paragraph 2 above, or prepared as part of my regular job duties:

*Exhibit A1*: Amended Notice of Civil Penalty Assessment and Order, issued May 13, 2015, and amended on June 27, 2016, including the incorporated Amended Exhibits Nos. 1 and 2.

*Exhibit A2*: Respondents' request for a contested case hearing, dated June 3, 2015.

*Exhibit A3*: Respondents Mike Hashem (Hashem) and Respondent Skidmore Limited Partnership (Skidmore) revised request for a contested case hearing, dated February 1, 2016.

*Exhibit A4*: Department's Declaration of Tim Spencer with attached monitoring results and emails.

*Exhibit A5*: Multnomah County Property Records for 2800 NE 82nd Ave, Portland, OR, retrieved June 27, 2016.

*Exhibit A6*: Oregon Secretary of State Business Search Records, retrieved June 27, 2016.

*Exhibit A7*: Solid Waste Disposal Site Closure Permit, No. 211.

*Exhibit A8*: Department's Economic Benefit Memorandum.

4. On April 25, 2016, during the Prehearing Conference I announced DEQ's intention to file this Motion for Summary Determination. On June 22, 2016 I conferred with Mr. Senders, counsel for Hashem and Skidmore regarding the content of this Motion for Summary Determination. In addition, on June 24, 2016, I sent an email to Mr. Kondilis, representative of Respondent PSFM, regarding the content of this Motion for Summary Determination. As of the date of this Motion for Summary Determination, Respondents and the Department have not stipulated to any issues of the case.

Date: 6/27/16

Kieran O'Donnell
Environmental Law Specialist
Department of Environmental Quality

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | |
|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTNERSHIP, &<br>MIKE HASHEM<br>Respondents. | DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION<br><br>OAH Case No. 1604492<br>DEQ Case No. LQ/SW-NWR-15-048 |

## INTRODUCTION

The Department of Environmental Quality (DEQ) submits this Motion for Summary Determination (MSD) pursuant to OAR 137-003-0580. DEQ respectfully requests that the Administrative Law Judge rule in DEQ's favor on all legal issues in the attached Amended Notice of Civil Penalty Assessment and Order, Case No. AQ/AB-WR-15-048 (the Amended Order). This motion is supported by the attached exhibits, which establish that there are no genuine issues as to any material facts in this case and that DEQ is entitled to a favorable ruling as a matter of law.

Respondents are owners or operators of a construction and demolition waste landfill with the tax roll description if Section 28, T1N, R2E, WM, and located at or around 2800 NE 82nd Ave., Portland, Oregon 97220 (the Facility). On November 14, 2011, DEQ issued Solid Waste Disposal Site Closure Permit, No. 211 (the Permit), to Respondents Mike Hashem (Hashem) and PSFM Limited Partnership (PSFM). *Exhibit A7*. On November 18, 2011, DEQ amended the Permit, naming Respondent PSFM the permittee and operator and Respondent Hashem the owner. *Id.* Respondent Skidmore Limited Partnership (Skidmore) is the owner of the Facility according to the Multnomah County Tax Assessor's office. *Exhibit A5*.

Pursuant to OAR 137-003-0630(2), DEQ made a good faith effort to confer with Respondents on this Motion for Summary Determination.

## LEGAL STANDARD

An Administrative Law Judge shall grant a motion for summary determination if, considering all evidence in a manner most favorable to the non-moving party, the record shows that: 1) there is no genuine issue as to any material fact that is relevant to resolution of the legal issues,

and 2) the moving party is entitled to a favorable ruling as a matter of law. OAR 340-003-0580(6) and (7). In reviewing DEQ's interpretation of a DEQ rule as applied in a formal enforcement action, an administrative law judge must follow DEQ's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. OAR 340-011-0545(3). With the exception of exact terms that do not require interpretation, an administrative law judge shall give the DEQ's interpretation of statutory terms the appropriate deference in light of DEQ's expertise with the subject matter, experience with the statute, involvement in the relevant legislative process, and the degree of discretion accorded DEQ by the legislature. OAR 340-011-0545(4). Finally, the ruling on summary determination may resolve some or all of the issues in the contested case. OAR 137-003-0580(11).

## PROCEDURAL HISTORY

On May 13, 2015, DEQ issued Notice of Civil Penalty Assessment and Order No. LQ/SW-NWR-15-048 (the Order) to the Respondents, which alleged that Respondents committed the following violations:

1) Failing to operate and maintain the Landfill Gas Control System (LFGCS) in effective working order such that methane concentrations do not exceed Compliance Limits, in violation of OAR 340-095-0020(9)(a), OAR 340-095-0030(4)(a), and Condition 7.4 of the Permit;
2) Failing to submit to DEQ a financial assurance plan and annual updates to the plan, in violation of OAR 340-095-0090(1), and Conditions 10.2 and 10.4 of the Permit;
3) Failing to submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012, in violation of Condition 7.2 of the Permit;
4) Failing to submit to DEQ an updated landfill gas monitoring plan by March 31, 2012, in violation of Condition 8.2 of the Permit;
5) Failing to conduct quality assurance testing during each year of operation, in violation of Condition 8.9 of the Permit; and

6) Failing to submit to DEQ an annual post-closure evaluation report by February 15 of each year of permit coverage in violation of Condition 11.3 of the Permit.

Along with the filing of this MSD, DEQ amends the Order, changing the dates and locations of three of the alleged methane concentration exceedances. The conclusions of law remain unchanged. The Order and the Amended Order assess a total civil penalty of $58,593 for the violations listed above. *Exhibit A1.* On June 3, 2015, Respondents requested a contested case hearing in writing. *Exhibit A2.* On February 1, 2016, Respondent Hashem and Respondent Skidmore submitted a revised request for a contested hearing. *Exhibit A3.* The Department requested an assignment of an Administrative Law Judge on March 30, 2016.

ARGUMENT IN SUPPORT OF MOTION

Pursuant to OAR 137-003-0585, the Administrative Law Judge should grant this Motion for Summary Determination and issue a Proposed and Final Order in favor of the Department because the record shows there is no genuine issue as to any material fact that is relevant to the resolution of any legal issue and the Department is entitled to a favorable ruling as a matter of law.

**1. There is no genuine issue as to any material fact because Respondents have either admitted factual matters alleged in the Order or failed to present evidence to the contrary.**

A respondent must file a request for a contested case hearing within twenty days of the date of service of the Order. OAR 340-011-0530(1). The request must include a written response that admits or denies all factual matters alleged in the notice. OAR 340-011-0530(2). Furthermore, "factual matters not denied will be considered admitted" and the failure to raise a defense will constitute a waiver of the defense. *Id.* (See also, *Proposed and Final Order in the Matter of: City of Cottage Grove*, OAH Case No. 800386, (2008), page 7, the Administrative Law Judge ruled that evidence pertaining to a facility's operational date constituted an affirmative defense and was thereby waived by Respondent's failure to allege the defense in the request for a contested case hearing.) Finally, when a motion for summary determination is

made, "the non-moving party… may not rest on the mere allegations or denials contained in that party's… answer, if any." OAR 137-003-0580(10).

The Order informed the Respondents of their right to a contested case hearing. In addition, the Order instructed Respondents to include any disputed facts and affirmative defenses in its request for a contested case hearing. *Exhibit A1*. Respondents' June 3, 2015, request for a contested case hearing (Request) did not deny any of the facts alleged in the Order or assert any affirmative defenses. *Exhibit A2*. Respondent Hashem and Respondent Skidmore's February 1, 2016, revised request for a contested case hearing (Revised Request) rests on mere denials of fact and denials of conclusions of law, without the production of any supporting evidence. For example, the Revised Request makes the factual denial, "Hashem and Skidmore deny that on January 13, 2014, the methane concentrations at the facility exceeded compliance limits," and the denial of a conclusion of law, "Hashem and Skidmore deny that they are required to prepare a financial assurance plan." *Exhibit A3*. Neither of these statements are supported by additional evidence or information.

The Respondents may reply to this Motion for Summary Determination by denying facts alleged by the Department. However, as stated above, it is not sufficient for the Respondents to rest on mere denials of fact to avoid summary determination. OAR 137-003-0580(1). Respondents must present evidence that demonstrates that a genuine issue of fact exists that requires a fact-finding hearing. *Id.*

**2. <u>The Department is entitled to a favorable ruling as a matter of law because the undisputed facts support the violations alleged in the Notice.</u>**

The Department found that Respondents, as owners or operators demonstrating control of the Facility, violated Oregon's environmental laws by a) failing to maintain the LFGCS in effective working order such that methane concentrations do not exceed Compliance Limits, b) failing to submit to DEQ a financial assurance plan and annual updates, c) failing to submit to DEQ an updated post-closure operations and maintenance plan, d) failing to DEQ an updated landfill gas monitoring plan, e) failing to conduct quality assurance testing, and f) failing to

submit to DEQ an annual post-closure evaluation report. The Administrative Law Judge should uphold these violations because each violation is supported by the undisputed facts alleged in the Notice and the attached declarations.

a. As owners or operators of the Facility, Respondents are jointly liable for all of the violations cited in the Order.

As either owners or operators, demonstrating control over the Facility, all three Respondents are responsible for the violations cited in the Order within the plain meaning of the applicable statutes and rules.

The applicable solid waste statutes state that both the person that holds the solid waste disposal site permit and "the person owning or controlling a land disposal site" are required to renew the permit. ORS 459.205(2). The statutes further specify that:

> When solid waste is no longer received at a land disposal site, the person who holds the permit or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, *the person owning or controlling the property on which the disposal site is located*, shall close and maintain the site according the requirements of this chapter, any applicable rule adopted by the Environmental Quality Commission under ORS 459.045 and any requirement imposed by the Department of Environmental Quality as a condition to renewing or issuing a disposal site permit.

ORS 459.268 (emphasis added). Therefore, when the permittee fails to comply with any applicable statute, rule, or permit condition, the statute places the burden of the proper operation of a landfill on the person or persons that either own or control the property.

The obligation of the Administrative law judge and the Environmental Quality Commission is to construe the statutes as written and not insert additional terms or requirements. ORS 174.010. The solid waste statutes do not define the terms "control" or "controlling." Therefore, the administrative law judge must interpret the statue under its plain meaning. Webster's Third New Int'l Dictionary 496 (unabridged ed., 1993), defines "control" as "exercising restraining or directing influence over…," "power or authority to guide or manage …," and "application of policies and procedures for directing, regulating, and coordinating

production, administration, and other business activities in a way to achieve the objectives of the enterprise."

In the *Final Order in the Matter of: Kinzua Resources, LLC; ATR Services, Inc.; Gregory M. Demers; and Frontier Resources, LLC*, OAH Case No. 1403637, 2015 (hereinafter *Kinzua*) the Environmental Quality Commission (EQC) upheld an order issued by DEQ for violations at Pilot Rock Landfill. In *Kinzua*, the EQC found that the individual Mr. Demers was personally liable for violations of solid waste statutes and rules by demonstrating control over the Pilot Rock Landfill. *Kinzua*, page 9. Although not a listed permittee or an owner of the landfill, Mr. Demers demonstrated "control" in part by implementing management measures upon request by DEQ and working with consultants to find solutions to other issues at the landfill. *Id.*

In this case, under the plain language of the statute and as consistent with EQC's interpretation provided by *Kinzua*, all three Respondents are responsible for the violations cited in the Order. As the undisputed permittee, Respondent PSFM is required to comply with the statutes, rules, and Permit conditions that apply to the Facility. *Exhibit A7*. Since PSFM has failed to comply with the applicable statutes, rules, and permit conditions, persons owning or controlling the property are also liable for the violations. ORS 459.268. According to the Multnomah County Tax Assessors Office, Respondent Skidmore owns the Facility and is therefore liable. *Exhibit A5*. In addition, Respondent Skidmore purchased the Facility from Respondent PSFM in 2008 for a recorded consideration amount of $0.00. *Id.* Finally, similar to Mr. Demers in *Kinzua*, Mr. Hashem has demonstrated, in part through emails to DEQ, a long history of authority and management of the operations at the Facility. *Exhibit A4*. In addition, Respondent Hashem is the President of Skidmore Management Corporation. *Exhibit A6*. Skidmore Management Corporation is the sole partner of Skidmore Limited Partnership. *Id.* Therefore, all three Respondents are liable for the violations alleged in the Order.

EQC has previously articulated the public health policy that supports the statutes' placement of liability for the operation of a landfill on multiple parties, stating that "the proper control and management of landfills is a matter of great significance to public health and the

environment." *Kinzua*, page 10. In order to capture the magnitude of the public health significance of managing a landfill and ensure that some person is held responsible for that management, "ORS 459 establishes detailed and comprehensive regulation of these activities, including placing regulatory burdens on both the permittee, and in the event of the failure of the permittee to comply, those persons controlling the property." *Id.*

b. Respondents violated OAR 340-095-0020(9)(a), 0030(4)(a), and Condition 7.4 of the Permit by failing to maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits.

Respondents failed to maintain the LFGCS in effective working order such that methane concentrations do not exceed compliance limits when methane levels repeatedly exceeded 5% at several of the Facility's monitoring wells.

Oregon Administrative Rules prohibits the operation of a landfill where the concentration of methane exceeds 25 percent of its lower explosive limit in facility structures or its lower explosive limit at the property boundary. OAR 340-095-0020(9)(a) and OAR 340-0095-0030(4)(a). In addition, Permit Condition 7.4 echoes the above mentioned prohibition required by Oregon Administrative Rule. *Exhibit A7, page 9*. Finally, the Permit defines the applicable Lower Explosive Limit (Compliance Limit) for methane as "5 percent by volume." *Exhibit A7, page 17*. Therefore, an exceedance of methane levels above 5 percent by volume is a violation of both Administrative Rule and Condition 7.4 of the Permit.

Respondents violated OAR 340-095(0020(9)(a), OAR 340-0095-0030(4)(a), and Condition 7.4 of the Permit when the following monitoring wells demonstrated emissions of landfill gas containing more than 5% methane on at least the following dates: on January 13, 2014, at MW-29, MW-3S, and MW-4S; on January 24, 2014, at MW-29 and MW-4S, and on May 27, 2014 at MW-29. *Exhibit A4*. In addition, on May 27, 2014 and June 5, 2014 DEQ performed inspections of the Facility and recorded the following deficiencies to the LFGCS: MW-30 was plugged with water; MW-31 was filled with soil and gravel and the fittings for attaching the gas meter were defective, rendering monitoring impossible; bolts used to secure

flush mounted vault lids on all of the seven gas probes inspected by DEQ were missing or damaged; and MW-32 was plugged with an unknown material, rendering it inoperative. *Id.* Respondents have failed to provide any evidence that demonstrates that either the exceedances did not occur or that the deficiencies in the LFGCS did not exist. *Exhibits A2 and A3*. Therefore, the facts are undisputed and as a matter of law, Respondents violated OAR 340-095(0020(9)(a), OAR 340-0095-0030(4)(a), and Condition 7.4 of the Permit. Furthermore, Respondents methane exceedances at MW-29 and the inoperable MW-30 presented a heightened risk to human health and the environment because these monitoring wells are approximately only 15 feet from residential buildings. *Exhibit A4*.

c. Respondents violated OAR 340-095-0090(1), OAR 340-095-0050(3)(b), and Conditions 10.2 and 10.4 of the Permit by Failing to submit to DEQ a financial assurance plan and annual updates to the plan.

Oregon Administrative rules require that owners or operators of closed landfills maintain a financial assurance plan that includes evidence that the owner or operator holds a financial assurance policy necessary to provide for the post-closure maintenance of the Facility. OAR 340-095-0090(1). In addition, owners or operators are required to submit to DEQ a copy of the annual update to the Facility's financial assurance policy. OAR 340-095-0050(3). The Permit reflects these rule requirements and adds that the financial assurance plan was required no later than May 31, 2013. *Exhibit A7, page 14*.

Respondents have failed to provide DEQ with either a financial assurance plan or annual updates to the plan. *Exhibit A4*. In addition, Respondents have not offered any evidence that they have produced a plan or submitted annual updates. *Exhibits A2 and A3*. Therefore, the underlying facts are undisputed and as a matter of law, Respondents violated OAR 340-095-0090(1), OAR 340-095-0050(3)(b), and Conditions 10.2 and 10.4 of the Permit. Furthermore, financial assurance is vital to protect the public's interest in the operation of a closed landfill. In *Kinzua*, EQC adopted the following testimony of DEQ:

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> Financial assurance provides for the costs of closure and post-closure maintenance of a disposal site in the event the permit holder becomes insolvent. Financial assurance is commonly provided as insurance or a bond in amounts equivalent to estimated site closure costs. Such assurance allows DEQ to perform closure and post-closure activities at a disposal site without passing costs to taxpayers of Oregon.

*Kinzua*, at page 4. Therefore, Respondent Hashem and Respondent Skidmore's, conclusory statement on page 2 of Exhibit A3, denying culpability for failing to prepare a financial assurance plan explicitly contradicts the plain language of the rules which place the obligation on the "owner or operator" and the policy behind the shared obligation that ensures the Oregon taxpayer is not left paying for the closure of a landfill when a permittee becomes insolvent. Without a mechanism to enforce Respondents' failure to produce financial assurance, the public is at risk of having to pay for Respondents' mismanagement of the Facility.

d. Respondents violated Condition 7.2 of the Permit by failing to submit to DEQ an updated operations and maintenance plan.

Condition 7.2 of the Permit requires the permittee to prepare and submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012. *Exhibit A7, page 8*. The post closure operations and maintenance plan describes in detail how the permittee will carry out all of the required operations and maintenance elements of the Permit. *Id.* Without a post-closure operations and maintenance plan DEQ cannot effectively ensure public safety and provide regulatory oversite over the Facility's maintenance operations.

To date, Respondent PSFM has failed to prepare and submit to DEQ the required post-closure operations and maintenance plan. *Exhibit A4*. Since the permittee has failed its permit obligation, Respondent Hashem and Respondent Skidmore are responsible for permit compliance. ORS 459.268. In addition, Respondents have not provided any evidence suggesting that they have prepared and submitted an operations and maintenance plan. *Exhibits A2 and A3*. Therefore, the fact remains undisputed and as a matter of law Respondents violated Condition 7.2 of the Permit.

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e. Respondents have violated Condition 8.2 of the Permit by failing to submit to DEQ an updated landfill gas monitoring plan.

Condition 8.2 of the Permit requires the permittee to submit to DEQ, by no later than March 31, 2012, an updated landfill gas monitoring plan. *Exhibit A7, page 12.* The plan must be prepared and stamped by a registered geologist or registered engineer and reflect changes to monitoring practices in conformance to the required monitoring procedures. *Id.* Without an updated landfill gas monitoring plan, DEQ cannot effectively ensure public safety and provide regulatory oversite over the Facility's landfill gas monitoring operations.

To date, Respondent PSFM has failed to prepare and submit to DEQ the required updated landfill gas monitoring plan. *Exhibit A4.* Since the permittee has failed its permit obligation, Respondent Hashem and Respondent Skidmore are responsible for permit compliance. ORS 459.268. In addition, Respondents have not provided any evidence suggesting that they have prepared and submitted an updated landfill gas monitoring plan. *Exhibits A2 and A3.* Therefore, the fact remains undisputed and as a matter of law Respondents violated Condition 8.2 of the Permit.

f. Respondents have violated Condition 8.9 of the Permit by failing to conduct quality assurance testing during each year of operation.

Condition 8.9 of the Permit requires that the permittee retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. *Exhibit A7 page 13.* The quality assurance testing will be used to verify the accuracy of Respondents self-monitoring procedures. *Id.* Finally, the permittee must submit the quality assurance test results to DEQ as an attachment to the annual maintenance monitoring report. Without quality assurance testing, DEQ cannot effectively account for the accuracy permittee's monitoring results.

To date, Respondent PSFM has failed to submit to DEQ quality assurance testing results. *Exhibit A4.* Since the permittee has failed its permit obligation, Respondent Hashem and Respondent Skidmore are responsible for permit compliance. ORS 459.268. In addition,

Respondents have not provided any evidence suggesting that they have conducted quality assurance testing. *Exhibits A2 and A3*. Therefore, the fact remains undisputed and as a matter of law Respondents violated Condition 8.9 of the Permit.

g. Respondents have violated Condition 11.3 of the Permit by failing to submit to DEQ an annual post-closure evaluation report by February 15 of each year of Permit coverage.

Condition 11.3 of the Permit requires the permittee to submit to DEQ a post-closure evaluation report by no later than February 15th of each year of permit operation. *Exhibit A7, page 17*. The post-closure evaluation report must include a discussion of the implementation of post-closure plans and a description of unanticipated occurrences and changes to the post-closure plan. Without annual post-closure evaluation reports, DEQ cannot effectively protect the public health and provide oversite to the permittee's post-closure progress.

To date, Respondent PSFM has failed to submit to DEQ any post-closure evaluation reports. *Exhibit A4*. Since the permittee has failed its permit obligation, Respondent Hashem and Respondent Skidmore are responsible for permit compliance. ORS 459.286. In addition, Respondents have not provided any evidence suggesting that they have prepared submitted post-closure evaluation reports. *Exhibits A2 and A3*. Therefore, the fact remains undisputed and as a matter of law, Respondents violated Condition 11.3 of the Permit.

**3. The Department's Civil Penalty Assessment is appropriate.**

The civil penalty formula that the Department must use in determining the amount of a civil penalty is prescribed by OAR 340-012-0045. The Department must first determine the class and magnitude of each violation, based on the facts of the case, to determine the base penalty for that violation. OAR 340-012-0053, OAR 340-012-0130, and OAR 340-012-0140. The Department then increases or decreases the amount of the base penalty by application of the facts to the civil penalty formula. OAR 340-012-0145. Aggravating and mitigating factors in the formula address prior history of violations, the duration of the violation, mental state, and efforts to correct the violation.

The economic benefit ("EB") portion of the civil penalty formula represents the approximate dollar amount of the economic benefit that the Respondents gained through noncompliance as calculated using the Environmental Protection Agency's BEN computer model. OAR 340-012-0045(2)(3); OAR 340-012-0150. The economic benefit calculation in a civil penalty is designed to "level the playing field" between entities that chose to comply in a timely manner (and thus spend money to do so) and those entities that either avoid or delay the cost of compliance. In this case, the Department assessed an economic benefit of $34,593 for Violations No. 1 and 2, pursuant to the attached Economic Benefit Memorandum. *Exhibit A8.*

Respondents' answer does not deny any facts alleged in the Order or incorporated in the attached penalty calculation Exhibits relevant to DEQ's determination of either the aggravating factors or the economic benefit determination. *Exhibit A2 and A3*. Respondent Hashem and Respondent Skidmore's revised request for a contested case hearing offers only the conclusory statement that, "the amount of the civil penalty due is not correctly determined." *Exhibit 3*. As stated above, however, this conclusory statement is insufficient to establish the presence of a genuine issue of fact. OAR 137-003-0580(1). Therefore, there are no material facts in dispute regarding the civil penalties assessed by the Department, and thus as a matter of law, the Department is entitled to a ruling upholding the civil penalty.

## CONCLUSION

Respondents' violations are a direct result of their failure to properly own, operate, and control a closed solid waste disposal site in Portland, Oregon. As a result, the facility emitted dangerous levels of methane gas in close proximity to residential buildings, the public is at risk of paying for necessary post-closure costs, and the Department is unable to properly provide regulatory oversite of the Facility. Therefore, the Department respectfully requests that the Administrative Law Judge find that there is no genuine issue as to any material fact relevant to resolution of the legal issues in this matter, and that the Department is entitled to a favorable ruling as a matter of law on all violations alleged in the Order.

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Based on such a ruling, and pursuant to OAR 137-003-0580(12), the Department requests that the Administrative Law Judge issue a proposed order finding that Respondents violated Oregon law as set forth in the Order and the Amended Order and ordering Respondent to pay the civil penalty assessed in the Order and the Amended Order.

In the alternative, should this motion not be granted in its entirety, the Department respectfully requests that the Administrative Law Judge grant this motion in part.

6/27/16
Date

Kieran O'Donnell
Environmental Law Specialist
Department of Environmental Quality

NOTICE FOR RESPONSE TO

DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION

Pursuant to OAR 137-003-0580(2), within 14 calendar days after service of this motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

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|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTHERSHIP, &<br>MIKE HASHEM<br><br>Respondents. | AMENDED NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER<br><br>CASE NO. LQ/SW-NWR-15-048 |

## I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

## II. FINDINGS OF FACT

1. Respondents own and operate a construction and demolition waste landfill with the tax roll description of Section 28, T1N, R2E, WM, and located at or around 2800 NE 82nd Ave, Portland, Oregon 97220 (the Facility).

2. On November 14, 2011, DEQ issued PSFM Limited Partnership and Mike Hashem a Solid Waste Disposal Site Closure Permit, Permit Number 211 (the Permit).

3. The Facility is owned by Skidmore Limited Partnership.

4. The Permit allows Respondents to maintain and monitor a solid waste land disposal site at the Facility in conformance with the terms and conditions of the Permit.

5. Pursuant to Section 7.4 of the Permit, the Respondents must operate and maintain the landfill gas control system (LFGCS) in effective working order such that methane concentrations do not exceed regulatory compliance limits listed in Section 9.4 of the Permit.

6. Pursuant to the compliance limits listed in Section 9.4 of the Permit (Compliance Limits) the concentration of methane must not exceed the Lower Explosive Limit in soil gas at the Facility boundary. The Lower Explosive Limit for methane is 5 percent by volume.

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7. On January 13, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring wells MW-29, MW-3S, and MW-4S.

8. On January 24, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring wells MW-29 and MW-4s.

9. On May 27, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring well MW-29.

10. On or before March 14, 2014, Respondents informed DEQ that its LFGCS gas blower system had malfunctioned.

11. In May and June of 2014, some of Respondents' landfill-gas monitoring probes were malfunctioning. Specifically, some probes' lids would not close, some probes had striped bolts, and some probes were plugged with gravel and soil.

12. Pursuant to Section 10.2 of the Permit, the Respondents must "prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval" by no later than May 31, 2013.

13. Pursuant to Section 10.4 of the Permit, the Respondents must "annually review and update financial assurance requirements" and "submit the annual update to DEQ prior to May 31 of each year, beginning in 2014."

14. As of the date of this Notice, Respondents have not submitted to DEQ a financial assurance plan or the annual financial assurance updates.

15. Pursuant to Section 7.2 of the Permit, the Respondents must submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012.

16. As of the date of this Notice, Respondents have not submitted to DEQ an updated post-closure operations and maintenance plan.

17. Pursuant to Section 8.2 of the Permit, the Respondents must submit to DEQ an updated landfill gas monitoring plan by March 31, 2012.

18. As of the date of this Notice, Respondents have not submitted an updated LFG monitoring plan.



Item N 000233
EXHIBIT A1
PAGE 2

19. Pursuant to Section 8.9 of the Permit, the Respondents must conduct quality assurance testing by retaining the services of an independent DEQ-approved consultant to conduct at least one of the required yearly landfill gas monitoring events.

20. As of the date of this Notice, the Respondents have not conducted quality assurance testing for 2012, 2013, and 2014.

21. Pursuant to Section 11.3 of the Permit, the Respondents must submit to DEQ a post-closure evaluation report summarizing "a discussion of implementation of the post-closure plans and a description of unanticipated occurrences and any changes to the post-closure plans," prior to February 15 of each year.

22. As of the date of this Notice, Respondents have not submitted a Section 11.3 report for the years of 2012, 2013, 2014, and 2015.

## III. CONCLUSIONS

1. Respondents have violated OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Section 7.4 of the Permit by failing to operate and maintain the LFGCS in effective working order such that methane concentrations do not exceed Compliance Limits. Specifically, methane concentrations exceeded compliance limits at monitoring wells MW-29, MW-30, and MW-3S on January 13, 2014; at monitoring wells MW-29 and MW-4S on January 24, 2014; and at monitoring well MW-29 on May 27, 2014. In addition, on March 14, 2014, Respondents reported to DEQ that its gas blower system had malfunctioned. In May and June of 2014, some of Respondents' landfill gas monitoring probes were malfunctioning. Specifically, some probes' lids would not close, some probes had striped bolts, and some probes were plugged with gravel and soil. Furthermore, on May 27, 2014, methane concentrations at the Facility exceeded compliance limits at monitoring well MW-29. Therefore, Respondents failed to maintain the LFGCS in effective working order such that methane concentrations would not exceed compliance limits. These are Class I violations, according to OAR 340-012-0065(1)(f). DEQ hereby assesses a $20,720 civil penalty for these violations.

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2. Respondents have violated OAR 340-095-0090(1) and OAR 340-095-0050(3)(b) and Conditions 10.2 and 10.4 of the Permit by failing to submit to DEQ a financial assurance plan and annual updates to the plan. Specifically, Respondents have failed to submit the financial assurance plan by May 31, 2013 and the financial assurance update by May 31, 2014. These are Class I violations pursuant to OAR 340-012-0065(1)(i). DEQ hereby assesses a $37,873 civil penalty for these violations.

3. Respondents have violated Section 7.2 of the Permit by failing to submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012. As of the date of this Notice, Respondents have not submitted an updated post-closure operations and maintenance plan. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

4. Respondents have violated Section 8.2 of the Permit by failing to submit to DEQ an updated landfill gas monitoring plan by March 31, 2012. As of the date of this Notice, Respondents have not submitted an updated landfill gas monitoring plan. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

5. Respondents have violated Section 8.9 of the Permit by failing to conduct quality assurance testing during each year of operation. Specifically, since 2012, Respondents have failed to retain an independent DEQ-approved consultant to conduct at least one of the required yearly landfill gas monitoring events. These are Class II violations pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

6. Respondents have violated Section 11.3 of the Permit by failing to submit to DEQ an annual post-closure evaluation report by February 15 of each year of permit coverage. Specifically, the Respondents have failed to submit a post-closure evaluation report for 2012, 2013, 2014, and 2015. These are Class II violations pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

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## IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are hereby ORDERED TO:

1. Pay a total civil penalty of $58,593. The determinations of the civil penalties are attached as Exhibits No. 1 and 2 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. By no later than sixty (60) days after this Notice becomes a final order, Respondents must do the following:

a. Evaluate and assess the LFGCS at the Facility and make any necessary repairs to ensure that it remains in good working condition. Submit the results of the evaluation, assessment, and repairs to DEQ;

b. Submit to DEQ a financial assurance plan as required by Section 10.2 of the Permit;

c. Submit to DEQ an updated post-closure operations and maintenance plan as required by Section 7.2 of the Permit;

d. Submit to DEQ an updated landfill gas monitoring plan as required by Section 8.2 of the Permit;

e. Retain an independent DEQ approved consultant to conduct quality assurance monitoring at the Facility;

f. Submit to DEQ a post-closure evaluation report as required by Section 11.3 of the Permit.

g. Written documentation demonstrating Respondents' compliance must be sent to:

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DEQ, Northwest Region Office
c/o Tim Spencer
2020 SW 4th Ave., Suite 400
Portland, OR 97201
spencer.tim@deq.state.or.us

## V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must include them in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

Active duty service-members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800) 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website, http://legalassistance.law.af.mil/content/locator.php.

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If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

June 27, 2016
Date

Leah K. Feldon, Manager
Office of Compliance and Enforcement

# AMENDED EXHIBIT NO. 1

## FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 1: Failing to operate and maintain the landfill gas control system (LFGCS) in effective working order, in violation of OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Section 7.4 of the Solid Waste Disposal Site Closure Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(f).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondents have a Solid Waste Disposal Site Closure Permit.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondents' failure to maintain the landfill gas control system in an effective working order began on at least January 13, 2014, when methane concentration exceedances were reported. The violation continued until at least May 27, 2014, when the last methane concentration exceedance was reported. Therefore, the violation persisted for more than 28 days.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. On February 24, 2009, DEQ issued a Unilateral Order requiring evaluation of the LFGCS. In addition, the Unilateral Order required Respondents to submit progress reports on the administration of the LFGCS. Furthermore, on November 14, 2011, DEQ issued Respondent a Solid Waste Disposal Site

Closure Permit, No. 211, which expressly requires Respondents to maintain the LFGCS in effective working order. Despite these formal interactions between DEQ and Respondents directing Respondents to manage an effective LFGCS, the Respondents failed to do so. This demonstrates Respondents' failure to take reasonable care to avoid a foreseeable risk that its failure to maintain an effective LFGCS would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $8,720. This is the amount Respondents gained by avoiding spending $15,000 to repair and maintain the landfill gas control system in effective working order. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0 + 0 + 4 + 4 + 2)] + $8,720
= $6,000 + [$6,000 x 10] + $8,720
= $6,000 + $6,000 + $8,720
= $20,720

AMENDED EXHIBIT NO. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 2: Failing to submit to DEQ a financial assurance plan and annual updates to the financial assurance plan, in violation of OAR 340-095-0090(1) and OAR 340-095-0050(3)(b) and Sections 10.2 and 10.4 of the Solid Waste Disposal Site Closure Permit, No. 211 (the Permit).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0065(1)(i).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondents have a Solid Waste Disposal Site Closure Permit.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The Permit requires Respondents to submit a financial assurance plan by May 31, 2014. As of the date of this Notice, Respondents have not submitted the financial assurance plan. Therefore, there are more than 28 occurrences of the violation.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. On February 24, 2009, DEQ issued a Unilateral Order requiring evaluation of the LFGCS. On October 5, 2011, DEQ wrote to Respondents, specifically to highlighting that the new permit would require financial assurance. On November 14, 2011, DEQ issued Respondents the Permit, which expressly requires Respondents to prepare and maintain a financial assurance plan. Despite

these formal interactions between DEQ and Respondents directing Respondents to maintain and prepare a financial assurance plan. Furthermore, on August 14, 2014, DEQ provided Respondents with additional information on how to obtain financial assurance. This demonstrates Respondents' failure to take reasonable care to avoid a foreseeable risk that its failure to maintain and prepare a financial assurance plan would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $25,873. This is the amount Respondents gained by avoiding spending $25,000 to develop and maintain a financial assurance plan. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0+ 0+ 4+ 4+ 2)] + $25,873
= $6,000 + [$6,000 x 10] + $25,873
= $6,000 + $6,000 + $25,873
= $37,873

# KELL, ALTERMAN & RUNSTEIN, L.L.P.

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OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

June 3, 2015

*Via Fax (503-229-5100) and U.S. Mail*

Department of Environmental Quality
Office of Compliance and Enforcement - Appeals
811 SW Sixth Avenue
Portland, OR 97204

Re: Appeal of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-15-048

Dear Sirs:

This office represents respondents in the above-referenced matter and this letter constitutes respondents' written request for a contested case hearing in response to the Notice dated May 13, 2015, received by the registered agent for PSFM Limited Partnership and Skidmore Limited Partnership on May 15.

We understand Mr. Hashem had a meeting this afternoon with Environmental Law Specialist O'Donnell and Tim Spencer, and looks forward to continuing the dialogue.

Thank you.

Very truly yours,

John P. Ashworth

JPA:rlt
cc: Mike Hashem, Manager, PSFM Limited Partnership

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Attachment D 6

RECEIVED
FEB 01 2016
OFFICE OF COMPLIANCE AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

# ROSE, SENDERS AND BOVARNICK, LLC

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*Admitted in Oregon and Washington
**Admitted in Oregon, Washington and Montana

Copy - originals to ALJ

February 1, 2016

**HAND DELIVERED**

Oregon DEQ
Office of Compliance and Enforcement-Appeals
811 SW 6th Ave
Portland, OR 97204

Re: Request for Hearing
Case No. LQ/SW-NWR-15-048

Dear Sir or Madam:

This law firm represents Mike Hashem ("Hashem") and Skidmore Limited Partnership ("Skidmore"). On or about May 13, 2015, the Department of Environmental Quality issued a Notice of Civil Penalty, Assessment, and Order in the above-referenced case. Hashem and Skidmore are named as respondents, along with PSFM Limited Partnership ("PSFM").

Since the issuance of the Notice, the respondents and the Department of Environmental Quality ("DEQ") have been negotiating various proposals to settle this civil penalty, without waiving the right to a contested case hearing. These settlement discussions have now reached an impasse. Hashem and Skidmore wish to proceed with a contested hearing before an Administrative Law Judge.

Hashem and Skidmore dispute most of the allegations of fact and conclusions contained in the Notice. Hashem and Skidmore assert the following facts in opposition to the factual allegations asserted by DEQ:

1. Hashem does not own or operate a former construction demolition waste landfill. Skidmore owns one parcel of the former landfill and is one of five current owners.

2. DEQ issued a Waste Disposal Site Closure Permit, Permit No. 211 to PSFM. It did not issue the Permit to Hashem or to Skidmore.

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3. The Facility is not owned by Skidmore. Skidmore owns one of five parcels that comprise the Facility.

4. The permit allows PSFM to maintain and monitor a former solid waste land disposal site at the Facility. It does not allow either Hashem or Skidmore to maintain and monitor the former solid waste land disposal site.

5. Neither Hashem nor Skidmore are obligated to operate and maintain the Landfill Gas Control System (LFGCS) in effective working order.

6. Hashem and Skidmore deny that on January 13, 2014, the methane concentrations at the facility exceeded compliance limits. They also deny that on May 27, 2014, the methane concentrations exceeded compliance limits. If in fact the methane concentrations exceeded limits it was not due to anything that Hashem or Skidmore did or did not do.

7. Hashem and Skidmore deny that in May and June of 2014 some of PSFM's landfill gas monitoring probes were malfunctioning.

8. Hashem and Skidmore deny that they are required to prepare a financial assurance plan.

9. Hashem and Skidmore deny that they must annually review and update the financial assurance requirements.

10. Hashem and Skidmore deny that they must submit to DEQ an updated post-closure operations and maintenance plan.

11. Hashem and Skidmore deny that they are obligated to submit to DEQ an updated landfill gas monitoring plan.

12. Hashem and Skidmore deny that they must conduct quality assurance testing by retaining the services of an independent DEQ-approved consultant.

13. Hashem and Skidmore deny that they must submit to DEQ a post-closure evaluation report annually.

14. Hashem and Skidmore deny that they have violated the Permit since they are not parties to the Permit.

15. Hashem and Skidmore deny that a civil penalty of $58,593 is due and owing. Assuming for the sake of argument that Hashem and Skidmore have any liability, the amount of the civil penalty due is not correctly determined.

By way of affirmative defenses, respondents Hashem and Skidmore assert:

1. Hashem and Skidmore are not proper parties to this enforcement proceeding and should be dismissed.

2. The Permit issued in 2011 was erroneously issued PSFM Limited Partnership and should have been issued to the correct party or parties. As of 2011 PSFM no longer had any ownership interest or economic interest in the Facility.

3. DEQ was requested on several occasions to amend or correct the Permit and issue the permit to the current property owners, and DEQ failed to do so.

Respondents Hashem and Skidmore reserve the right to raise additional factual defenses and affirmative defenses either prior to or at the time for hearing. They also reserve the right to submit documents and evidence in support of their factual claims and affirmative defenses. Additionally, respondents Hashem and Skidmore request an award of attorney fees, if allowable by law, rule or regulation.

Sincerely,

Richard D. Senders

RDS:dms
cc: Kieran O'Donnell
Client
W:\Hashem-DEQ\Correspondence\02-01-16 DEQ.wpd

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BEFORE THE OREGON ENVIRONMENTAL

QUALITY COMMISSION

| | |
|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTNERSHIP, &<br>MIKE HASHEM<br>Respondent. | ) DECLARATION OF<br>) TIM SPENCER<br>)<br>) OAH Case No. 1604492<br>) DEQ Case No. LQ/SW-NWR-15-048 |

I, TIM SPENCER, declare under penalty of perjury that the following is true to the best of my knowledge:

1. I am currently employed by the Oregon Department of Environmental Quality (DEQ) as an environmental engineer and solid waste project manager.

2. I have worked for DEQ in the same or similar positions for 27 years.

3. My job duties include inspecting solid waste disposal facilities and evaluating compliance with Oregon's solid waste statutes, rules, and permits

4. I have extensive experience and knowledge in inspecting and regulating both active and closed solid waste disposal sites.

5. I have managed DEQ oversight of the Respondents' construction and demolition waste landfill, located at or around 2800 NE 82nd Ave., Portland, Oregon 97220 (the Facility) for the past approximately 20 years.

6. DEQ issued a Solid Waste Disposal Site Closure Permit, No. 211, for the Facility, to Respondent PSFM Limited Partnership and Respondent Mike Hashem (Respondent Hashem) on November 14, 2011.

7. During the course of my oversight of the Facility, I communicated directly with Respondent Hashem regarding the statutory, rule, and Permit requirements that pertain to the Facility. I have communicated with Respondent Hashem in the following ways:

a. Respondent Hashem is or has been the primary point of contact for my oversight of the operations of the Facility.



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b. I have communicated with Respondent Hashem via telephone or email regarding the operations of this Facility since at least 1998. Two of these emails are attached to this Declaration.

8. I have consistently witnessed Respondent Hashem act as a manager of the Facility, directing funds and resources for remedial improvements, operations, maintenance, and monitoring.

9. In 2014 I reviewed the Landfill Gas Collection System (LFGCS) monitoring results for the Facility. The results indicated that methane levels exceeded 5% from the following wells on the following dates. Wells MW-29, MW-3S, and MW-4S on January 13, 2014; wells MW-29 and MW-4S on January 24, 2014; well MW-29 on May 27, 2014. These results are attached to this Declaration.

10. MW 29 and MW 30 are located approximately 10 to 15 feet from residential buildings.

11. On May 27, 2014, and June 5, 2014 DEQ performed inspections of the Facility. At the time of the inspections the Facility's landfill gas monitoring probes demonstrated the following deficiencies: MW-30 plugged with water; MW-31 filled with soil and gravel and fittings for attaching the gas meter were defective and would not provide an air tight seal; bolts used to secure flush mounted vault lids on all seven gas probes checked by DEQ were missing or damaged; MW-32 appeared to be plugged with unknown foreign material and did not function properly.

12. As of the date of this Declaration, Respondents have not submitted to DEQ a financial assurance plan or annual updates to the financial assurance plan.

13. As of the date of this Declaration, Respondents have not submitted to DEQ a post-closure operations and maintenance plan.

14. As of the date of this Declaration, Respondents have not submitted to DEQ an updated landfill gas monitoring plan.

15. From 2012 to 2015, Respondents did not submit quality assurance testing results to DEQ, conducted by an independent DEQ-approved consultant.

16. As of the date of this Declaration, Respondents have not submitted to DEQ a post-closure evaluation report for any of the years of operation under the Permit.

Date: 6/27/2016

Tim Spencer
Solid Waste Project Manager
Oregon Department of Environmental Quality

TABLE 1
Surcharge Methane Monitoring Results
Dharma Rain Zen Center Proposed Householder Refuge and Temple
LaVelle Landfill
Portland, Oregon

| Location I.D. | Date | Barometric Pressure (inches Hg) | | Pressure (IOW) | Concentration (pbv) | | | Comments |
|---|---|---|---|---|---|---|---|---|
| | | Initial | Final | | Methane | Carbon Dioxide | Oxygen | |
| MW-1s | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 0.8 | 18.7 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 0.7 | 18.5 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.9 | 18.8 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.4 | 19.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.5 | 19.1 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.4 | 19.3 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 6.08 | 0.0 | 0.3 | 19.0 | Surcharge, System Off |
| MW-1d | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 1.3 | 18.6 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 1.5 | 18.2 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 1.3 | 18.5 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 1.0 | 18.6 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.5 | 19.3 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.7 | 19.2 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 0.0 | 0.4 | 19.2 | Surcharge, System Off |
| MW-2s | 09/24/13 | 29.63 | 29.61 | -0.01 | 0.0 | 0.8 | 18.2 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 1.1 | 17.8 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -0.01 | 0.0 | 0.3 | 19.1 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.02 | 0.0 | 0.1 | 19.6 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.5 | 19.3 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.01 | 0.0 | 0.1 | 19.4 | Surcharge, System Off |
| MW-2d | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 0.2 | 19.2 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 0.2 | 18.8 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.4 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.1 | 19.7 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.2 | 19.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 0.0 | 0.1 | 19.5 | Surcharge, System Off |
| MW-3s | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.6 | 10.5 | 8.1 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.5 | 12.8 | 6.3 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -0.02 | 2.0 | 18.5 | 2.0 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 10.5 | 12.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.02 | 1.8 | 7.9 | 13.3 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 3.4 | 16.3 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 6.8 | 12.6 | 6.3 | Surcharge, System Off |


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**TABLE 1**
**Surcharge Methane Monitoring Results**
**Dharma Rain Zen Center Proposed Householder Refuge and Temple**
**LaVelle Landfill**
**Portland, Oregon**

| Location I.D. | Date | Barometric Pressure (inches Hg) | | Pressure (IOW) | Concentration (pbv) | | | Comments |
|---|---|---|---|---|---|---|---|---|
| | | Initial | Final | | Methane | Carbon Dioxide | Oxygen | |
| MW-3d | 09/24/13 | 29.63 | 29.61 | -133.35 | 0.0 | 0.5 | 19.0 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -141.25 | 0.0 | 0.6 | 18.3 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -143.25 | 0.0 | 0.5 | 19.1 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -141.11 | 0.1 | 0.5 | 19.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -160.09 | 0.0 | 0.6 | 19.4 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -148.47 | 0.0 | 1.5 | 19.2 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -150.00 | 0.1 | 2.3 | 18.3 | Surcharge, System Off |
| MW-4s | 09/24/13 | 29.63 | 29.61 | -0.01 | 23.6 | 27.8 | 0.0 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -0.01 | 16.8 | 23.7 | 3.2 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -0.04 | 15.7 | 27.5 | 0.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 4.74 | 8.4 | 23.6 | 0.9 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.02 | 9.2 | 20.5 | 1.7 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 1.2 | 15.9 | 1.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.02 | 20.2 | 21.5 | 0.0 | Surcharge, System Off |
| MW-4d | 09/24/13 | 29.63 | 29.61 | -117.61 | 0.2 | 1.2 | 18.7 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -36.34 | 0.0 | 0.2 | 18.6 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -31.66 | 0.0 | 0.3 | 19.2 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -95.59 | 0.1 | 0.5 | 19.3 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -65.85 | 0.0 | 0.3 | 19.5 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -35.20 | 0.0 | 0.2 | 19.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -95.48 | 0.1 | 0.6 | 19.3 | Surcharge, System Off |
| MW-5s | 09/24/13 | 29.63 | 29.61 | -0.01 | 0.0 | 4.6 | 14.1 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 7.1 | 10.1 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 4.8 | 14.7 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.01 | 0.1 | 1.3 | 18.7 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.03 | 0.0 | 1.3 | 18.6 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.01 | 0.0 | 2.1 | 14.5 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.03 | 0.1 | 4.7 | 12.5 | Surcharge, System Off |
| MW-5d | 09/24/13 | 29.63 | 29.61 | -0.01 | 3.5 | 22.3 | 0.0 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -0.01 | 10.3 | 25.5 | 0.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.01 | 0.0 | 7.4 | 13.2 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -0.04 | 0.1 | 3.6 | 17.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.06 | 0.0 | 3.5 | 17.6 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.6 | 6.7 | 7.5 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.01 | 0.0 | 17.0 | 3.7 | Surcharge, System Off |
| MW-14s | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 3.3 | 14.0 | Baseline |

TABLE 1
Surcharge Methane Monitoring Results
Dharma Rain Zen Center Proposed Householder Refuge and Temple
LaVelle Landfill
Portland, Oregon

| Location I.D. | Date | Barometric Pressure (inches Hg) | | Pressure (IOW) | Concentration (pbv) | | | Comments |
|---|---|---|---|---|---|---|---|---|
| | | Initial | Final | | Methane | Carbon Dioxide | Oxygen | |
| MW-16s | 09/24/13 | 29.63 | 29.61 | -0.02 | 0.0 | 4.5 | 14.1 | Baseline |
| MW-17s | 09/24/13 | 29.63 | 29.61 | -0.02 | 0.0 | 5.6 | 12.5 | Baseline |
| MW-29 | 10/30/13 | 29.98 | 29.86 | -0.82 | 32.6 | 15.4 | 0.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -4.32 | 29.5 | 10.9 | 0.2 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -1.53 | 28.2 | 7.4 | 0.0 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.98 | 5.0 | 2.3 | 14.7 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -2.31 | 12.1 | 5.7 | 8.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -6.77 | 22.4 | 7.4 | 0.0 | Surcharge, System Off |
| MW-30 | 10/30/13 | 29.98 | 29.86 | 6.18 | 1.0 | 0.4 | 17.1 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.2 | 19.1 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -7.56 | 8.3 | 0.9 | 1.0 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -150.56 | 0.6 | 0.6 | 13.4 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -142.69 | 0.1 | 0.3 | 18.5 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -200.85 | 0.3 | 0.3 | 19.0 | Surcharge, System Off |
| MW-31 | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 0.1 | 19.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.6 | 19.3 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.4 | 19.6 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 0.0 | 0.6 | 19.0 | Surcharge, System Off |
| MW-32 | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.5 | 0.9 | 18.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.4 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -9.57 | 0.4 | 6.9 | 6.5 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -10.88 | 3.0 | 10.3 | 2.8 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -13.93 | 4.5 | 10.7 | 0.0 | Surcharge, System Off |

Notes:
Hg: Mercury
IOW: Inches of water
pbv: percent by volume


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| Monitoring Probe Identifiaction | Total Depth (ft bgs) | Sample Date | Maximum Methane (%) | Stabilized Methane (%) | Oxygen (%) | Static Pressure (In WC) | Barometric Pressure (In HG) |
|---|---|---|---|---|---|---|---|
| MW-4 S | 6.35 | 01/24/14 | 8.4 | 6.1 | 15.1 | | |
| MW-4 D | 21.96 | 01/24/14 | 0 | 0 | 20.1 | | |
| MW-10 | 21.68 | 01/24/14 | 0 | 0 | 20.9 | | |
| MW-11 | 20.65 | 01/24/14 | 0 | 0 | 20.9 | | |
| MW-12 S | 5.47 | 01/24/14 | 0 | 0 | 19.5 | | |
| MW-12 D | 19.9 | 01/24/14 | 0 | 0 | 20.3 | | |
| MW-13 | 21.25 | 01/24/14 | 0 | 0 | 20.4 | | |
| MW-14 | 21.91 | 01/24/14 | 0 | 0 | 18.1 | | |
| MW-15 | 36.16 | 01/24/14 | 0 | 0 | 20.3 | | |
| MW-16 | 18.83 | 01/24/14 | 0 | 0 | 19.1 | | |
| MW-17 | 38.94 | 01/24/14 | 0 | 0 | 15.8 | | |
| MW-29 | 11.07 | 01/24/14 | 15.3 | 15.2 | 4.2 | | |
| MW-30 | 22.52 | 01/24/14 | 0 | 0 | 19.7 | | |
| MW-31 | 10.92 | 01/24/14 | 0 | 0 | 20 | | |
| MW-32 | 20.85 | 01/24/14 | 2.1 | 2.1 | 5.2 | | |

**From:** SPENCER Tim
**To:** ODONNELL Kieran
**Subject:** FW: LaVelle CH4 attempt
**Date:** Monday, June 27, 2016 11:29:32 AM

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MW-29 – 5/27/2014

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**From:** CAMERON Kenneth A
**Sent:** Tuesday, May 27, 2014 11:25 AM
**To:** SPENCER Tim; SCHWARZ Bob
**Cc:** CAMERON Kenneth A
**Subject:** LaVelle CH4 attempt

Yes, that says attempt. I went out this morning and started off with MW-29 on the south side. No problems were encountered. The static pressure was zeroed and when attached reached a peak pressure of +0.5. CH4 peak was 6.3 and stabilized at 5.8. CO2 peaked at 2.4 and stabilized at 2.1. O2 peaked and stabilized at 4.4. Unfortunately those were the only readings I got.

At MW-30 (the one under the manhole) I bailed out around 6 gallons of water (using an 8 ounce plastic cup by the way, I thought the bucket would fit, it didn't). I did get a static pressure of +0.1 then the meter went dead. It was plugged in all weekend so the battery should have been fully charged and the battery low message never showed up. It worked fine for calibration before I left the office and for MW-29. I don't have a clue but we've already been told, I believe, that the meter is too old for repair or upgrades. We wouldn't have gotten any gas readings anyway at this well. Since the fitting had been under water for quite a while I pulled the fitting and cap off to see if water had entered the well. It had, water was right up to the top of the PVC casing. There wouldn't have been any head space to get measurements on.

I did at least locate MW-31 and -32. Tim and I had found MW-31 last week and discovered it was full of soil or gravel to within about 6 inches of the top. It took a while to find MW-32 but eventually located it in tall grass. A large track hoe was excavating the base of the slope leading up to the cap and was within about 30 or 40 feet of the well. There were three new looking survey stakes in a line leading up the slope and the well was right on that line between two of the stakes. I didn't want bother the hoe operator, I was in tennis shoes and didn't have a hard hat or vest. I hope the stakes mark the limit of excavation.

I then went to the north side to find the wells there and didn't have much better luck. I only found two wells, MW-3 and MW-6 (which wasn't on the list of those to be sampled). Both of those were right in the middle of the sidewalk and easily seen. I looked for quite a while but could not find MW-4 or MW-5. I looked under cars in the parking strip and the parking lot and through the grass and reeds filling the filtration swale that is between the street and the sidewalk, no joy. I don't remember the swale or the parking lot being paved from when we were there a few years ago, maybe they no longer exist. When was the last time they were visited?

To carry on the monitoring in-house it looks like we will have to rent a meter.

**From:** Mike7
**To:** SPENCER Tim
**Cc:** SCHWARZ Bob
**Subject:** Re: H. G. LaVelle Landfill-- Methane Gas Monitoring
**Date:** Wednesday, June 11, 2014 4:28:42 PM

Tim,
I asked jason to investigate the information you provided me and make needed repairs and report back to us .
I will be in touch .
Thank you
Mike Hashem

Sent from my iPhone

> On Jun 10, 2014, at 5:02 PM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:
>
>
> Hello Mike,
>
> On June 5th 2014, a DEQ environmental scientist visited your site (H.G. LaVelle landfill) and tested a limited number of perimeter gas monitoring wells . The purpose of this visit was to measure current levels of methane, carbon dioxide, oxygen, and static pressure and to cross-check the results of recent PSFM monitoring events. The wells that DEQ selected to monitor included some that have had elevated methane levels in the recent past. Specifically, DEQ attempted to monitor MW-29, MW-30, MW-31, MW-32, along the south boundary and MW-3s, MW-4s, and MW-5d along the north boundary of the landfill.
>
> During this site visit DEQ's scientist noted problems with the physical condition and functionality of some of these monitoring wells. Following is a summary of his observations:
>
> MW-29
> Condition ok, function ok.
>
> MW-30
> The vault was free of standing water but the well casing was flooded with water. So MW-30 , a very important probe located near residences, is non-functional and could not be tested.
>
> MW-31
> This well has been partially filled with gravel and soil and is non-functional. In addition, the quick-connect coupling at the top of the well is corroded or jammed and will not latch to the male connector on the test-meter tubing. The connector needs repair or replacement and gravel, soil and any other debris must be removed from the casing to restore this well to proper function.
>
> MW-32
> This well casing may also contain debris. After the readings were completed, and connectors uncoupled, an audible rush of air entered the well indicating that flow through the well screen is obstructed. This well needs to be evaluated and restored to proper function.
>
> MW-3s, MW-4s, Mw-5d
> Although these wells appeared otherwise functional during testing the quick connects appeared dirty and corroded and test results suggest the quick connects may not provide a tight seal when snapped to the male connector on the test meter tubing.
>
> Monitoring Results
> Methane levels slightly exceeded the compliance limit of 5% by volume at MW-29. The reading was 6.3 %. Other readings were below the compliance limit but DEQ is concerned about the condition of all the monitoring wells

because testing accuracy may be compromised.
>
> Because of the public safety risks associated with methane gas it is extremely important that PSFM maintain all the gas monitoring wells in good working order. Accurate monitoring-well readings are the only way to determine if the gas control system is doing an adequate job of preventing off-site migration of landfill gas beneath neighboring properties.
>
> Please submit to DEQ a plan for evaluating the gas monitoring wells and restoring those that are in poor condition. In addition, we would like to schedule a site visit with you within the next 3 weeks to a month to conduct split PSFM-DEQ testing of the gas monitoring wells.
>
> Please contact me via email or by phone at 503 229-5826 if you have questions about this message. Thank you .
>
> Regards,
>
> Tim Spencer, Project Manager
> DEQ NWR Solid Waste Program
>
>
>
>
>
>
>
>
>

**From:** Mike7
**To:** SPENCER Tim
**Subject:** Re: March 2014 Readings
**Date:** Friday, March 21, 2014 12:07:08 PM

---

I will have jason read it next week and will increase hours of operation .
Mike .

Sent from my iPhone

On Mar 21, 2014, at 11:30 AM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

> Mike,
>
> Maximum methane concentration and stabilized (steady state) concentration are both important to consider in evaluating methane–related safety risk which is why we want to have both values reported. Sometimes the purging step removes gas that was initially present in a monitoring probe and there is insufficient gas present in surrounding soils to replenish the amount being withdrawn. That appears to have happened with the March reading at MW-29. It is unusual , though that the methane concentration went from 12% all the way to zero . The maximum reading is still significant because it exceeded the lower explosive limit at a location that is very close to residential structures. At a minimum this location (MW-29) should be retested very soon to confirm that methane concentrations have remained below 5%.
>
> Thank you.
>
> Tim Spencer
>
> Tim Spencer, Project Manager
> DEQ NWR Solid Waste Program
> (503) 229-5826
> spencer.tim@deq.state.or.us

---

**From:** Mike7 [mailto:mikehashem7@gmail.com]
**Sent:** Thursday, March 20, 2014 3:10 PM
**To:** SPENCER Tim
**Subject:** Re: March 2014 Readings

Actually well 29 stabilized at 0 % today 'a reading . Well 32 is at 4% which is higher than usual and maybe a result of the work done at the zen center .
Mike



EXHIBIT A4
PAGE 11

Sent from my iPhone

On Mar 20, 2014, at 3:00 PM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

> Mike, thank you for the methane readings. MW-29, near the apartments, still has elevated methane. Blower hours of operation should be extended to see If MW-29 methane levels drop below 5%. If that doesn't work the individual extraction wells may need to be tested and adjusted to increase extraction rates near MW-29. Energyneering (Benny Benson) definitely has the expertise and equipment to do that.
>
> Thanks again,
>
> Tim Spencer

Tim Spencer, Project Manager
DEQ NWR Solid Waste Program
(503) 229-5826
spencer.tim@deq.state.or.us

---

**From:** Mike7 [mailto:mikehashem7@gmail.com]
**Sent:** Thursday, March 20, 2014 2:33 PM
**To:** SPENCER Tim
**Subject:** Fwd: March 2014 Readings

This is from today . Just got it .
Mike

Sent from my iPhone

Begin forwarded message:

> **From:** Jason Bennett <novembeast@gmail.com>
> **Date:** March 20, 2014 at 2:30:26 PM PDT
> **To:** M Hashem <Mikehashem7@gmail.com>
> **Subject: March 2014 Readings**

# MULTNOMAH COUNTY, OREGON PROPERTY RECORDS

Property Information



## Search Results for R319056

Pay Now

**Owner Name**
SKIDMORE LIMITED PARTNERSHIP>

**Property ID Number**
R319056

**Owner Address**
PO BOX 707
BEAVERCREEK, OR 97004

**Situs Address**
2800 NE 82ND AVE
PORTLAND, OR 97220
*** Additional Addresses ***
2818 NE 82ND AVE
PORTLAND, OR 97220

**Alternate Account Number**
R942280380

**Neighborhood**
C680

**Map Tax Lot**
1N2E28BC -00400

**Levy Code Area - Taxing Districts**
201 - EAST OF WILLAMETTE RIVER

**Portland Maps**
Click to Open Map

**Information on Ordering Copies**
Click to Open Order Form

## Property Description

**Exemption**

**Expiration Date**

**Tax Roll Description**
SECTION 28 1N 2E, TL 400 12.51 ACRES, LAND & IMPS
SEE R319057 (R942280381) FOR BILLBOARD

**Map Number**
2739 OLD
1N2E28BC -00400

**Parcel**

**Account Status**
A - Active

**Property Use**
IL - IMPROVED LAND AS VACANT

**Year Built**
1958

**Acreage**
12.51

**Related Accounts**
P390065, P390066, P390067, P390068, P390072, P457669, P457873, P458715, P464155, P471150, P493514, R319057

**Linked Accounts**

**Split/Merge Account**

**Split/Merge Account Message**

**Special Account Information**

## Sales Information

EXHIBIT N5
Item N 000259
PAGE 1

| Deed | Grantor (Seller) | Grantee (Buyer) | Instrument | Date | Consideration Amount |
|---|---|---|---|---|---|
| SWD | PSFM LIMITED PARTNETSHIP | SKIDMORE LIMITED | 2008153727 | 11/06/08 | $0 |
| WD | ROSE CITY SAND & GRAVEL CO | PSFM LIMITED PARTNERSHIP | 97128072 | 08/01/97 | $1,150,000 |
| C | PSFM LIMITED PARTNERSHIP | SKIDMORE LIMITED | 00038983 | 03/21/00 | $1,250,000 |

**2016 Land Information (Unedited and Uncertified)**

| ID | Type | Acres | Sq Ft |
|---|---|---|---|
| L1 | COM - COMMERCIAL LAND | 6.00 | 261360 |
| L2 | IND - INDUSTRIAL LAND | 4.46 | 194145 |
| L3 | IND - INDUSTRIAL LAND | 2.06 | 89518 |

INFORMATION SUBJECT TO DISCLAIMER - SEE HOME PAGE

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EXHIBIT A5
Item N 000260
PAGE 2

OREGON SECRETARY OF STATE
# ▶ Corporation Division



## Business Name Search

New Search  Printer Friendly

### Business Entity Data

06-27-2016 12:15

| Registry Nbr | Entity Type | Entity Status | Jurisdiction | Registry Date | Next Renewal Date | Renewal Due? |
|---|---|---|---|---|---|---|
| 573983-81 | DLP | ACT | OREGON | 05-05-1997 | 05-05-2017 | |
| Entity Name | SKIDMORE LIMITED PARTNERSHIP | | | | | |
| Foreign Name | | | | | | |

New Search  Printer Friendly

### Associated Names

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | ORK | RECORDS OFFICE | | | | |
| Addr 1 | 16505 S TIMBER RIDGE DR | | | | | |
| Addr 2 | | | | | | |
| CSZ | OREGON CITY | OR | 97045 | | Country | UNITED STATES OF AMERICA |

*Please click here for general information about registered agents and service of process.*

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | AGT | REGISTERED AGENT | | Start Date | 07-16-2002 | Resign Date |
| Name | C | JEFFREY ABBOTT | | | | |
| Addr 1 | 4891 WILLAMETTE FALLS DR SUITE 1 | | | | | |
| Addr 2 | | | | | | |
| CSZ | WEST LINN | OR | 97068 | Country | UNITED STATES OF AMERICA | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | MAL | MAILING ADDRESS | | | | |
| Addr 1 | PO BOX 707 | | | | | |
| Addr 2 | | | | | | |
| CSZ | BEAVERCREEK | OR | 97004 | Country | UNITED STATES OF AMERICA | |

| | | | | | |
|---|---|---|---|---|---|
| Type | GNP | GENERAL PARTNER | | Resign Date | |
| Of Record | 562304-86 | SKIDMORE MANAGEMENT CORPORATION | | | |
| Addr 1 | 16505 S TIMBER RIDGE DR | | | | |
| Addr 2 | | | | | |
| CSZ | OREGON CITY | OR | 97045 | Country | UNITED STATES OF AMERICA |

New Search  Printer Friendly

### Name History

| Business Entity Name | Name Type | Name Status | Start Date | End Date |
|---|---|---|---|---|
| SKIDMORE LIMITED PARTNERSHIP | EN | CUR | 05-05-1997 | |

Please read before ordering Copies.

New Search  Printer Friendly

### Summary History

| Image Available | Action | Transaction Date | Effective Date | Status | Name/Agent Change | Dissolved By |
|---|---|---|---|---|---|---|
| | ANNUAL REPORT | 04-07-2016 | | FI | | |
| | AMENDED ANNUAL REPORT | 05-07-2015 | | FI | | |

Item N 000261

EXHIBIT 14-6

PAGE 1

| | | | | | | |
|---|---|---|---|---|---|---|
| | ANNUAL REPORT | 04-07-2014 | | FI | | |
| | ANNUAL REPORT | 04-05-2013 | | FI | | |
| | ANNUAL REPORT | 04-12-2012 | | FI | | |
| | ANNUAL REPORT | 04-08-2011 | | FI | | |
| | ANNUAL REPORT | 04-20-2010 | | FI | | |
| | ANNUAL REPORT | 05-26-2009 | | FI | | |
| | NOTICE LATE ANNUAL | 05-08-2009 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 04-04-2008 | | SYS | | |
| | AMNDMT TO ANNUAL RPT/INFO STATEMENT | 01-14-2008 | | FI | | |
| | ANNUAL REPORT PAYMENT | 04-05-2007 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 04-06-2006 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 04-04-2005 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 04-02-2004 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 04-02-2003 | | SYS | | |
| | CHANGE OF REGISTERED AGENT/ADDRESS | 07-16-2002 | | FI | Agent | |
| | AMNDMT TO ANNUAL RPT/INFO STATEMENT | 07-16-2002 | | FI | | |
| | ANNUAL REPORT PAYMENT | 03-26-2002 | | SYS | | |
| | CHANGE OF REGISTERED AGENT/ADDRESS | 12-27-2001 | | FI | | |
| | ANNUAL REPORT PAYMENT | 04-09-2001 | | SYS | | |
| | STRAIGHT RENEWAL | 04-11-2000 | | FI | | |
| | STRAIGHT RENEWAL | 03-24-1999 | | FI | | |
| | AGENT/AUTH REP CHNG | 09-28-1998 | | FI | | |
| | STRAIGHT RENEWAL | 03-25-1998 | | FI | | |
| | CHANGED RENEWAL | 03-25-1998 | | FI | | |
| | NEW FILING | 05-05-1997 | | FI | | |

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OREGON SECRETARY OF STATE
# ► Corporation Division



## Business Name Search

New Search | Printer Friendly

### Business Entity Data

06-27-2016 12:16

| Registry Nbr | Entity Type | Entity Status | Jurisdiction | Registry Date | Next Renewal Date | Renewal Due? |
|---|---|---|---|---|---|---|
| 562304-86 | DBC | ACT | OREGON | 03-05-1997 | 03-05-2017 | |
| Entity Name | SKIDMORE MANAGEMENT CORPORATION | | | | | |
| Foreign Name | | | | | | |

New Search | Printer Friendly

### Associated Names

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | PPB | PRINCIPAL PLACE OF BUSINESS | | | | |
| Addr 1 | 16505 S TIMBER RIDGE DR | | | | | |
| Addr 2 | | | | | | |
| CSZ | OREGON CITY | OR | 97045 | | Country | UNITED STATES OF AMERICA |

*Please click here for general information about registered agents and service of process.*

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | AGT | REGISTERED AGENT | | Start Date | 07-17-2002 | Resign Date |
| Name | C | JEFFREY | ABBOTT | | | |
| Addr 1 | 4891 WILLAMETTE FALLS DR STE 1 | | | | | |
| Addr 2 | | | | | | |
| CSZ | WEST LINN | OR | 97068 | | Country | UNITED STATES OF AMERICA |

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | MAL | MAILING ADDRESS | | | | |
| Addr 1 | PO BOX 707 | | | | | |
| Addr 2 | | | | | | |
| CSZ | BEAVERCREEK | OR | 97004 | | Country | UNITED STATES OF AMERICA |

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | PRE | PRESIDENT | | | | Resign Date |
| Name | MIKE | | HASHEM | | | |
| Addr 1 | PO BOX 707 | | | | | |
| Addr 2 | | | | | | |
| CSZ | BEAVERCREEK | OR | 97004 | | Country | UNITED STATES OF AMERICA |

| | | | | | | |
|---|---|---|---|---|---|---|
| Type | SEC | SECRETARY | | | | Resign Date |
| Name | SOFIA | | KONDILIS-HASHEM | | | |
| Addr 1 | PO BOX 707 | | | | | |
| Addr 2 | | | | | | |
| CSZ | BEAVERCREEK | OR | 97004 | | Country | UNITED STATES OF AMERICA |

New Search | Printer Friendly

### Name History

| Business Entity Name | Name Type | Name Status | Start Date | End Date |
|---|---|---|---|---|
| SKIDMORE MANAGEMENT CORPORATION | EN | CUR | 03-05-1997 | |

Please read before ordering Copies.

New Search Printer Friendly

## Summary History

| Image Available | Action | Transaction Date | Effective Date | Status | Name/Agent Change | Dissolved By |
|---|---|---|---|---|---|---|
| | ANNUAL REPORT | 02-10-2016 | | FI | | |
| | AMENDED ANNUAL REPORT | 03-13-2015 | | FI | | |
| | NOTICE LATE ANNUAL | 03-06-2015 | | SYS | | |
| | ANNUAL REPORT | 03-11-2014 | | FI | | |
| | NOTICE LATE ANNUAL | 03-07-2014 | | SYS | | |
| | ANNUAL REPORT | 02-16-2013 | | FI | | |
| | ANNUAL REPORT | 02-02-2012 | | FI | | |
| | ANNUAL REPORT | 02-02-2011 | | FI | | |
| | ANNUAL REPORT | 02-04-2010 | | FI | | |
| | ANNUAL REPORT | 02-09-2009 | | FI | | |
| | ANNUAL REPORT PAYMENT | 01-31-2008 | | SYS | | |
| | AMNDMT TO ANNUAL RPT/INFO STATEMENT | 01-14-2008 | | FI | | |
| | ANNUAL REPORT PAYMENT | 01-26-2007 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 01-25-2006 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 02-01-2005 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 02-05-2004 | | SYS | | |
| | ANNUAL REPORT PAYMENT | 02-10-2003 | | SYS | | |
| | REINSTATEMENT AMENDED | 07-17-2002 | | FI | Agent | |
| | ADMINISTRATIVE DISSOLUTION | 05-03-2002 | | SYS | | |
| | NOTICE LATE ANNUAL | 03-08-2002 | | SYS | | |
| | CHANGE OF REGISTERED AGENT/ADDRESS | 12-27-2001 | | FI | | |
| | CHANGED RENEWAL | 03-13-2001 | | FI | | |
| | ANNUAL REPORT PAYMENT | 03-02-2001 | | SYS | | |
| | CHANGED RENEWAL | 02-24-2000 | | FI | | |
| | STRAIGHT RENEWAL | 02-17-2000 | | FI | | |
| | CHANGED RENEWAL | 02-13-1999 | | FI | | |
| | STRAIGHT RENEWAL | 02-02-1999 | | FI | | |
| | AGENT/AUTH REP CHNG | 09-28-1998 | | FI | | |
| | STRAIGHT RENEWAL | 02-02-1998 | | FI | | |
| | CHANGED RENEWAL | 02-02-1998 | | FI | | |
| | NEW FILING | 03-05-1997 | | FI | | |



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EXHIBIT A6
Item N 000264
PAGE 4

State of Oregon
Department of
Environmental
Quality

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT
## Construction and Demolition Waste Landfill

**Oregon Department of Environmental Quality**
**2020 SW Fourth Avenue, Suite 400**
**Portland, OR 97201**
**Telephone: 503-229-5353**

**Issued in accordance with the provisions of ORS Chapter 459 and subject to the land use compatibility statement referenced below.**

---

**ISSUED TO:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**FACILITY NAME AND LOCATION:**

H.G. Lavelle Landfill
Sec. 28, T1N, R2E, WM
Multnomah County

**OWNER:**

Mike Hashem
PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**OPERATOR:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**ISSUED IN RESPONSE TO:**

- a notification by the site Owner dated November 17, 2011

**ISSUED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

Audrey O'Brien — November 18, 2011

Audrey O'Brien
Solid Waste Manager
Northwest Region

Date

---

ADDENDUM NO. 1

In accordance with Oregon Administrative Rules 340-93-0070(7)(a) and 340-93-0113, Solid Waste Permit No. 211 is hereby amended as follows:

The name of the permittee and operator is PSFM Limited Partnership.

Permit expiration date: August 31, 2021. This Addendum must be attached to and made part of Solid Waste Disposal Permit No. . The addendum is effective upon receipt.

State of Oregon
Department of
Environmental
Quality

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT
## Construction and Demolition Waste Landfill

**Oregon Department of Environmental Quality**
**2020 SW Fourth Avenue, Suite 400**
**Portland, OR 97201**
**Telephone: 503-229-5353**

**Issued in accordance with the provisions of ORS Chapter 459 and subject to the land use compatibility statement referenced below.**

---

**ISSUED TO:**

Mike Hashem
PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**FACILITY NAME AND LOCATION:**

H.G. Lavelle Landfill
Sec. 28, T1N, R2E, WM
Multnomah County

**OWNER:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**OPERATOR:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**ISSUED IN RESPONSE TO:**

- a solid waste permit renewal application received September 16, 2003

The determination to issue this permit is based on findings and technical information included in the permit record.

**ISSUED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

Audrey M O'Brien

Audrey O'Brien
Solid Waste Manager
Northwest Region

November 14, 2011
Date

---

## Permitted Activities

Until such time as this permit expires or is modified or revoked, the permittee is authorized to maintain and monitor a solid waste land disposal site in conformance with the requirements, limitations, and conditions set forth in this document including all attachments.

## TABLE OF CONTENTS

**Introduction**

This document is a solid waste permit issued by the Oregon Department of Environmental Quality in accordance with Oregon Revised Statutes (ORS) 459 and Oregon Administrative Rules (OAR), Chapter 340.

**In this document**

This document contains the following sections:


| Section | Topic | See Page |
|---|---|---|
| ---- | **Permit Administration** | |
| 1.0 | Issuance | 3 |
| 2.0 | Disclaimers | 4 |
| 3.0 | Authority | 4 |
| 4.0 | Permit Modification | 5 |
| ---- | **Allowable Activities** | |
| 5.0 | Authorizations | 6 |
| 6.0 | Prohibitions | 6 |
| ---- | **Facility Post-Closure Management** | |
| 7.0 | Post-Closure Operations and Maintenance | 7 |
| 8.0 | Landfill Gas Monitoring Requirements | 11 |
| 9.0 | Environmental Monitoring Standards | 13 |
| 10.0 | Financial Assurance | 14 |
| 11.0 | Post Closure Record Keeping and Reporting | 15 |
| ---- | **Compliance Schedule** | |
| 12.0 | Summary of Due Dates | 17 |

# PERMIT ADMINISTRATION

## 1.0 ISSUANCE

| | | |
|---|---|---|
| 1.1. | **Contents** | This section describes the administrative aspects of the permit including the following information:<br>• permittee<br>• permit number<br>• permit term<br>• facility type<br>• facility owner/operator<br>• basis for permit issuance<br>• definitions |
| 1.2 | **Permittee** | This permit is issued to Mike Hashem and PSFM Limited Partnership. |
| 1.3 | **Permit number** | This permit will be referred to as **Solid Waste Permit Number 211.** |
| 1.4 | **Permit term** | This permit is issued on the date this document is signed.<br>This permit's expiration date is **August 31, 2021.** |
| 1.5 | **Facility type** | The facility is permitted as a closed construction and demolition waste landfill. |
| 1.6 | **Facility owner/ operator** | The owner of this facility is:<br>Mike Hashem<br>PSFM Limited Partnership<br>PO Box 1587<br>Clackamas OR 97015<br><br>The operator of this facility is:<br>PSFM Limited Partnership<br>PO Box 1587<br>Clackamas OR 97015 |
| 1.7 | **Basis for permit issuance** | This permit is issued based upon the following documents submitted by the permittee:<br>• solid waste permit application received September 16, 2003. |
| 1.8 | **Definitions** | Unless otherwise specified, all terms are as defined in OAR 340-93-030 |
| 1.9 | **Legal control of property** | The permittee must at all times maintain legal control of the disposal site property; including maintaining a current permit, contract or agreement that allows the operation of the facility if the site is not owned by the permittee. |

## 2.0 DISCLAIMERS

| | | |
|---|---|---|
| 2.1 | Contents | This section contains disclaimers for :<br>• property rights and<br>• department liability |
| 2.2 | Property rights | The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights. |
| 2.3 | Department liability | The Department and its officers, agents, and employees do not sustain any liability on account of the issuance of this permit or on account of the construction, maintenance, or operation of facilities pursuant to this permit. |

## 3.0 AUTHORITY

| | | |
|---|---|---|
| 3.1 | Contents | This section describes the Oregon Department of Environmental Quality's (DEQ's or The Department's) authority to issue this permit, and includes the following topics:<br>• 10 year permit<br>• documents superseded<br>• permittee responsibility<br>• other compliance<br>• penalties |
| 3.2 | Ten year permit | This permit is issued for a maximum of 10 years as authorized by Oregon Revised Statutes 459.245 (2). |
| 3.3 | Documents superseded | This document is the primary solid waste permit for the facility superseding all other solid waste permits DEQ has issued to Mike Hashem and PSFM Limited Partnership. |
| 3.4 | Permittee responsibility and liability | Conditions of this permit are binding upon the permittee. The permittee must conduct all facility activities in compliance with the provisions of this permit. The permittee is liable for all acts and omissions of the permittee's contractors and agents in carrying out the operations and other responsibilities pursuant to this permit. |
| 3.5 | Other compliance | The issuance of this permit does not relieve the permittee from the responsibility to comply with all other applicable federal, state, or local laws or regulations, including the following solid waste requirements, and any future updates or additions to these requirements:<br>• solid waste permit application received September 16, 2003.<br>• Oregon Revised Statutes, Chapters 459 and 459A;<br>• Oregon Administrative Rules Chapter 340, and<br>• any documents submitted by the permittee and approved by DEQ. |

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| 3.6 | **Penalties** | Violation of permit conditions will subject the permittee to civil penalties of up to $25,000 for each day of each violation [ORS 459.995(1)(a)]. |
| 3.7 | **DEQ access to disposal site** | The permittee must allow representatives of DEQ access to the permitted facility at all reasonable times for the purpose of making inspections, surveys, collecting samples, obtaining data and carrying out other necessary functions related to this permit. Reference: OAR 340-093-0050(6) |

## 4.0 PERMIT MODIFICATION

| | | |
|---|---|---|
| 4.1 | **Contents** | This section describes the permit-modification steps, including:<br>• permit review<br>• permit modification<br>• modification and revocation by DEQ<br>• modification by permittee<br>• public participation<br>• changes in ownership or address |
| 4.2 | **Permit review** | At any time during the permit's term, DEQ may review and amend the permit if necessary.<br><br>DEQ will consider the following factors in making this determination:<br>• the facility's compliance history;<br>• changes in the post-closure use or maintenance of the facility;<br>• changes in state or federal rules which should be incorporated into the permit;<br>• a significant release of leachate or landfill gas from the facility to the environment;<br>• proposals to redevelop the site or change its current use; or<br>• other significant information or events. |
| 4.3 | **Permit modification** | DEQ or the permittee may propose to change the permit at any time during the permit's term.<br><br>Once approved by DEQ, any permit-required plans become part of the permit by reference. DEQ may provide notice and opportunity for review of permit-required plans. |
| 4.4 | **Modification and revocation by DEQ** | DEQ's Director may, at any time before the permit expiration date, modify, suspend, or revoke this permit in whole or in part, in accordance with Oregon Revised Statutes 459.255, for reasons including but not limited to the following:<br>• violation of any terms or conditions of this permit or any applicable statute, rule, standard, or order of the Commission;<br>• obtaining this permit by misrepresentation or failure to disclose fully all relevant facts, or<br>• a significant change in the post–closure management or monitoring of the facility. |
| 4.5 | **Modification by permittee** | The permittee must apply for a permit modification if there is a significant change in facility operations or management or monitoring or a deviation from permitted activities. |

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| 4.6 | **Public participation** | DEQ will issue a public notice to inform the public of any significant changes to the permit. |
| 4.7 | **Changes in ownership** | The permittee must report to DEQ any change in the facility's ownership or the permittee's or operator's name and address at least ten (10) days prior to the change. |

## ALLOWABLE ACTIVITIES

### 5.0 AUTHORIZATIONS

| | | |
|---|---|---|
| 5.1 | **Contents** | This section describes the activities the permittee is authorized to conduct, including:<br>• post-closure care<br>• authorization of other activities<br>• other site activities determined by DEQ to be necessary or appropriate |
| 5.2 | **Post-closure care** | This permit authorizes the permittee to provide post-closure maintenance and monitoring at the facility. The permittee may accept clean soil or rock as needed to re-grade and maintain the surface contours of the landfill cover. |
| 5.3 | **Authorization of other activities** | The permittee must conduct all facility activities in accordance with the provisions of this permit and in accordance with DEQ-approved plans and procedures. DEQ-approved plans become part of the permit by reference. DEQ's conditions of approval of a plan also become part of this permit unless the permittee contests this action within 30 days after receipt of a conditional approval. |

### 6.0 PROHIBITIONS

| | | |
|---|---|---|
| 6.1 | **Contents** | This section describes specific activities the permittee is prohibited from conducting, including:<br>• waste acceptance<br>• open burning<br>• site changes |
| 6.2 | **Waste receipt** | The facility is a permanently closed construction and demolition landfill. The permittee is prohibited from accepting any waste for disposal or disposing of any waste at this site. |
| 6.3 | **Open burning** | The permittee must not conduct any open burning at the site. |
| 6.4 | **Site changes** | The permittee must not modify the landfill facility without DEQ written approval. |

## FACILITY POST-CLOSURE MANAGEMENT

## 7.0 POST-CLOSURE OPERATIONS AND MAINTENANCE

**7.1 Contents**

This section describes the post-closure operation and maintenance requirements for the landfill facility including:

- post-closure operations and maintenance plan
- post closure maintenance
- landfill gas control system
- landfill gas monitoring probes
- cover system maintenance
- surface grading, contours
- surface water control system
- leachate prevention
- stormwater control system
- routine inspections
- site redevelopment
- discovery of prohibited wastes
- spills notification
- access control
- fire protection
- submittals to DEQ
- submittal address

**7.2 Post-closure plan**

The permittee must prepare an updated post-closure operations and maintenance plan and submit the plan to DEQ for review and approval by no later than October 15, 2012. The post-closure plan must describe in detail how the permittee intends to carry out all activities identified in sections 7.4 to 7.12 of this permit as well as other requirements of this permit and must be prepared and stamped by a registered engineer with current Oregon registration.

The permittee must revise the post-closure plan as necessary to keep it reflective of current facility conditions and procedures. Plan revisions must be submitted to DEQ for approval.

Reference: *Solid Waste Landfill Guidance*, September 1996, provides information on applicable elements of a post-closure plan.

**7.3 Post-closure maintenance**

The permittee must maintain the disposal site in accordance with the DEQ approved post-closure plan and any amendments to the plan approved in writing by DEQ.

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| 7.4 | Landfill gas control system | The permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Refer to methane compliance limits in permit Section 9.4<br><br>The permittee must notify DEQ about any damaged, defective, or worn-out gas-system equipment, replace or repair such equipment immediately, and provide a written description of any such work in the annual post-closure maintenance and monitoring report. |
| 7.5 | Landfill gas monitoring probes | To ensure accurate landfill gas monitoring results, the permittee must equip each landfill gas monitoring probe with appropriate sampling ports and valves, protect and maintain each probe, and repair or modify damaged or non-functional probes. |
| 7.6 | Cover system maintenance | The permittee must prevent soil erosion, protect the landfill cover's overall integrity, and mow cover vegetation or otherwise manage onsite vegetation to minimize fire hazards and potential nuisance conditions. Any construction or redevelopment proposals involving the landfill must include an evaluation of potential impacts to the cover system and a plan to restore and enhance the cover.. |
| 7.7 | Surface contour maintenance | The Permittee must maintain landfill-cover surface contours of at least 2 percent to minimize leachate generation by promoting storm water drainage and minimizing standing water and ponding. For any construction or redevelopment proposals involving the landfill, the permittee and prospective developer must evaluate the landfill's existing surface drainage deficiencies and propose engineering measures to enhance surface drainage and stormwater control. |
| 7.8 | Surface water control | The permittee must, at all times, divert surface water drainage around or away from the landfill and maintain surface water diversion ditches or structures in good working condition and free of obstructions and debris. |
| 7.9 | Leachate prevention and control | The permittee must maintain the landfill in a manner that deters leachate production to the maximum extent practicable. |
| 7.10 | Stormwater control system | The permittee must maintain perimeter stormwater drainage ditches in good working condition and free of debris and obstructions. |
| 7.11 | Inspections | At least once each month the permittee must physically inspect the entire landfill site to determine compliance with this permit and DEQ rules to assure that all environmental control systems and monitoring equipment are well maintained and functional. More frequent inspections may be necessary during or after extreme weather events or other unusual occurrences.<br><br>The permittee must record any post-closure repairs performed. Inspection records must be made available to DEQ upon request. The permittee must summarize the inspection results in the annual post-closure maintenance and monitoring report submitted to DEQ. |

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| 7.12 | **Future site development and use** | Any future redevelopment, use, activity, or construction of buildings, structures or utilities on this landfill site must have DEQ's prior written approval and must be accomplished in a manner that protects:<br>• the environment and public health and safety<br>• the integrity of the landfill cover (or provide an effective DEQ-approved replacement)<br>• landfill stability<br>• existing landfill gas control and monitoring facilities and equipment<br>• stormwater diversion and control facilities and any other surface water control systems |
| 7.13 | **Discovery of prohibited wastes** | Any solid wastes discovered at the facility must be isolated or removed immediately. Non-hazardous prohibited waste must, within 48 hours, be transported to a disposal site authorized to accept such waste, unless otherwise approved in writing by DEQ.<br>In the event that discovered wastes are hazardous or suspected to be hazardous, the permittee must, within 7 days, notify DEQ and initiate procedures to identify and remove the waste. Hazardous wastes must be removed within 90 days, unless otherwise approved by DEQ. Temporary storage and transportation must be carried out in accordance with DEQ rules. |
| 7.14 | **Spills notification** | Oregon Revised Statue 466.635 and Oil and Hazardous Materials Emergency Response Rules, Chapter 340, Division 142 require immediate notification to Oregon Emergency Response System (OERS) after taking any required emergency actions to protect human health and the environment when oil or hazardous materials are spilled. The spill must be immediately reported to OERS at 1-800-452-0311 if the spill is of a reportable quantity. Reportable quantities include:<br>• *any* amount of oil spilled to waters of the state;<br>• oil spills on land in excess of forty-two (42) gallons;<br>• two hundred (200) pounds or twenty-five (25) gallons or more of spilled pesticide residue; and<br>• spills of hazardous materials that are equal to, or greater than, the quantity listed in the Code of Federal Regulations, 40 CFR Part 302 (List of Hazardous Substances and Reportable Quantities), and amendments adopted before July 1, 2002.<br>For a complete list of hazardous materials required to be reported, refer to OAR 340-142-0050. |
| 7.15 | **Access control** | The permittee must control public access to the facility as necessary to prevent unauthorized entry and dumping. |
| 7.16 | **Fire protection** | The permittee must notify the local fire control agency about the presence of methane gas and any other site conditions that may pose a safety risk to local fire control agency personnel in the event of a fire.<br>Fires must be immediately and thoroughly extinguished and promptly reported to DEQ. |

**7.17 Annual Reporting Requirement**

By February 15, 2013 the permittee must submit to DEQ three copies of an annual post-closure maintenance and monitoring report for the past year's (2012) monitoring and maintenance period. DEQ requests one electronic copy and two paper copies. Paper copies should be printed on both sides of the paper whenever possible.

Thereafter, the permittee must submit this annual report to DEQ by February 15 for each year this permit is in effect.

This annual report must document all monitoring and maintenance and operations activities associated with the landfill's post-closure care as described in the post-closure plan and the landfill gas monitoring plan including an annual summary of landfill gas monitoring results and details about the landfill gas control system's performance. Specific requirements for the landfill gas monitoring plan are addressed in permit section 8.2.

**Annual report contents:**

- describe all significant events that occurred at the site during the last year;
- describe the condition and performance of the landfill gas monitoring network including any repairs or changes to specific monitoring probes;
- tabulate and summarize all the gas monitoring data collected in the past year;
- discuss any methane exceedances and response measures including increased monitoring and corrective actions taken;
- describe the landfill gas control system's operations, maintenance, condition, and performance including the vacuum blower unit and extraction wells, and any required system adjustments or modifications;
- tabulate and summarize any landfill gas control system test data (for blower and/or extraction wells);
- describe general site maintenance activities including mowing, cover repairs, site grading, debris removal from stormwater drainage ditches, etc.

**7.18 Submittal address**

The permittee must submit all required documents to:

Oregon Department of Environmental Quality
Manager, Solid Waste Program
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
Telephone: 503-229-5353
Fax: 503 229-6945

## LANDFILL GAS MONITORING

## 8.0 LANDFILL GAS MONITORING REQUIREMENTS

| | | |
|---|---|---|
| 8.1 | Contents | This section describes the required landfill gas monitoring program including :<br>• monitoring plan<br>• monitoring equipment<br>• equipment calibration<br>• additional monitoring points<br>• gas probe purging<br>• monitoring schedule<br>• monitoring parameters<br>• quality assurance testing<br>• confined space monitoring<br>• summary of LFG monitoring procedures<br>• reporting requirements<br>• submittal address |
| 8.2 | **LFG monitoring plan** | The permittee must update the landfill gas (LFG) monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-required monitoring procedures. The current plan, dated April 3, 2009, was prepared by Hart Crowser, Inc. By March 31, 2012, the permittee must submit an updated plan to DEQ for review and approval. The plan updates must be prepared and stamped by a registered geologist or registered engineer with current Oregon registration. |
| 8.3 | **LFG monitoring equipment** | The permittee or the permittee's representatives must use DEQ-approved methane test equipment for conducting routine landfill gas monitoring. Some instruments lack built-in pressure measurement capabilities. With such instruments, use a separate magnehelic or equivalent approved pressure gauge to measure static pressure. |
| 8.4 | **Monitoring equipment calibration** | The permittee must properly calibrate the DEQ-approved methane meter the day of every monitoring event and before commencing monitoring activities. |
| 8.5 | **Additional monitoring points** | At any time during the permit's term DEQ may require the permittee to install additional landfill gas monitoring probes to address changes in site conditions or increases in landfill gas related health and safety risks. The permittee must incorporate any new or replacement monitoring probes or devices into the LFG Monitoring Plan and submit the updated plan to DEQ for review and approval. |
| 8.6 | **Gas probe purging** | During LFG monitoring events, the permittee must purge each monitoring probe sufficiently to obtain accurate gas concentration measurements that reflect soil gas characteristics at the landfill property boundary.<br><br>For each probe, calculate optimum purge times based on: 1) the monitoring probe depth; 2) probe casing diameter; 3) LFG test meter purge (flow) rates; and 4) purge time required for methane concentrations to stabilize in previous monitoring events. Updated purging procedures for each probe should be documented in the landfill gas monitoring plan.<br><br>**Note:** Refer to LFG monitoring plan for individual probe details. |

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| 8.7 | LFG Monitoring schedule | The permittee must test all designated compliance monitoring probes at least once per month. Designated compliance monitoring probes are listed in section 9.3 of this permit. DEQ may require more frequent monitoring at any time if routine testing shows upward-trending methane concentrations or if changed site conditions cause increased risk to public health and safety. |
| 8.8 | LFG Monitoring parameters | The required landfill gas parameters for each monitoring event are: static pressure, methane concentration, oxygen, and carbon dioxide. The permittee must first measure and record static pressure before purging the probes. The permittee must then record peak and steady-state methane concentrations and steady-state oxygen and carbon dioxide concentrations. In addition, the permittee must record ambient atmospheric conditions on the day of each monitoring event including barometric pressure and temperature. |
| 8.9 | Quality assurance testing | Each year the permittee must retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. The consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee must submit the quality assurance test results to DEQ as an attachment to the annual maintenance and monitoring report. |
| 8.10 | Confined space monitoring | As needed to assess potential human health and safety risks, DEQ may require the permittee to monitor methane concentrations in confined spaces or structures that exist on the landfill property. |
| 8.11 | Summary of LFG probe monitoring procedures | The permittee must carry out LFG probe monitoring procedures as follows:<br>1. Review the up-to-date landfill gas monitoring plan and follow the plan's prescribed steps.<br>2. Record that day's barometric pressure, air temperature and weather conditions.<br>3. Use DEQ-approved LFG test equipment<br>4. Calibrate the test equipment (gas meter) before each use<br>5. Measure static pressure in each probe with meter's built-in pressure setting or with separate magnehelic gauge.<br>6. Purge each probe sufficiently to obtain representative soil gas samples<br>7. Record maximum and steady-state concentrations of methane, carbon dioxide, and oxygen.<br>8. Record all data and information on field data forms provided in the LFG Monitoring Plan<br>9. Report test data to DEQ every three months.<br>10. Before February 15 submit to DEQ all prior year's monitoring data in the annual post-closure and monitoring report. |
| 8.12 | Reporting require-ments | At the end of each calendar quarter, the permittee must report monthly landfill gas monitoring results to DEQ for the last three months and may report these results to DEQ by email. Landfill gas monitoring results for the entire year must be included in the annual Post-Closure Maintenance and Monitoring Report discussed in permit section 7.17. |

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| 8.13 | **Submittal address** | The Permittee must submit all required documents to DEQ at:<br><br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW 4th Avenue, Suite 400<br>Portland, OR 97201<br>Telephone: 503-229-5353<br>Fax: 503 229-6945 |

## 9.0 ENVIRONMENTAL MONITORING STANDARDS

| | | |
|---|---|---|
| 9.1 | **Contents** | This section describes the applicable environmental standards and designated compliance monitoring locations :<br>• compliance with DEQ rules<br>• compliance points<br>• methane limits<br>• methane exceedances |
| 9.2 | **Compliance with applicable DEQ rules** | The permittee must not allow the release of any landfill-related substance into groundwater, surface water, or any other media which will result in a violation of any applicable federal or state air or water limit, drinking water rules, or regulations beyond the solid waste boundary of the disposal site or an alternative boundary specified by DEQ. |
| 9.3 | **Compliance points** | The following landfill gas monitoring probes are designated methane compliance points:<br><br>MW-1s, MW-1d, MW-2s, MW-2d, MW-3s, MW-3d, MW-4s, MW4-d, MW-5s, MW-5d, MW-6s, MW-6d, MW-7s,MW-7d, MW-8s, MW-8d, MW-9, MW-10, MW-11, MW-12, MW-13, MW-14, MW-15, MW-16, MW-17, MW-22, MW-29, MW-30, MW-31, MW-32. |
| 9.4 | **Methane compliance limits** | The concentration of methane must not exceed:<br>• 25 percent of the Lower Explosive Limit for methane in onsite structures (excluding gas control structures or gas recovery system components); and<br>• the Lower Explosive Limit for methane in soil gas at the facility boundary.<br><br>Note: The Lower Explosive Limit for methane is 5 percent by volume. |

**9.5 Methane exceedance**

If methane levels exceed the specified compliance limits, the permittee must:

1. Immediately take all necessary steps to ensure protection of human health and safety and report the exceedance to DEQ;
2. Within 7 days of the detection (unless DEQ approves an alternative schedule), notify DEQ in writing about the exceedance and describe measures taken to protect human health and safety;
3. Immediately increase the frequency of monitoring at the affected compliance monitoring probe or probes to a weekly testing schedule, or more frequently if DEQ requires, until methane concentrations return to levels below the compliance limits for a period of at least two weeks;
4. Adjust or modify the landfill gas control system as needed to increase vacuum levels (suction pressure) and gas extraction rates in the affected area;
5. Within 60 days of the exceedance, submit to DEQ for review and approval a written report plan describing the corrective actions implemented.

**9.6 Submittal address**

The Permittee must submit all required documents to the Department at:

Oregon Department of Environmental Quality
Manager, Solid Waste Program
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
Telephone: 503-229-5353
Fax: 503 229-6945

## 10.0 FINANCIAL ASSURANCE

**10.1 Contents**

This section describes the requirements for financial assurance at the facility, including:

- financial assurance plan
- cost estimate
- recertification of financial assurance
- use of financial assurance
- long-term financial responsibility
- submittal address

**10.2 Financial assurance plan**

Prior to May 31, 2013, the permittee must prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval. The plan also needs to propose a financial assurance mechanism. The permittee must revise the financial assurance plan in the future as necessary to reflect current post-closure and corrective action costs and the current financial assurance mechanism. The permittee must submit any future plan revisions to DEQ for review and approval and maintain an up-to-date copy of this plan in the permitted-facility administrative records.

Reference: The plan must be prepared in accordance with OAR 340-095-0090. Acceptable mechanisms are described in OAR 340-095-0095.

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| 10.3 | **Cost Estimate** | The permittee must calculate the cost estimate for post-closure care based on a minimum of 20 years of post-closure care. The permittee must update the cost-estimate annually and each update must continue financial assurance coverage for at least 20 years of post-closure care, unless notified in writing by DEQ of a change in this requirement.<br><br>Reference: The permittee must prepare the cost estimate in accordance with DEQ financial assurance regulations for non-municipal landfills, OAR 340-095-0090. |
| 10.4 | **Recertification of financial assurance** | The permittee must annually review and update financial assurance requirements. The permittee must submit the annual update to DEQ prior to May 31 of each year, beginning in 2014.<br><br>Note: The permittee must prepare the annual review according to OAR 340-095-0090(6)(d)(A). |
| 10.5 | **Use of financial assurance** | The permittee must not use the financial assurance funds for any purpose other than to finance the permitted facility's approved post-closure activities, to guarantee that those activities will be completed, or to finance required corrective actions at the facility. |
| 10.6 | **Long-term financial responsibility** | The permittee must continuously maintain financial assurance for the facility until DEQ no longer requires the permittee or other person owning or controlling the site to demonstrate financial responsibility for post-closure maintenance, monitoring or corrective actions. |
| 10.7 | **Submittal address** | All submittals to DEQ under this section must be sent to:<br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW 4th Avenue, Suite 400<br>Portland, OR 97201<br>Telephone: 503-229-5353 |

## 11.0 POST-CLOSURE RECORDKEEPING AND REPORTING

| | | |
|---|---|---|
| 11.1 | **In this section** | This section describes requirements for facility post-closure recordkeeping and reporting.<br>• Non-compliance reporting<br>• Evaluation<br>• Fees<br>• Permit display<br>• Access to records<br>• Deed record<br>• Submittal address |

| | | |
|---|---|---|
| 11.2 | Non-compliance reporting | The permittee must take immediate corrective action for any violations of permit conditions or DEQ rules and notify DEQ at:<br>(503) 229-5353<br>DEQ response: DEQ may investigate the nature and extent of the compliance problem and evaluate the adequacy of the permittee's corrective action plans. |
| 11.3 | Evaluation | Prior to February 15 of each year, the permittee must evaluate the facility's status and submit to DEQ, as part of the annual post-closure maintenance and monitoring report, the following information:<br>• a discussion of implementation of the post-closure plans<br>• a description of unanticipated occurrences and any changes to the post-closure plans |
| 11.4 | Permit display | The permittee must display this permit where operating personnel can easily refer to it. |
| 11.5 | Access to records | DEQ must have easy access to all records and reports related to the permitted facility |
| 11.6 | Deed record | Upon issuance of this permit, the permittee must verify that the property deed record on file with the appropriate county recording authority includes a detailed description of the site including a plat. The description should include, at a minimum, the general types and location of wastes deposited, depth of waste and other information of probable interest to future land owners. If such a deed record does not exist the permittee must modify the deed as described above. A copy of the deed or the modified deed must be submitted to DEQ within 180 days after the issuance of this permit.<br>Reference: OAR 340-094-0130(1)(a) |
| 11.7 | Submittal address | All submittals to DEQ under Section 11 must be sent to:<br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW Fourth Avenue, Suite 400<br>Portland, OR 97201<br>(503) 229-5353 |

# COMPLIANCE SCHEDULE

## 12.0 SUMMARY OF DUE DATES

**12.1 Summary** The following is a summary of the permit-required reporting activities and due dates.

| Due Date | Activity | See section... |
|---|---|---|
| Each calendar quarter by March 15, June 15, September 15 and, December 15, beginning in 2012, for each year the permit is in effect | Submit landfill gas test data for the preceding three months | 8.11 Summary of LFG probe monitoring procedures<br>8.12 Landfill gas monitoring. |
| By March 31, 2012 | Submit updated landfill gas monitoring plan | 8.2 Landfill gas monitoring plan |
| Within 180 days of issuance of this permit | Submit existing or modified property deed record | 11.6 Deed record |
| By February 15, beginning in 2013, for each year the permit is in effect | Submit an annual post-closure maintenance and monitoring report | 7.17 Annual reporting requirements<br>11.3 Evaluation |
| By May 31, 2013 | Submit financial assurance plan | 10.2 Financial assurance plan |
| By May 31 of each year, beginning in 2014 | Submit annual financial assurance update | 10.4 Recertification of financial assurance |

State of Oregon
Department of Environmental Quality **Memorandum**

**Date:** April 3, 2015
**To:** File
**From:** Susan Elworth, Environmental Law Specialist, Office of Compliance and Enforcement
**Subject:** BEN calculation for PSFM Limited Partnership and Skidmore Limited Partnership

## I. General Purpose and Authority

The economic benefit portion of the civil penalty formula is simply the monetary benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance.

Oregon Revised Statute 468.130(2)(c,h) directs the Environmental Quality Commission to consider economic conditions of the entity in assessing a penalty as well as other factors that Commission makes relevant by rule. Accordingly, the Commission adopted economic benefit as part of its penalty calculation in Oregon Administrative Rules (OAR) 340-012-0045(1)(e) and -0155. Pursuant to OAR 340-012-0150, the Department generally uses the U.S. Environmental Protection Agency's BEN computer model to determine economic benefit and will use it upon request of a respondent.

## II. Theory of Economic Benefit

Compliance with environmental regulations may require an entity to expend financial resources. These expenditures support the public goal of better environmental quality, but often do not yield direct financial return to the entity. Economic benefit is the amount by which an entity is financially better off from not having complied with environmental requirements in a timely manner. If an entity avoids an expenditure, it increases its profit margin or has additional funds available for other profit-making activities. Sometimes the benefit may not be intuitive. For example, if an entity would have had to obtain a loan to make the expenditure, it might seem that the entity did not enjoy the benefit of the extra money – but avoiding the need to repay a loan is a direct financial advantage. If an entity did not make the expenditure on time, but later did make the expenditure, it might seem that the entity did not retain an economic advantage – but temporary access to the monies it should have spent is equivalent to an interest-free loan during the period of noncompliance which is also a direct financial advantage. For this reason BEN generally ignores the potential or likely source of the monies not used.

Economic benefit is "no fault" in nature. An entity need not have deliberately chosen to delay compliance, or even have been aware of its noncompliance, for it to accrue an economic benefit of noncompliance. An economic benefit may accrue before the entity is in actual violation because planning costs, permitting fees, and similar costs often must be paid long before beginning the regulated activity that is in violation.

An appropriate economic benefit calculation represents the amount of money that would make the entity indifferent between compliance and noncompliance. If DEQ does not recover, through a civil penalty, at least this economic benefit, then the entity will retain a gain. Because of the precedent of this retained gain, other regulated companies may see an economic advantage in similar noncompliance. The U.S. Supreme Court has noted that deterrence is a primary purpose of a penalty[1] and that a penalty which fails to include sufficient economic benefit to remove the advantage of noncompliance will fail to deter future violations.[2]

## III. Basis of the Costs Considered

Determining economic benefit always requires evaluating circumstances to determine what necessary or reasonable costs would have been required to obtain compliance or to determine what benefits were received from noncompliance. Often, an entity has more than one option to reach compliance and the Department evaluates the circumstances to determine what probable or reasonable steps the entity should have taken. The Department then estimates the reasonable costs and benefits pursuant to OAR 340-012-0150(2).

The partnerships should have spent $15,000 to repair three probes and monitor from these probes since January 13, 2014. Additionally, they failed to spend $5,000 to prepare a financial assurance plan and $20,000 per year to maintain the financial assurance plan since May 31, 2013. By avoiding this cost, they benefitted by an estimated **$34,593**.

## IV. Applicability of Standard Rates Presumed by Rule

The BEN model relies on income-tax rates, inflation rates, and discount rates. The model allows the operator to input particular rates, but in the absence of operator input, the BEN model uses standard values based on the years of the violation, the state where the violation occurred and the entity's legal and profit status (*e.g.*, C-corporation, other for profit, non-profit, municipality, or federal facility). It calculates inflation rates from the Plant Cost Index (PCI) published by the magazine *Chemical Engineering* and from the Consumer Price Index. Alternative optional inflation indices include:

| Abbreviation and Full Name | Description | Typical Applications |
|---|---|---|

[1] *See Tull v. United States*, 481 U.S. 412 (1987) (finding that the legislature intended penalties for environmental violations under the Clean Water Act to create deterrence). *Note also* OAR 340-012-0026(1)(c) which states that a goal of enforcement under the Oregon Environmental Quality Commission rules is deterrence.
[2] *See Friends of the Earth v. Laidlaw Environmental Services, Inc.*, 528 U.S. 167, fn. 2 (2000) (discussing the insufficiency of the economic benefit portion of a penalty for hazardous waste violations).

| | | | |
|---|---|---|---|
| 2.5% | Constant rate of 2.5% | Assumes annual inflation rate is constant at 2.5 percent. | |
| CCI | Construction Cost Index | Construction costs (based on 1.128 tons Portland cement, 1,088 bd. ft. 2x4 lumber) and 200 common labor. | General construction costs, especially where labor costs are a high proportion of total costs. |
| ECI | Employment Cost Index | Total civilian compensation for all workers, seasonally adjusted. | One-time nondepreciable expenditures or annual costs that comprise mainly labor. |
| GDP | Gross Domestic Product Implicit Price Deflator | Measured by U.S. Commerce Department through the Bureau of Economic Analysis. Equals GDP in current dollars divided by GDP in constant dollars. | general expenses that affect multiple sectors of the economy (e.g., labor and construction). |
| PCI | Plant Cost Index | Plant cost index published by *Chemical Engineering*. | Standard default and for plant equipment costs. |
| PPI | Producer Price Index for Finished Goods | Reflects the price level for processing finished goods. | Processing finished goods, general expenses that affect multiple sectors of the economy (*e.g.*, labor and construction). |

Pursuant to OAR 340-012-0150(1), the "model's standard values for income tax rates, inflation rate and discount rate shall be presumed to apply to all Respondents unless a specific Respondent can demonstrate that the standard value does not reflect the Respondent's actual circumstance."

## V. Description of the Attached Run

BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures. Such expenditures can include: (1) capital investments (*e.g.*, larger pollution control or monitoring equipment, costs of design and installation), (2) one-time non-depreciable expenditures (*e.g.*, permit fees, clean-up costs, setting up a reporting system, acquiring land needed for a capital improvement), (3) annually recurring costs (*e.g.*, routine operating and maintenance costs, utilities). Each of these expenditures can be either delayed or avoided. BEN's baseline assumption is that capital investments and one-time non-depreciable expenditures are merely delayed over the period of noncompliance, whereas annual costs are avoided entirely over this period.

The calculation incorporates the economic concept of the "time value of money." Stated simply, a dollar today is worth more than a dollar tomorrow, because you can invest today's dollar to start earning a return immediately. Thus, the further in the future the dollar is, the less it is worth in "present-value" terms. Similarly, the greater the time value of money (*i.e.*, the greater the "discount" or "compound" rate used to derive the present value), the lower the present value of future costs. To calculate an entity's economic benefit, BEN uses standard financial cash flow and net-present-value analysis techniques based on modern and generally accepted financial principles, which were subjected to extensive national notice-and-comment processes.[3]

Inputs to the model include costs specific to the situation of the entity which include the values described in Section III as well as the presumed standard indexes and rates described in Section IV. The values used are listed in the lower three-quarters of the attached BEN Run Table. Using these values, BEN makes a series of calculations the results of which are listed in the top of the attached BEN Run Table by the letter indicated below.

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[3] *See* Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Request for comment, 61 Fed. Reg. 53025-53030 (Oct. 9, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Extension of time for request for comment, 61 Fed. Reg. 65391 (Dec. 12, 1996); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 32947-32972 (June 18, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Advance notice of proposed action, response to comment, and request for additional comment, 64 Fed. Reg. 39135-39136 (July 21, 1999); Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases, Notice of final action and response to comment, 70 Fed. Reg. 50326-50345 (August 26, 2005) available at http://www.epa.gov/EPA-GENERAL/2005/August/Day-26/g17033.htm.

A) **On-Time Capital & One-Time Costs**. This is what compliance would have cost had the entity made its purchases of capital on time or paid its one-time costs on time. BEN calculates this value from the estimated costs as of the date the costs are estimated by discounting the annual cash flows at an average of the cost of capital throughout this time period. The value of the costs is adjusted to account for tax deductibility and depreciation. "A" is the value of noncompliance as of the date of initial noncompliance. (*See* **Fig. 1**) If "A" is zero, there are no capital or one-time costs in the calculation.

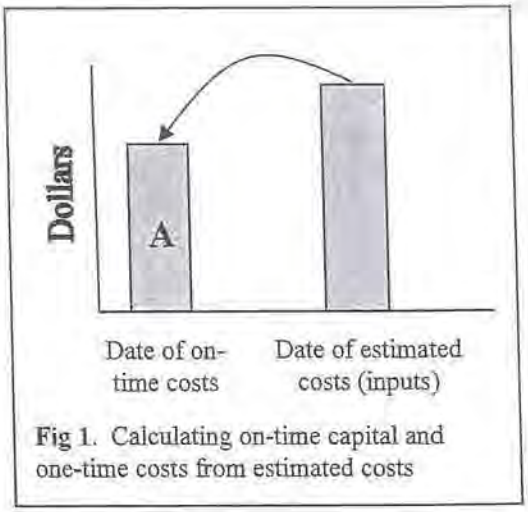


**Fig 1.** Calculating on-time capital and one-time costs from estimated costs

B) **Delay Capital & One Time Costs**. If the entity eventually did pay or will pay the costs of compliance in the future, BEN calculates what the entity would have needed to set aside on the date of noncompliance so as to have sufficient funds as of the date of delayed compliance. This number is used to mitigate the economic benefit by considering the known amount the entity will pay. BEN derives this number by: (1) determining the predicted delayed costs by adjusting for inflation and to account for tax deductibility in the year in which the funds were or will be spent and also for future depreciation tax shields, and (2) discounting the annual cash flows at an average of the cost of capital throughout this time period to account for interest. (*See* **Fig. 2**) "B" will be zero if all costs were avoided.

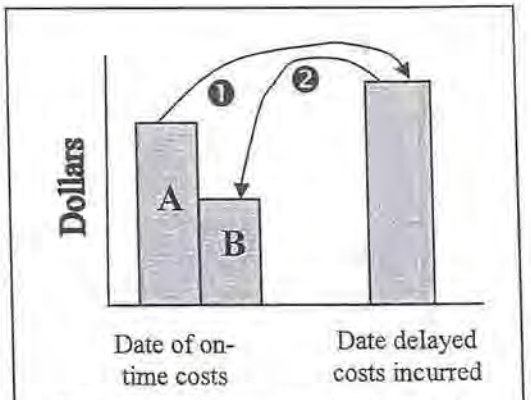


**Fig. 2.** Calculating the delayed capital and one-time costs from estimated costs

C) **Avoided Annually Recurring Costs**. This is the value of the avoided annual recurring costs as of the date of initial noncompliance. BEN derives this value by discounting the annual cash flows at an average of the cost of capital throughout this time period and accounting for tax deductibility. (*See* **Fig. 3**) "C" will be zero if there are no recurring annual costs.

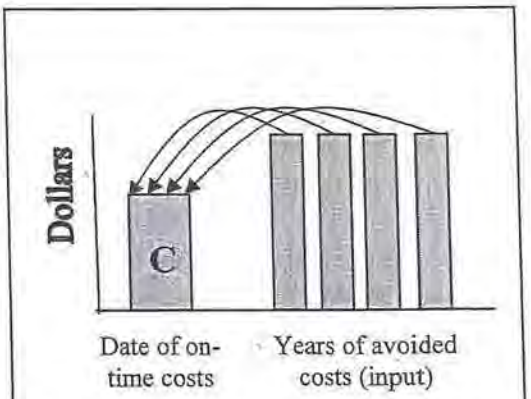


**Fig. 3.** Calculating annual recurring costs

D) **Initial Economic Benefit (A – B+C)**. The values for A, B, and C are all values as of the date of noncompliance. The economic benefit received as of the date of noncompliance is determined by taking the on-time capital and one-time costs that should have been paid (A), subtracting the delayed capital and one-time costs which had been or will be paid (B), and adding the avoided annually recurring costs (C). The result is the economic benefit received as of the date of noncompliance. (*See* **Fig. 4**) The economic benefit is often much lower than the originally-estimated costs. This is because inflation tends to make more recent costs higher than historical costs and because the entity could have taken a tax deduction for the year in which the expenditure was made.

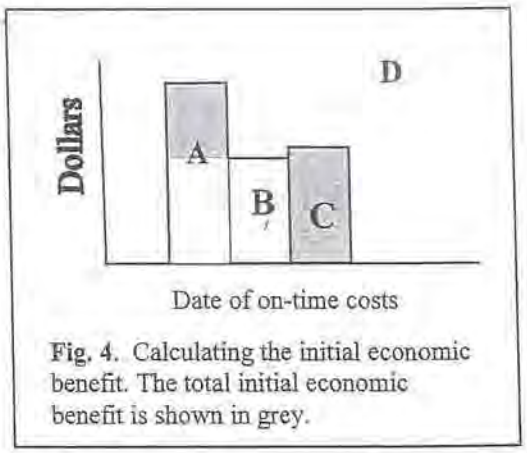


**Fig. 4.** Calculating the initial economic benefit. The total initial economic benefit is shown in grey.

E) **Final Economic Benefit at Penalty Payment Date**. BEN compounds the initial economic benefit forward to the penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance. (*See* **Fig. 5**) Occasionally an entity looses money because the economic benefit is a negative number. In that case the economic benefit used in the penalty calculation is zero.

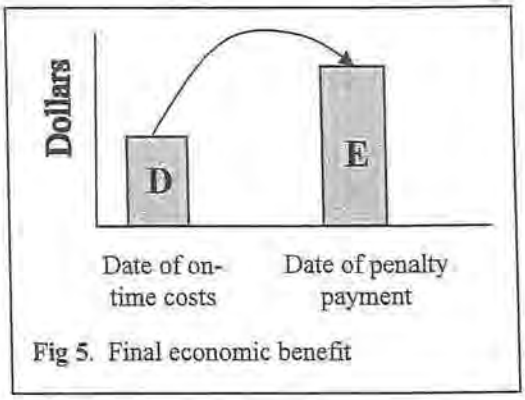


**Fig 5.** Final economic benefit

## IV. Final Economic Benefit Is Likely an Underestimate

The economic benefit calculated above may underestimate the total economic benefit that the respondent received to date because it is based on conservative assumptions and does not include unknown or incidental costs. It also does not address uncertain indirect financial benefits, including:

- *Advantage-of-risk* – the value of (1) the risk of never getting caught and (2) keeping future options open by delaying a decision to institute a process or purchase capital;
- *Competitive advantage* – (1) beginning production earlier than would be possible if in compliance; (2) attracting clients by avoiding compliance costs, having a higher profit margin and therefore being able to offer goods or services at a lower cost than competitors; (3) keeping those clients attracted by lower prices because of brand loyalty or high switching costs; or (4) using the time or money saved to increase production; and

- *Illegal profits* – selling illegal products or services.

EPA has undertaken a review of these indirect factors and may craft an economic method for calculating them.[4] Until that evaluation is complete, I consider these other economic benefits to be "de minimis" in light of the difficulties in calculation. Pursuant to OAR 340-012-0150(3), the Department need not calculate an economic benefit if that benefit is de minimis.

Another reason that the estimate above may be an underestimate is that the calculation is based on the time value of money, and is sensitive to when delayed costs are actually incurred and when penalties are actually paid. When the Department calculates an economic benefit for incorporation in a Notice of Civil Penalty Assessment, it often assumes the entity will comply with the schedule in the Order and that the penalty will be paid without the delays required for an appeal. This results in a lower economic benefit than would be obtained if the actual dates were initially known and used. For this reason the Department may recalculate the economic benefit for the hearing or in settlement so as to reach a more accurate final economic benefit.

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[4] *See* EPA Office of Enforcement and Compliance Assurance, "*Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs*," (May 25, 2003) available at http://www.epa.gov/compliance/resources/publications/civil/programs/econben-costs.pdf; EPA Illegal Competitive Advantage Economic Benefit Advisory Panel of the Science Advisory Board, Advisory no. EPA-SAB-ADV-05-003, (Sept. 7, 2005) available at http://www.epa.gov/sab/pdf/ica_eb_sab-adv-05-003.pdf; EPA Office of Enforcement and Compliance Assurance, Response to advisory, (July 19, 2006) available at http://www.epa.gov/sab/pdf/sab-adv-05-003_response_07-19-06.pdf.

Run Name = financial assurance

| Present Values as of Noncompliance Date (NCD), | 31-May-2013 |
|---|---|
| A) On-Time Capital & One-Time Costs | $2,636 |
| B) Delay Capital & One-Time Costs | $0 |
| C) Avoided Annually Recurring Costs | $20,171 |
| D) Initial Economic Benefit (A-B+C) | $22,808 |
| **E) Final Econ. Ben. at Penalty Payment Date,** | |
| ***01-Jun-2015*** | **$25,873** |

| | |
|---|---|
| *For-Profit (not C-Corp.) w/ OR tax rates* | |
| Discount/Compound Rate | 6.5% |
| Discount/Compound Rate Calculated By: | BEN |
| Compliance Date | 01-Jun-2015 |
| Capital Investment: | |
| Cost Estimate | $0 |
| Cost Estimate Date | N/A |
| Cost Index for Inflation | N/A |
| Consider Future Replacement (Useful Life) | N/A (N/A) |
| One-Time, Nondepreciable Expenditure: | avoided |
| Cost Estimate | $5,000 |
| Cost Estimate Date | 12-Mar-2015 |
| Cost Index for Inflation | PCI |
| Tax Deductible? | y |
| Annually Recurring Costs: | |
| Cost Estimate | $20,000 |
| Cost Estimate Date | 12-Mar-2015 |
| Cost Index for Inflation | PCI |
| User-Customized Specific Cost Estimates: | N/A |
| On-Time Capital Investment | |
| Delay Capital Investment | |
| On-Time Nondepreciable Expenditure | |
| Delay Nondepreciable Expenditure | |

EXHIBIT A8
PAGE 8

Run Name = gas control system

| Present Values as of Noncompliance Date (NCD), | 03-Jan-2014 |
|---|---|
| A) On-Time Capital & One-Time Costs | $7,970 |
| B) Delay Capital & One-Time Costs | $0 |
| C) Avoided Annually Recurring Costs | $0 |
| D) Initial Economic Benefit (A-B+C) | $7,970 |
| E) Final Econ. Ben. at Penalty Payment Date, 01-Jun-2015 | $8,720 |

| | |
|---|---|
| *For-Profit (not C-Corp.) w/ OR tax rates* | |
| Discount/Compound Rate | 6.6% |
| Discount/Compound Rate Calculated By: | BEN |
| Compliance Date | 01-Jun-2015 |
| Capital Investment: | |
| Cost Estimate | $0 |
| Cost Estimate Date | N/A |
| Cost Index for Inflation | N/A |
| Consider Future Replacement (Useful Life) | N/A (N/A) |
| One-Time, Nondepreciable Expenditure: | avoided |
| Cost Estimate | $15,000 |
| Cost Estimate Date | 12-Mar-2015 |
| Cost Index for Inflation | PCI |
| Tax Deductible? | y |
| Annually Recurring Costs: | |
| Cost Estimate | $0 |
| Cost Estimate Date | N/A |
| Cost Index for Inflation | N/A |
| User-Customized Specific Cost Estimates: | N/A |
| On-Time Capital Investment | |
| Delay Capital Investment | |
| On-Time Nondepreciable Expenditure | |
| Delay Nondepreciable Expenditure | |

EXHIBIT 14-8
Item N 000291 PAGE 9

**ELWORTH Susan**

**From:** ODONNELL Kieran
**Sent:** Friday, April 03, 2015 2:29 PM
**To:** ELWORTH Susan
**Subject:** EB Calculation - PSFM

State of Oregon
Department of Environmental Quality Memorandum

**Date**: April 3, 2015

**To**: Susan Elworth
**From**: Kieran O'Donnell
**Subject**: PSFM Limited Partnership & Skidmore Limited Partnership

**Name**: PSFM Limited Partnership & Skidmore Limited Partnership
**Type**: Oregon DLPs (domestic limited partnerships)
**Penalty Payment Date**: June 3, 2015

**Violation 1:** Failing to maintain a landfill gas control system in effective working order.
**Avoided Cost 1**: $15,000 = approximate cost to repair three probes and monitor from these probes for 2014.
Cost avoided since January 13, 2014

**Violation 2:** Failure to develop and maintain a financial assistance plan.
**Avoided Cost 2**: $25,000 = $5,000 to prepare a FA plan + $20,000 to maintain all activities necessary to keep FA.
Cost avoided since May 31, 2013

**Avoided Cost Total**: $40,000

**Estimate Date**: March 12, 2015

**Q-Time**: 27105

Kieran O'Donnell
Environmental Law Specialist
Oregon Department of Environmental Quality
503.229.5012

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **MIKE HASHEM & SKIDMORE LIMITED PARTNERSHIP'S MOTION FOR SUMMARY DETERMINATION** |
| | ) | |
| Respondents. | ) | |
| | ) | |

Skidmore Limited Partnership and Mike Hashem, respondents in the above-captioned case, move for a summary determination that one or both are not liable for a civil penalty assessment for violations of the Solid Waste Disposal Site Closure Permit (the "Permit") for one or more of the following reasons:

1. Mike Hashem ("Hashem") is not the permitee, the operator, or the owner of the real property. Hashem has not assumed the Permit. Hashem has no personal liability for the permitee's alleged violations of the Permit.

2. Skidmore Limited Partnership ("Skidmore") is not the permitee or the operator. Skidmore is not named on the Permit. Skidmore has not assumed the responsibilities of the Permit. Skidmore has no liability for Permit compliance. Skidmore is only one of five separate parcel owners who own tracts of land within the boundaries of the former landfill. If property owners have any legal responsibility or liability under the Permit, then all property owners must share in the responsibility and liability equitably.

3. The landfill closed in 1982. The post closure care period for the former landfill is 30 years according to Department of Environment Quality administrative rules. More than 30 years have passed between the closure of the landfill and the alleged violations. DEQ lacks the authority to enforce the Permit and to assess a civil penalty.

In support of this motion, respondents rely upon OAR 137.03.0580, the Memorandum of Facts and Law, and the supporting documents that are being filed contemporaneously with this motion.

DATED this 23rd day of June, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Hashem and Skidmore
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **CERTIFICATE OF COMPLIANCE OAR 137-003-0630** |
| | ) | |
| | ) | |
| Respondents. | ) | |
| | ) | |

I, Richard D. Senders, attorney for Respondents Mike Hashem and Skidmore Limited Partnership, do hereby certify that I conferred with Kieran O'Donnell, the attorney for the Department of Environmental Quality, by telephone on June 22, 2016, to discuss the motion for summary determination. We were not able to come to a mutually acceptable resolution to the motion for summary determination.

DATED this 23rd day of June, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Respondents Mike Hashem and Skidmore Limited Partnership
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

## CERTIFICATE OF SERVICE

On June 24, 2016, mailed the foregoing MIKE HASHEM & SKIDMORE LIMITED PARTNERSHIP'S MOTION FOR SUMMARY DETERMINATION in OAH Case No. 1604492.

***Sent By Email and by First Class Mail to:***

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Refferal@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
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*Kieran.ODONNELL@state.or.us*

Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 24th day of June, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Plaintiff
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Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **MEMORANDUM OF FACTS AND LAW IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY DETERMINATION** |
| Respondents. | ) | |

## INTRODUCTION

The Department of Environmental Quality ("DEQ") has issued a Notice of Civil Penalty Assessment and Order (the "Order") against PSFM Limited Partnership ("PSFM"), Skidmore Limited Partnership ("Skidmore") and Mike Hashem ("Hashem"). The Order alleges that PSFM, Skidmore, and Hashem have violated the Solid Waste Closure Permit (the "Permit") for the facility known as the Lavelle Landfill. Specifically, the Order claims that the respondents failed to operate and maintain the landfill gas control system (the "LFGCS") in effective working order between January 13, 2014 and June 30, 2014. DEQ is assessing a civil penalty of $20,720. The Order also alleges that respondents failed to submit a financial assurance plans by May 31, 2013 and May 31, 2014, and DEQ is assessing a civil penalty of $37,873 for this violation.

A copy of the Order is attached as Exhibit 1.

The respondents denied the factual allegations, claims, and conclusions in the Order. After the parties were unable to agree on a negotiated resolution, the

respondents timely requested a contested hearing before an administrative law judge. Attached as Exhibit 2 is Skidmore and Hashem's request for a contested hearing. Attached as Exhibit 3 is PSFM's request for a contested hearing.

Skidmore and Hashem have filed a motion for summary determination on the narrow issue of whether they are responsible for performance of the Permit and whether DEQ has authority to assess a civil penalty against them. The motion for summary determination does not address the issues of whether or not there was non-compliance or what would be the correct penalty if there was non-compliance.

**FACTS**

The Lavelle Landfill is former quarry pit that was operated by Rose City Sand & Gravel Co. Rose City mined the property for sand and gravel to a depth of up to 80 feet. Beginning in 1972, mining operations ceased, and the quarry pit was operated as a demolition landfill. The landfill was permitted to receive building and demolition debris, wood products, metals, heavy industrial debris, and similar materials. The landfill closed in 1982. Following closure, the landfill was covered with a soil cover. The landfill encompasses approximately 33 acres.

The landfill has a landfill gas control system that was designed and constructed along the landfill's north and west boundaries in 1979 to monitor and to extract methane gas from the landfill. The system includes a network of extraction wells connected to a header pipe running along the perimeter of the landfill. The header pipe is connected to an extraction blower. The system also includes monitoring wells that allow the sampling of methane gas levels at various locations and vents. In 2009 the methane gas extraction system was expanded along the landfill's south boundary at

the request of DEQ. The Department supervised the design and the construction of the expansion of the system.

A solid waste disposal site closure permit was issued to Rose City Sand & Gravel Co. on December 1, 1984 in response to an application received March 15, 1984. The quarry had been closed for some two years when the permit was finally issued. The permit was renewed April 8, 1994.

Rose City Sand & Gravel Co. subdivided the 33 acre landfill into five parcels and put the property on the market for sale. In or about 1997, PSFM acquired Parcel No. 4, which was approximately 21 acres. At about the same time, M. Hashem Limited Partnership acquired Parcel 2, which was 1.5 acres, and Parcel 3, which was approximately 4.5 acres. The General Partner of M. Hashem Limited Partnership was N.M.B. Corp. Parcel 1, which is approximately one-half acre, was sold to an individual who built a carpet store. Parcel 5, which amounted to approximately five acres, was sold to a developer who built the Madison Place Apartments.

In 1998, PSFM assumed the solid waste disposal site closure permit that had previously been issued to Rose City Sand & Gravel Co. PSFM is an Oregon limited partnership. The general partner of PSFM is M.M.D.F. Corp. Mike Hashem was the president of M.M.D.F. Corp. DEQ issued an amended solid waste disposal site closure permit on June 30, 1998 that names PSFM as the prermitee, owner, and operator. DEQ erroneously included Mike Hashem's name on the Permit. The Permit should have identified the permittee as PSFM Limited Partnership, in care of Mike Hashem, rather than identifying the permittee as Mike Hashem PSFM Limited Partnership.

In March of 2000, PSFM sold its 21-acre parcel to Skidmore on contract. The contract was satisfied in 2004. Skidmore is an Oregon limited partnership with

Skidmore Management Corp. as its general partner.

The Permit was scheduled to expire on March 31, 2004. On September 1, 2003, PSFM submitted an application to renew the Permit. The application was signed by Mike Hashem, in his capacity as president.

In 2004 or 2005, M Hashem Limited Partnership sold Parcel 2, which is approximately 1.5 acres, to Asian American Plaza LLC.

PSFM's application to renew the permit languished at DEQ for over seven years. During this time Skidmore made efforts to sell all or a major portion of its property to a big box retailer. The sale never materialized.

In February of 2009, DEQ issued PSFM an order requiring it to investigate and to take remedial action at the landfill due to high methane readings, even though its closure permit had expired. A work plan was prepared by PSFM's engineers and approved by DEQ. The work plan called for expansion of the active gas extraction and passive ventilating system that was installed at the landfill in 1979. Pursuant to the work plan, four new extraction wells were added to the system as well as additional low grade piping. This work was completed by the end of September 2009.

PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and provide the readings to DEQ. Mr. Bennett was trained by DEQ on how to sample methane gas levels.

In January of 2010, DEQ conducted a series of tests. DEQ concluded that the wells on the east side of the landfill did not require further monitoring, and it excluded monitoring wells 20, 28, 27, 19, 26, 25, 18, 24, 23, and 33 from the monitoring requirements. It was also recommended that the extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continued to be elevated along the landfill's south side where monitoring well 29

was located.

In or about late September or early October 2011, DEQ submitted a draft of a new solid waste disposal site closure permit to PSFM for its review and comments. The draft permit listed Mike Hashem, M. Hashem Limit Partnership and PSFM as the permit holders. Mr. Hashem objected to being named as a permittee. He also objected to M. Hashem Limited Partnership being named as a permit holder. DEQ corrected the draft and issued the permit naming PSFM as the sole permittee. The operator was also PSFM. Under owner, DEQ put both Mike Hashem's name and PSFM. This again was in error. PSFM, at the time, had no ownership interest in any of the property and neither did Mike Hashem.

In 2012, M. Hashem Limited Partnership and Skidmore did a lot line adjustment. Skidmore retained 12.5 acres. M. Hashem Limited Partnership increased its parcel to 13.7 acres. Following the lot line adjustment, M Hashem Limited Partnership entered into an agreement to sell all of its 13.7 acre parcel, to Northwest Zen Sangha, dba Dharma Rain Zen Center ("Dharma"). In October 2012, Dharma and DEQ entered into a Consent Order and Prospective Purchase Agreement which allows Dharma to redevelop the property without liability for prior releases. As part of the development, Dharma is allowed to surcharge the soil, monitor methane gasses, and build structures on its property. It was also authorized to modify the extraction system and monitoring wells in order to build a street. PSFM was not a party to the negotiations or to the agreement between Dharma and DEQ.

Dharma's engineers surcharged the soil and took methane readings near where the surcharging was taking place in November 2013, December 2013, and January of 2014. On March 14, 2015, DEQ received a copy of Dharma's methane readings during its surcharging operations. On the same day, DEQ notified PSFM that monitoring well

29 was showing high methane readings, and it asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. That same day, PSFM notified DEQ of a problem it had with the gas blower extraction system a couple of months earlier, and PSFM speculated that this was the likely cause of the higher than normal reading. In the same email, PSFM reported to DEQ that the extraction blower system had been repaired. PSFM agreed to follow DEQ's recommendations and to retest the monitoring wells that were producing the high readings. By March 20, 2014, PSFM was reporting that monitoring well 29 was in compliance. On May 29 DEQ tested well 29 and found it slightly over the compliance level. It was retested again on June 5, 2014 and was within the compliance level. The target compliance level for a monitoring well is no more than 5 percent methane by volume.

On June 5, 2014, DEQ staff reviewed the condition of some of the monitoring wells. The staff found that some of the wells were in poor condition. In an email dated June 10, 2014, DEQ asked PSFM to repair certain monitoring wells. PSFM responded on June 11, 2014 that it would send out its technician to check the wells and to make any needed repairs. On June 26, 2014, PSFM emailed DEQ that the monitoring wells were in good working order except for monitoring well 31, which had been placed in a manhole and was constantly inundated by water. Monitoring well 29 showed methane gas levels within compliance limits.

On July 30, 2014, DEQ issued a Pre-Enforcement Notice. The Notice alleges that PSFM alone is in violation of the Permit. PSFM replied to the Notice and denied any violations of the Permit. In May of 2015, DEQ issued the Order.

All the monitoring wells on Skidmore's property showed methane gas levels within compliance limits. Skidmore owns just 12.5 acres within the 33-acre landfill.

Monitoring well 29 is on property belonging to the Madison Apartments and is close to the Dharma property line. The blower and extraction pump for the LFGCS is located on property belonging to the carpet store.

Neither Hashem or Skidmore have applied to DEQ to assume PSFM's responsibilities under the Permit. Neither Hashem or Skidmore have entered into a contract with PSFM whereby either accepts responsibility for the performance of PSFM's obligations under the Permit.

DEQ has not issued formal findings that the Lavelle Landfill after 30 years of closure possess a significant hazard or risk to public health, safety or the environment. DEQ has not issued any notice that it intended to extend the closure permit beyond its statutory expiration date of 30 years after the closure of the landfill. The alleged Permit violations took place after the Permit expired.

**LAW**

A summary determination should be granted if the motion, affidavits, and supporting documents show that there is no genuine issue of as to any material fact that is relevant to resolution of the legal issue raised in the motion and that the moving party is entitled to a favorable ruling as a matter of law. OAR 137-003-0580.

DEQ's rules on non-municipal solid waste land disposal sites are found in OAR 340-095-0001 through 340-095-0090. The rules pertaining to closure and post closure care of disposal sites are found OAR 340-095-0050. This rule requires the person holding the disposal site permit to apply for a permit to cover the closure of the site and all or part of the time that active post closure site maintenance is required by the Department. The rule goes on to say that the person who holds the disposal site permit, or if that person fails to comply, then the person owning or controlling the

disposal site that is closed and no longer receiving solid waste must continue or renew the disposal site permit after the site is closed for the duration of the period in which the Department continues to actively supervise the site, even though solid waste is no longer received at the site. OAR 340-095-0050(1)(b). The rule further provides that if someone other than the permittee assumes responsibility for post-closure activities, there must be a written contract between the permittee and the other party or parties that are assuming responsibility. OAR 340-095-050(2)(d).

Closure permits are generally to terminated no later than 30 years after the closure of the landfill. OAR 340.095.0050(4) states:

> "Department shall terminate closure permits for non municipal land disposal sites not later than 30 years after the site is closed, unless the Department finds there is a need to protect against a significant hazzard or risk to public health or safety or the environment."

OAR 340.095.0080(2) reiterates that post closure care permits are generally to terminate 30 years after the closure of the non-municipal land disposal site. See also ORS 459.270(2).

A permit holder may apply for an early termination of the permit or to be released from one or more of the permit requirements if certain conditions are met. OAR 340.095.0050(5).

OAR 340-095-0090 deals with the issue of financial assurance plans. The rule begins by requiring the "owner or operator" of the disposal site to develop and maintain a financial assurance plan and to provide evidence of financial assurance to cover the costs of closure of the site, post-closure maintenance, and for corrective action required by DEQ. OAR 340-095-0090(1). The permittee is then required to annually review and update the financial assurance during the post-closure period. OAR 340-095-

0090(6)(d).

## ARGUMENT

The record clearly shows that Hashem and Skidmore should not have been named as respondents in the Order. Neither Hashem or Skidmore are the permittee or operator of the former disposal site. Hashem is not the owner of the real property, nor has he contractually assumed responsibilities as a permittee or owner. Skidmore is not named as an owner on the Permit. Skidmore has not contractually assumed the responsibilities of the permittee. Skidmore has not been designated as the permittee because of the permittee's noncompliance. Skidmore owns a portion of the former landfill, but so do four others. Skidmore owns approximately 12.5 acres of the 33 acre landfill site. Skidmore's parcel is in compliance with the LFGCS. Skidmore is not liable for the permittee's alleged noncompliance.

In addition, the closure permit terminated in 2012, which is 30 years after the closure of the landfill. There was no formal finding by DEQ that the landfill posed a significant health or safety risk after 30 years, nor was the permit formally extended beyond the 30-year termination date. DEQ lacks the authority to assess a civil penalty for conduct occurring after the statutory termination date of the Permit.

## CONCLUSION

There are no material facts in dispute as to whether Hashem or Skidmore are permittees or operators or whether they assumed the responsibilities of the permittee. Hashem and Skidmore are entitled to be dismissed from this compliance action as a matter of law. Moreover, there is no dispute that the landfill was closed in 1982 and that

DEQ made no findings of a significant health or safety risk in 2012 or formerly took steps to extend the life of the closure permit beyond its 30-year expiration date. For these reasons, the motion for summary determination should be granted and Hashem and Skidmore dismissed as respondents.

DATED this 23rd day of June 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Hashem and Skidmore
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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | |
|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTHERSHIP, &<br>MIKE HASHEM<br><br>Respondents. | NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER<br><br>CASE NO. LQ/SW-NWR-15-048 |

## I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

## II. FINDINGS OF FACT

1. Respondents own and operate a construction and demolition waste landfill with the tax roll description of Section 28, T1N, R2E, WM, and located at or around 2800 NE 82nd Ave, Portland, Oregon 97220 (the Facility).

2. On November 14, 2011, DEQ issued PSFM Limited Partnership and Mike Hashem a Solid Waste Disposal Site Closure Permit, Permit Number 211 (the Permit).

3. The Facility is owned by Skidmore Limited Partnership.

4. The Permit allows Respondents to maintain and monitor a solid waste land disposal site at the Facility in conformance with the terms and conditions of the Permit.

5. Pursuant to Section 7.4 of the Permit, the Respondents must operate and maintain the landfill gas control system (LFGCS) in effective working order such that methane concentrations do not exceed regulatory compliance limits listed in Section 9.4 of the Permit.

6. Pursuant to the compliance limits listed in Section 9.4 of the Permit (Compliance Limits) the concentration of methane must not exceed the Lower Explosive Limit in soil gas at the Facility boundary. The Lower Explosive Limit for methane is 5 percent by volume.

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6. On January 13, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring wells MW-29, MW-30, MW-3S, MW-4s, and MW-5d. In addition, on May 27, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring well MW-29.

7. On or before March 14, 2014, Respondents informed DEQ that its LFGCS gas blower system had malfunctioned.

8. In May and June of 2014, some of Respondents' landfill-gas monitoring probes were malfunctioning. Specifically, some probes' lids would not close, some probes had striped bolts, and some probes were plugged with gravel and soil.

9. Pursuant to Section 10.2 of the Permit, the Respondents must "prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval" by no later than May 31, 2013.

10. Pursuant to Section 10.4 of the Permit, the Respondents must "annually review and update financial assurance requirements" and "submit the annual update to DEQ prior to May 31 of each year, beginning in 2014."

11. As of the date of this Notice, Respondents have not submitted to DEQ a financial assurance plan or the annual financial assurance updates.

12. Pursuant to Section 7.2 of the Permit, the Respondents must submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012.

13. As of the date of this Notice, Respondents have not submitted to DEQ an updated post-closure operations and maintenance plan.

14. Pursuant to Section 8.2 of the Permit, the Respondents must submit to DEQ an updated landfill gas monitoring plan by March 31, 2012.

15. As of the date of this Notice, Respondents have not submitted an updated LFG monitoring plan.

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16. Pursuant to Section 8.9 of the Permit, the Respondents must conduct quality assurance testing by retaining the services of an independent DEQ-approved consultant to conduct at least one of the required yearly landfill gas monitoring events.

17. As of the date of this Notice, the Respondents have not conducted quality assurance testing for 2012, 2013, and 2014.

18. Pursuant to Section 11.3 of the Permit, the Respondents must submit to DEQ a post-closure evaluation report summarizing "a discussion of implementation of the post-closure plans and a description of unanticipated occurrences and any changes to the post-closure plans," prior to February 15 of each year.

19. As of the date of this Notice, Respondents have not submitted a Section 11.3 report for the years of 2012, 2013, 2014, and 2015.

## III. CONCLUSIONS

1. Respondents have violated OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Section 7.4 of the Permit by failing to operate and maintain the LFGCS in effective working order such that methane concentrations do not exceed Compliance Limits. Specifically, methane concentrations exceeded compliance limits at monitoring wells MW-29, MW-30, MW-3S, MW-4s, and MW-5d on January 13, 2014. In addition, on March 14, 2014, Respondents reported to DEQ that its gas blower system had malfunctioned. In May and June of 2014, some of Respondents' landfill gas monitoring probes were malfunctioning. Specifically, some probes' lids would not close, some probes had striped bolts, and some probes were plugged with gravel and soil. Furthermore, on May 27, 2014, methane concentrations at the Facility exceeded compliance limits at monitoring well MW-29. Therefore, Respondents failed to maintain the LFGCS in effective working order such that methane concentrations would not exceed compliance limits. These are Class I violations, according to OAR 340-012-0065(1)(f). DEQ hereby assesses a $20,720 civil penalty for these violations.

2. Respondents have violated OAR 340-095-0090(1) and OAR 340-095-0050(3)(b) and Conditions 10.2 and 10.4 of the Permit by failing to submit to DEQ a financial assurance plan and annual updates to the plan. Specifically, Respondents have failed to submit the financial assurance plan

by May 31, 2013 and the financial assurance update by May 31, 2014. These are Class I violations pursuant to OAR 340-012-0065(1)(i). DEQ hereby assesses a $37,873 civil penalty for these violations.

3. Respondents have violated Section 7.2 of the Permit by failing to submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012. As of the date of this Notice, Respondents have not submitted an updated post-closure operations and maintenance plan. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

4. Respondents have violated Section 8.2 of the Permit by failing to submit to DEQ an updated landfill gas monitoring plan by March 31, 2012. As of the date of this Notice, Respondents have not submitted an updated landfill gas monitoring plan. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

5. Respondents have violated Section 8.9 of the Permit by failing to conduct quality assurance testing during each year of operation. Specifically, since 2012, Respondents have failed to retain an independent DEQ-approved consultant to conduct at least one of the required yearly landfill gas monitoring events. These are Class II violations pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

6. Respondents have violated Section 11.3 of the Permit by failing to submit to DEQ an annual post-closure evaluation report by February 15 of each year of permit coverage. Specifically, the Respondents have failed to submit a post-closure evaluation report for 2012, 2013, 2014, and 2015. These are Class II violations pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

## IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are hereby ORDERED TO:

1. Pay a total civil penalty of $58,593. The determinations of the civil penalties are attached as Exhibits No. 1 and 2 and are incorporated as part of this Notice.

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If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. By no later than sixty (60) days after this Notice becomes a final order, Respondents must do the following:

a. Evaluate and assess the LFGCS at the Facility and make any necessary repairs to ensure that it remains in good working condition. Submit the results of the evaluation, assessment, and repairs to DEQ;

b. Submit to DEQ a financial assurance plan as required by Section 10.2 of the Permit;

c. Submit to DEQ an updated post-closure operations and maintenance plan as required by Section 7.2 of the Permit;

d. Submit to DEQ an updated landfill gas monitoring plan as required by Section 8.2 of the Permit;

e. Retain an independent DEQ approved consultant to conduct quality assurance monitoring at the Facility;

f. Submit to DEQ a post-closure evaluation report as required by Section 11.3 of the Permit.

g. Written documentation demonstrating Respondents' compliance must be sent to:

DEQ, Northwest Region Office
c/o Tim Spencer
2020 SW 4th Ave., Suite 400
Portland, OR 97201
spencer.tim@deq.state.or.us

## V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You *must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you*

receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must include them in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

Active duty service-members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800) 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website, http://legalassistance.law.af.mil/content/locator.php.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

May 13, 2015
Date

Sarah Mucha for
Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 1: Failing to operate and maintain the landfill gas control system (LFGCS) in effective working order, in violation of OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Section 7.4 of the Solid Waste Disposal Site Closure Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(f).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondents have a Solid Waste Disposal Site Closure Permit.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondents' failure to maintain the landfill gas control system in an effective working order began on at least January 13, 2014, when the first methane concentration exceedances were reported. The violation continued until at least May 27, 2014, when the last methane concentration exceedance was reported. Therefore, the violation persisted for more than 28 days.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. On February 24, 2009, DEQ issued a *Unilateral Order* requiring evaluation of the *LFGCS*. In addition, the *Unilateral* Order required Respondents to submit progress reports on the administration of the LFGCS. Furthermore, on November 14, 2011, DEQ issued Respondent a Solid Waste Disposal Site

Closure Permit, No. 211, which expressly requires Respondents to maintain the LFGCS in effective working order. Despite these formal interactions between DEQ and Respondents directing Respondents to manage an effective LFGCS, the Respondents failed to do so. This demonstrates Respondents' failure to take reasonable care to avoid a foreseeable risk that its failure to maintain an effective LFGCS would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $8,720. This is the amount Respondents gained by avoiding spending $15,000 to repair and maintain the landfill gas control system in effective working order. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0 + 0 + 4 + 4 + 2)] + $8,720
= $6,000 + [$6,000 x 10] + $8,720
= $6,000 + $6,000 + $8,720
= $20,720

EXHIBIT NO. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 2: Failing to submit to DEQ a financial assurance plan and annual updates to the financial assurance plan, in violation of OAR 340-095-0090(1) and OAR 340-095-0050(3)(b) and Sections 10.2 and 10.4 of the Solid Waste Disposal Site Closure Permit, No. 211 (the Permit).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0065(1)(i).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondents have a Solid Waste Disposal Site Closure Permit.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. *Each day of violation constitutes a separate occurrence. The Permit requires Respondents to* submit a financial assurance plan by May 31, 2014. As of the date of this Notice, Respondents have not submitted the financial assurance plan. Therefore, there are more than 28 occurrences of the violation.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. On February 24, 2009, DEQ issued a Unilateral Order requiring evaluation of the LFGCS. On October 5, 2011, DEQ wrote to Respondents, specifically to highlighting that the new permit would require financial assurance. On November 14, 2011, DEQ issued Respondents the Permit, which expressly requires Respondents to prepare and maintain a financial assurance plan. Despite

these formal interactions between DEQ and Respondents directing Respondents to maintain and prepare a financial assurance plan. Furthermore, on August 14, 2014, DEQ provided Respondents with additional information on how to obtain financial assurance. This demonstrates Respondents' failure to take reasonable care to avoid a foreseeable risk that its failure to maintain and prepare a financial assurance plan would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $25,873. This is the amount Respondents gained by avoiding spending $25,000 to develop and maintain a financial assurance plan. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0+ 0+ 4+ 4+ 2)] + $25,873
= $6,000 + [$6,000 x 10] + $25,873
= $6,000 + $6,000 + $25,873
= $37,873

# ROSE, SENDERS AND BOVARNICK, LLC

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*Admitted in Oregon and Washington
**Admitted in Oregon, Washington and Montana

February 1, 2016

**HAND DELIVERED**

Oregon DEQ
Office of Compliance and Enforcement-Appeals
811 SW 6th Ave
Portland, OR 97204

Re: Request for Hearing
Case No. LQ/SW-NWR-15-048

Dear Sir or Madam:

This law firm represents Mike Hashem ("Hashem") and Skidmore Limited Partnership ("Skidmore"). On or about May 13, 2015, the Department of Environmental Quality issued a Notice of Civil Penalty, Assessment, and Order in the above-referenced case. Hashem and Skidmore are named as respondents, along with PSFM Limited Partnership ("PSFM").

Since the issuance of the Notice, the respondents and the Department of Environmental Quality ("DEQ") have been negotiating various proposals to settle this civil penalty, without waiving the right to a contested case hearing. These settlement discussions have now reached an impasse. Hashem and Skidmore wish to proceed with a contested hearing before an Administrative Law Judge.

Hashem and Skidmore dispute most of the allegations of fact and conclusions contained in the Notice. Hashem and Skidmore assert the following facts in opposition to the factual allegations asserted by DEQ:

1. Hashem does not own or operate a former construction demolition waste landfill. Skidmore owns one parcel of the former landfill and is one of five current owners.

2. DEQ issued a Waste Disposal Site Closure Permit, Permit No. 211 to PSFM. It did not issue the Permit to Hashem or to Skidmore.

3. The Facility is not owned by Skidmore. Skidmore owns one of five parcels that comprise the Facility.

4. The permit allows PSFM to maintain and monitor a former solid waste land disposal site at the Facility. It does not allow either Hashem or Skidmore to maintain and monitor the former solid waste land disposal site.

5. Neither Hashem nor Skidmore are obligated to operate and maintain the Landfill Gas Control System (LFGCS) in effective working order.

6. Hashem and Skidmore deny that on January 13, 2014, the methane concentrations at the facility exceeded compliance limits. They also deny that on May 27, 2014, the methane concentrations exceeded compliance limits. If in fact the methane concentrations exceeded limits it was not due to anything that Hashem or Skidmore did or did not do.

7. Hashem and Skidmore deny that in May and June of 2014 some of PSFM's landfill gas monitoring probes were malfunctioning.

8. Hashem and Skidmore deny that they are required to prepare a financial assurance plan.

9. Hashem and Skidmore deny that they must annually review and update the financial assurance requirements.

10. Hashem and Skidmore deny that they must submit to DEQ an updated post-closure operations and maintenance plan.

11. Hashem and Skidmore deny that they are obligated to submit to DEQ an updated landfill gas monitoring plan.

12. Hashem and Skidmore deny that they must conduct quality assurance testing by retaining the services of an independent DEQ-approved consultant.

13. Hashem and Skidmore deny that they must submit to DEQ a post-closure evaluation report annually.

14. Hashem and Skidmore deny that they have violated the Permit since they are not parties to the Permit.

15. Hashem and Skidmore deny that a civil penalty of $58,593 is due and owing. Assuming for the sake of argument that Hashem and Skidmore have any liability, the amount of the civil penalty due is not correctly determined.

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By way of affirmative defenses, respondents Hashem and Skidmore assert:

1. Hashem and Skidmore are not proper parties to this enforcement proceeding and should be dismissed.

2. The Permit issued in 2011 was erroneously issued PSFM Limited Partnership and should have been issued to the correct party or parties. As of 2011 PSFM no longer had any ownership interest or economic interest in the Facility.

3. DEQ was requested on several occasions to amend or correct the Permit and issue the permit to the current property owners, and DEQ failed to do so.

Respondents Hashem and Skidmore reserve the right to raise additional factual defenses and affirmative defenses either prior to or at the time for hearing. They also reserve the right to submit documents and evidence in support of their factual claims and affirmative defenses. Additionally, respondents Hashem and Skidmore request an award of attorney fees, if allowable by law, rule or regulation.

Sincerely,

Richard D. Senders

RDS:dms
cc: Kieran O'Donnell
Client
W:\Hashem-DEQ\Correspondence\02-01-16 DEQ.wpd

# PSFM LP

*PO BOX 621 Beavercreek, Or 97004*

Oregon DEQ

Office of Compliance and enforcement-Appeals

811 SW 6th Ave

Portland, OR 07204

RE: Request for a hearing

Case No. LQ/SW-NWR-15-048

Dear Sir or Madam:

I am writing on behalf of PSFM Limited Partnership. I have explained to DEQ several times that PSFM LP has not been an owner of the site for over 12 years and has no financial interest in the property. DEQ is aware that 5 separate owners own the property that formerly was a landfill. PSFM LP repeatedly asked DEQ to be relieved from the permit obligation and DEQ refused and issued a Permit in 2011 to PSFM LP claiming that PSFM LP is obligated to operate the Permit because back in 2003 when PSFM LP was still an owner, had filled up a renewal application to renew the Permit .

PSFM LP has met and negotiated with DEQ and explained its position to DEQ, without waiving the right to a contested hearing. DEQ failed to address the real issues and still insists that PSFM LP operate the defective Permit. PSFM LP would like to proceed to a contested hearing.

PSFM LP dispute most of the allegations of facts and conclusions in the notice and assert the following facts in opposition to DEQ's assertions:

1- PSFM LP does not own or operate the waste landfill. In 1997, PSFM LP bought one parcel out five parcels and agreed at the time to read and report the methane gas level at the site to DEQ. In 2003 DEQ requested that PSFM LP fill a renewal application for the Permit. **The Permit was not renewed in a timely manner and did expire.** PSFM LP subsequently sold its parcel.

2- 8 years later DEQ issued a new Permit to PSFM LP claiming that the original Permit had never expired since PSFM LP filled up an application in 2003 and therefore they are still obligated to administer the new Permit. PSFM LP continued to ask DEQ to transfer the Permit to the various property owners. Even though DEQ agreed with PSFM LP that transferring the Permit to the land owners would be the best solution, they failed to do so. The matter was further complicated by DEQ issuing two new, separate permits to two other owners of properties in the former landfill, which may conflict with this Permit in questions.

3- The facility is not owned by PSFM LP.
4- The Permit allows PSFM LP to maintain and monitor a former solid waste land disposal site at the facility, but PSFM LP does not have authority or permission from the land owners to trespass or perform such task DEQ has demanded of it. DEQ can't demand PSFM LP to trespass over third parties property and do testing and modification without their legal consent.
5- PSFM LP did maintain the landfill gas control system in effective working order.
6- PSFM LP denies knowledge that on January 13 2014 and May 27, 2014 the methane concentrations at the facility exceeded compliance limits. If in fact the methane concentrations exceeded limits it was not due to anything that PSFM LP did or did not do. If methane concentrations exceeded limits the likely cause were the activities that DEQ had authorized some of the owners and their contractors to do on their properties without PSFM LP's knowledge or participation.
7- PSFM LP denies that in May and June 2014 some of the PSFM LP landfill gases monitoring probes were malfunctioning. PSFM LP does not own or control the properties or the probes in questions, and If in fact the probes were malfunctioning it was not due to anything that PSFM LP did or did not do, and any malfunction was likely caused by the activities DEQ had authorized some of the owners and contractors to do on their properties without PSFM LP's knowledge or participation.
8- The Permit was wrongfully issued and enforced, and PSFM LP denies that it is obligated to prepare a financial assurance plan.
9- The Permit was wrongfully issued and enforced, and PSFM LP denies that it is obligated to submit an updated post closure operations plan.
10- The Permit was wrongfully issued and enforced, and PSFM LP denies that it is obligated to provide an updated post closure operations and plan.
11- The Permit was wrongfully issued and enforced, and PSFM LP denies that it is obligated to submit to DEQ an updated landfill gas monitoring plan.
12- The Permit was wrongfully issued and enforced, and PSFM LP denies that it is obligated to conduct quality assurance testing by retaining the services of an independent DEQ approved consultant.
13- The Permit was wrongfully issued and enforced, and PSFM LP denies that it is obligated to provide to DEQ a post closure evaluation report annually.
14- PSFM LP denies violating the permit.
15- PSFM LP denies that a civil penalty of $58,593 is due and owing. Assuming PSFM LP has any liability, the amount of the civil penalty due is not correctly determined.

By way of affirmative defenses, respondent PSFM LP asserts:

1. PSFM LP is not an owner or operator of the facilities. PSFM LP has no authority to do work on third party private property without their written consent and approval, which was never obtained, or given. DEQ can't simply demand that PSFM LP break the law by trespassing on other owner's properties and do physical work.

2. The permit issued in 2011 was defective at inception. It was erroneously issued to the wrong entity. As of 12 years ago PSFM LP no longer had any ownership interest or economic interest in the facility.
3. DEQ was asked on several occasions to amend the Permit and issue a new one to the landfill property owners as a group or a land owner association to administer the Permit and to release PSFM LP from this Permit. DEQ failed to properly amend and administer the Permit. Not only should the civil enforcement action be dismissed, PSFM LP should be relieved from any further obligations under the Permit.
4. DEQ has entered into two separate agreements with two property owners of the landfill which may be a conflict with the Permit issued to PSFM LP , and this has made it difficult for DEQ to transfer the current Permit to the rightful owners .

Respondent PSFM LP reserves the right to raise additional factual defenses and affirmative defenses either prior to or at the time of the hearing. PSFM LP also reserves the right to submit documents and evidence in support of its factual claims and affirmative defenses. Additionally, respondent requests an award of attorney fees, if an attorney is retained. Respondent also seeks to recover compensation for the time spent by PSFM's manager to contest this penalty and for the costs incurred by PSFM LP.

Sincerely,

John Kondilis

## CERTIFICATE OF SERVICE

On June 24, 2016, mailed the foregoing MEMORANDUM OF FACTS AND LAW IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY DETERMINATION in OAH Case No. 1604492.

***Sent By Email and by First Class Mail to:***

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Refferal@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*Kieran.ODONNELL@state.or.us*

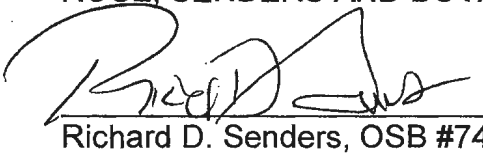
Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 24 day of June, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



Richard D. Senders, OSB #742931
Attorney for Plaintiff
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **DECLARATION OF RICHARD D. SENDERS IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY DETERMINATION** |
| Respondents. | ) | |

I, Richard D. Senders, do hereby declare as follows:

I am a the attorney for respondents Skidmore Limited Partnership and Mike Hashem in the above-captioned case. I am over the age of 21 and have personal knowledge of the matters stated herein. This declaration is submitted in support of respondents Hashem and Skidmore's motion for summary determination.

Attached hereto and marked as Exhibit 1 is a true and correct copy of a Fact Sheet prepared by DEQ about the Lavell Landfill that I obtained from DEQ pursuant to a records request. The Fact Sheet states that the landfill closed in 1982.

Attached hereto and marked as Exhibit 2 are true and correct copies of a DEQ documents that I obtained from DEQ pursuant to a records request pertaining to when the Lavelle Landfill closed. The documents reflect that the landfill was closed on or before December 31, 1982.

Attached hereto and marked as Exhibit 3 is a true and correct copy of the Methane Monitoring Work Plan Building Surcharge Activities prepared by GeoDesign for Dharama that I obtained from DEQ pursuant to a records request.

Attached hereto and marked as Exhibit 4 is a true and correct copy of an email sent by GeoDeasign to DEQ with its surcharge monitoring data that I obtained from DEQ pursuant to a records request.

Attached hereto and marked as Exhibit 5 is a true and correct copy of a DEQ field report from a June 5, 2014 inspection and testing of certain monitoring wells, including monitoring well 29 that I obtained from DEQ pursuant to a records request.

Attached hereto and marked as Exhibit 6 is a true and correct copy of a the Pre-Enforcement Notice issued by DEQ on July 30, 2014 that I obtained from DEQ pursuant to a records request. DEQ finds only PSFM Limited Partnership in violation the closure permit.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND THAT IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO THE PENALTY OF PERJURY.**

DATED: June 23, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Hashem and Skidmore

# Fact Sheet

# Methane Investigation at H.G. Lavelle Landfill

## Background

In cooperation with the owner of the H.G. Lavelle Landfill, the Department of Environmental Quality (DEQ) is evaluating methane levels in the soil, utility lines, and enclosed spaces in structures adjacent to the landfill. The landfill, located at NE 82nd Avenne and NE Siskiyou Street, is just north of the Madison Place subdivision.

The landfill received demolition debris until it closed in 1982. The material within the landfill includes some organic matter such as plants and wood. Records indicate that some household waste was disposed of at the site, in violation of DEQ permit requirements that were in effect in the 1970s and 1980s.

When organic matter decomposes it often produces methane gas which can rise to the surface at a closed landfill. Natural gas, used in our homes, is composed mainly of methane.

## Status of our investigation

DEQ and the landfill owner have tested for methane in confined spaces and crawl spaces in some of the ten buildings adjacent to the landfill on the north side of Knott Street. Methane can become a safety risk when it migrates into enclosed spaces such as in-ground utility service boxes, utility conduits, and unvented crawl spaces beneath buildings.

No methane has been found in the confined spaces in and around the Knott Street homes. However, elevated methane has been found in methane monitoring wells near some of these homes. We therefore will continue to monitor for methane gas, and are working with the landfill owner to expand the existing extraction system to remove landfill gas from these areas.

## What are the potential risks for Madison Place residents?

Methane is a flammable gas. In some circumstances, the presence of methane in a closed space may pose an explosion hazard. In-ground utility boxes or utility buildings built on the soil may provide enclosed spaces for methane vapors to concentrate.

The Madison Place residences were constructed with methane controls such as vapor barriers in crawl spaces. If a vapor barrier has deteriorated, methane gas could get in a crawl space.

As a precaution, Madison Place residents should air out enclosed spaces before entering or inspection. Residents should not smoke or light a fire while working in enclosed spaces where there is the potential for methane to concentrate. Make sure that crawl space vents are open.

## For more information

If you have any questions or would like more information, call DEQ Project Manager Bob Schwarz at (541) 298-7255 ext. 30, toll free at 800-452-4011, or schwarz.bob.@deq.state.or.us

## Alternative formats

*Alternative formats (Braille, large type) of this document can be made available. Contact the DEQ Office of Communications & Outreach, Portland, at (503) 229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696.*

State of Oregon
**Department of Environmental Quality**

**Land Quality**
**Solid Waste**
**Northwest Region**
2020 SW 4th Avenue
Suite 400
Portland, OR 97201
Phone: (503) 229-5263
(800) 452-4011
Fax: (503) 229-6957
Contact: Bob Schwarz,
(541) 298-7255 ext. 30

***www.oregon.gov/DEQ***

Last Updated: 05/21/09
By: Bob Schwarz

STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY INTEROFFICE MEMO

TO: Fred Hansen, Director DATE: November 27, 1984

FROM: Ernest Schmidt, Solid Waste Division

SUBJECT: H.G. LaVelle Landfill
SW Permit No. 211
Multnomah County

Background

1. The site is located on NE 82nd Ave. Commercial activities exist on the south and west sides. Residential areas are immediately north and east of the site.

2. Harold LaVelle operated this demolition landfill until his lease expired on December 31, 1982. At that time, he closed out and covered all of the fill except a small area that needed approximately 60,000 cubic yards of fill to bring it up to final grade.

3. Rose City Sand & Gravel Co., the property owner, assumed responsibility for operating the landfill gas control facilities and maintaining the site. They have applied for the closure permit.

Evaluation

1. An active landfill gas extraction system was installed in 1980 after the Department found high levels of methane in the soil two hundred feet north of the landfill in a residential area.

2. The gas extraction system consists of a series of 19 wells located around the north and west perimeter of the landfill. These wells are connected to a large blower which pulls landfill gas out of the soil. This system is very effective in preventing the migration of landfill gas. Methane monitoring wells located on-site and in the surrounding neighborhood are sampled regularly.

3. It is likely that the operation and monitoring of the gas control system will be necessary for longer than this 10-year permit.

4. Rose City Sand and Gravel has nearly finished filling the remaining 60,000 cubic yards with natural material (dirt and rock) excavated from the Banfield project.

5. Financial assurance requirements don't apply to this site because it closed before the requirements became effective.

6. Some odor complaints have occurred.

Recommendation

1. It is recommended that the attached permit be issued.

SC1881.M

VICTOR ATIYEH
Governor

# Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE: (503) 229-5696

| CLEARANCE | | |
|---|---|---|
| TO | INITIAL | DAT |
| HANSEN | | |
| SCHMIDT | | |
| BROWN | RLB | 11-1 |
| GRAY | CAG | 11-1 |
| VILENDEE | JX | 11-1 |
| SW | | |

November 5, 1984

M.E. Henningsen, President
Rose City Sand & Gravel Co.
8196 S.W. Hall Blvd., Suite 230
Beaverton, OR 97005

Re: LaVelle Landfill
SW-Permit No. 211
Multnomah County

The Department has completed review of your closure permit application for the LaVelle landfill on N.E. 82nd Avenue. A proposed closure permit has been drafted and is enclosed for your review. Please submit any comments in writing to this office within 14 days of the date of this letter.

The closure plan for the site was approved by the Department on March 15, 1983. You are authorized to accept soil and rock only to fill the remaining area up to final grade.

The financial assurance requirements do not apply to this site because it closed prior to the effective date of the new law.

Rose City Sand and Gravel Co. is responsible for operation of the gas control and monitoring facilities and for post-closure maintenance of the site. It is likely that operation of the gas control system will be necessary for longer than this 10-year permit. A decision will be made in the future, based on methane levels, whether the permit will need to be extended.

If you have any questions or need additional information, please contact me at 229-6237.

Sincerely,

Joseph F. Schultz
Senior Environmental Analyst
Solid Waste Division

JFS:b
SB3938
Enclosure(s)
cc: Ted Lyster
Northwest Region, DEQ

R.A. Wright Engineering, Inc.
consulting engineers

1340 S.W. Bertha Blvd.
Portland, Oregon 97219
503/246-4293

FILE: 755.10/5.32

COPY

February 2, 1983

Mr. Charles H. Gray
Regional Supervisor
Department of Environmental Quality
522 S. W. 5th
Portland, Oregon 97204

Dept. of Environmental Quality
RECEIVED
FEB 25 1983
NORTHWEST REGION

Dear Mr. Gray:

Amended Closure Plan
H. G. LaVelle, Inc. Landfill

As a result of the premature unplanned closure of H. G. LaVelle, Inc. Landfill located on N. E. 82nd Avenue, an amended closure plan has been prepared. In response to your letter of January 11, 1983, and a meeting the same day, the following information is provided. In addition, Drawings 755-1 Sheet 1/1 and 501-1 Sheet 1/5 are also attached.

Storm Drainage

The storm drainage channel along the north side of the site is incomplete. In addition, an area approximately 250 feet by 300 feet, and 12 feet deep remains unfilled. The drainage channel along the east side of the site including the catch basin and storm water disposal system is completed.

It is proposed to construct an open channel system in the unfinished section along the north side of the site. This open channel will be constructed of a 30-inch one-half round 12 gage corrugated steel pipe which will be overlapped and bolted together in 10-foot sections. The open channel would be constructed on compacted soil at a slope of approximately three percent. A transition section will be constructed between the concrete channel and the half round pipe.

The existing side slopes over refuse will vary from 50 to 33 percent or flatter. The existing east side slope will be constructed to 33 percent (3 to 1) and will be contoured to match 50 percent (2 to 1) existing slopes in some places. The unfilled area top surface will be sloped three percent to the east,

Uncovered Refuse

An area of uncovered refuse existed at the time of closure. This area will be properly spread, compacted, and covered with two feet of fine grained soil which has been stockpiled on-site. Final cover soil over a majority of the site has been placed at this time.

Methane Gas Collection System

In order for the landfill gas to be contained on-site, the landfill gas collection system should be maintained and operated in accordance with existing procedures. At the present time 19 extraction wells and 28 monitoring wells have been installed on-site. Six off-site monitoring wells have been constructed north of N. E. Siskiyou.

In summary, the landfill site will be closed in accordance with the following documents as amended by this letter. Those documents include:

1. DEQ Solid Waste Disposal Permit
2. METRO Solid Waste Disposal Site Permit
3. LaVelle Landfill Projected Life, May, 1981, R. A. WRIGHT ENGINEERING, INC.
4. Final Drainage Plan for LaVelle Landfill, June, 1980, R. A. WRIGHT ENGINEERING, INC.
5. LaVelle Landfill Gas Control, December, 1979, R. A. WRIGHT ENGINEERING, INC.

When this construction work is complete, we will request a site inspection. Please indicate if this plan is not acceptable and contact me if you have any questions.

Sincerely,

Charles C. Kemper, P.E.

cc: Dennis O'Neil
METRO

CCK/mh

GEODESIGN INC

August 30, 2013

Oregon Department of Environmental Quality
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201

Attention: Mr. Tim Spencer

**Methane Monitoring Work Plan**
**Building Surcharge Activities**
Proposed Householder Refuge and Temple
LaVelle Landfill
NE 82nd Avenue and NE Siskiyou Street
Portland, Oregon
GeoDesign Project: DharmaRain-1-05

## INTRODUCTION

The Dharma Rain Zen Center (DRZC) is planning to develop an approximately 14-acre parcel of land located at the eastern half of the approximately 26-acre former H.G. LaVelle Landfill located southeast of the intersection of NE 82nd Avenue and NE Siskiyou Street in Portland, Oregon (project site). The project site is currently undeveloped, and DRZC is preparing to construct Phase I of their planned development consisting of the Sodo Building, office, workshop, and infrastructure. The report of geotechnical engineering services[1] recommended a three-month-long surcharge program to help reduce post-construction settlement beneath proposed buildings and pavement areas. As discussed with the Oregon Department of Environmental Quality (DEQ), methane monitoring will be required before and during surcharge activities to evaluate the potential impacts that may result from the surcharge. This methane monitoring work plan describes the proposed methane monitoring that will be completed in association with the surcharge activities.

The project site is shown relative to surrounding physical features on Figure 1. The project site layout and surrounding properties are shown on Figure 2.

[1] GeoDesign, Inc., *Report of Geotechnical Engineering Services; Proposed Householder Refuge and Temple; LaVelle Landfill; NE 82nd Avenue and NE Siskiyou Street; Portland, Oregon,* dated May 10, 2013. GeoDesign Project: DharmaRain-1-03

## METHANE MONITORING

As discussed with the DEQ, we will complete methane monitoring prior to and during the planned three-month surcharge program. The surcharge areas are shown on Figure 2. The monitoring is intended to establish baseline conditions and evaluate potential off-site migration of methane that may result from the surcharge activities. Project site activities will be conducted in general accordance with the DEQ-approved Site-Specific Health and Safety Plan[2] (HSP) that has been prepared for the project site. Details on the methane monitoring are provided below.

### *BASELINE MONITORING*

Prior to planned surcharge activities, baseline methane monitoring data will be collected from the following perimeter gas probes:

- North side of landfill: MW-1, MW-2, MW-3, MW-4, and MW-5
- South side of landfill: MW-16, MW-17, MW-22, MW-29, MW-30, MW-31, and MW-32

Proposed monitoring locations are shown on Figure 2.

The following data will be collected and recorded as part of the baseline monitoring:

- Concentrations of methane, carbon dioxide, oxygen, and balance gases measured in percent by volume from the selected perimeter gas probes
- Static pressure measured in inches of water from the selected perimeter gas probes
- The date, time, and atmospheric barometric pressure

Gas concentrations and static pressure data will be collected using a Landtec GEM 2000+ gas analyzer.

### *SURCHARGE METHANE MONITORING*

During surcharge activities, methane monitoring will be conducted following the same procedures outlined for the baseline monitoring. Data will be compared to the baseline and evaluated for potential impacts or changes that can be attributed to the placement of soil at the proposed surcharge locations.

Surcharge monitoring will initially occur weekly during the first month of soil placement. After the soil stockpiles are placed, the monitoring frequency will be reduced to monthly until the surcharge is complete. Monitoring results and a brief comparison of the data to baseline conditions will be emailed to DEQ within three days of each monitoring event.

Lastly, a portion of the soil used for the surcharge will be generated from on-site sources, reducing the overall thickness of the existing landfill soil cap. We will perform routine monitoring as described in the HSP during site activities that disturb the existing soil cap.

---

[2] GeoDesign, Inc., *Site-Specific health and Safety Plan; Proposed Householder Refuge and Temple; LaVelle Landfill; NE 82nd Avenue and NE Siskiyou Street; Portland, Oregon,* dated August 1, 2013. GeoDesign Project: DharmaRain-1-04

We appreciate your continued assistance and support on this project. Please call if you have questions regarding this submittal or if we may be of assistance in any regard.

Sincerely,

GeoDesign, Inc.

Mike F. Coenen, P.E.
Associate Engineer

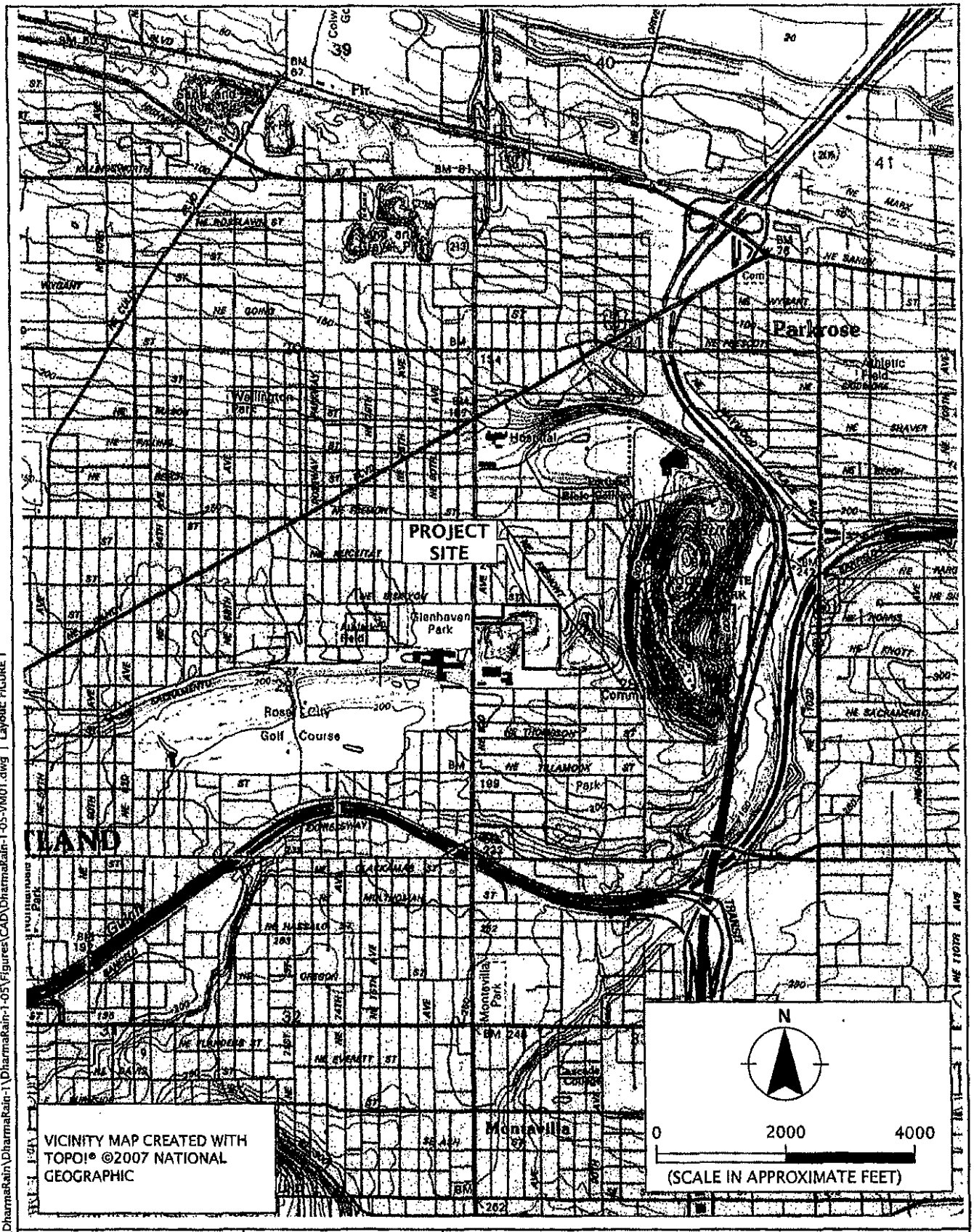
Signed for

Jason O'Donnell, R.G.
Principal Geologist

cc: Mr. Kevin Dana, Oregon Department of Environmental Quality (via email only)
Mr. Kakumyo Lowe-Charde, Dharma Rain Zen Center (via email only)
Mr. William Kehrli, CWK2 (via email only)

JMZ:MFC:REB:kt
Attachments
One copy submitted (via email only)
Document ID: DharmaRain-1-05-083013-envl.docx
© 2013 GeoDesign, Inc. All rights reserved.

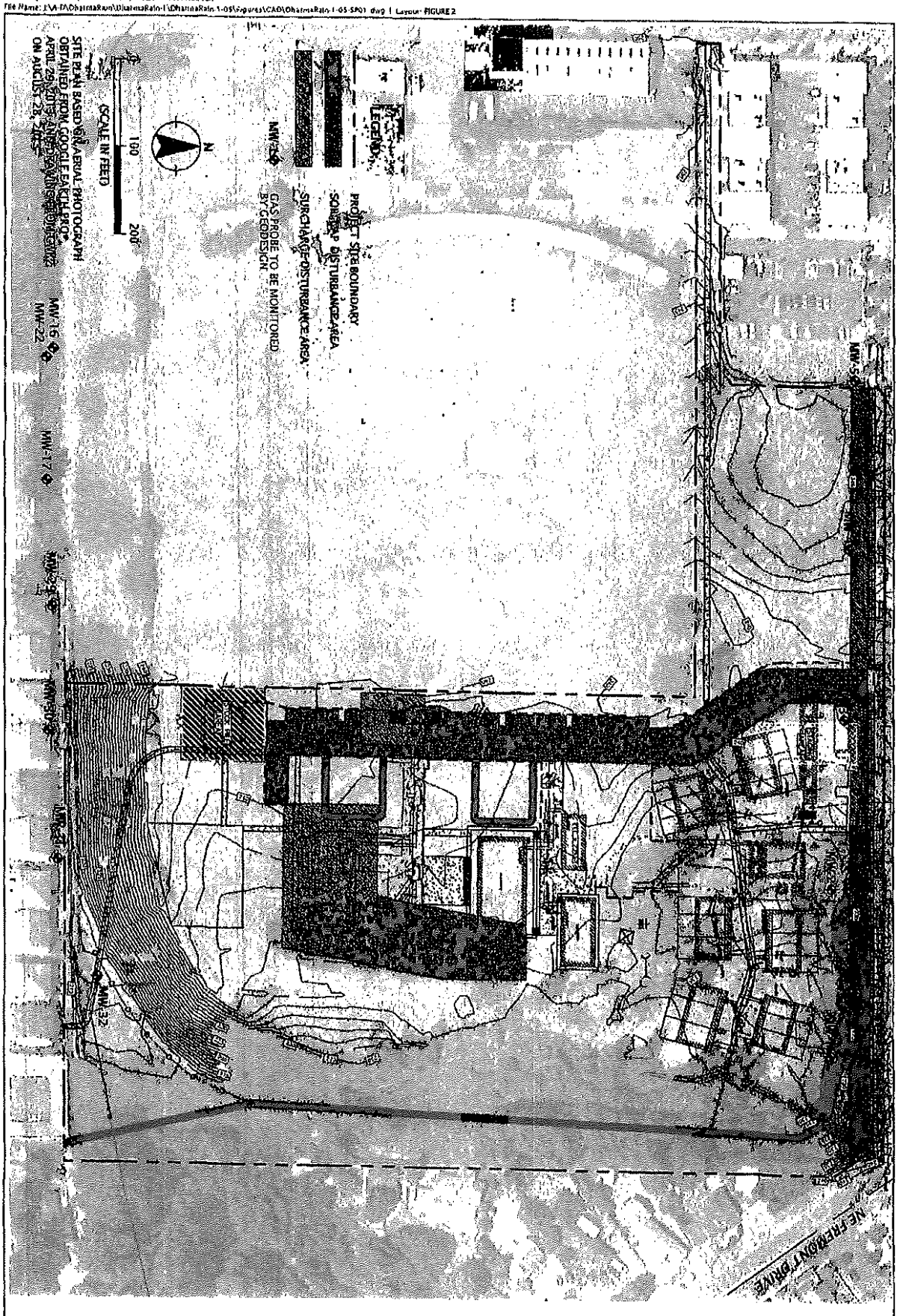
**FIGURES**




Printed By: mmiller | Print Date: 8/30/2013 11:08:15 AM
File Name: J:\A-D\DharmaRain\DharmaRain-1\DharmaRain-1-05\Figures\CAD\DharmaRain-1-05-VM01.dwg | Layout: FIGURE 1

| | | |
|---|---|---|
| GEODESIGN INC<br>15575 SW Sequoia Parkway - Suite 100<br>Portland OR 97224<br>Off 503.968.8787 Fax 503.968.3068 | DHARMARAIN-1-05 | **VICINITY MAP** |
| | AUGUST 2013 | PROPOSED HOUSEHOLDER REFUGE AND TEMPLE<br>PORTLAND, OR — **FIGURE 1** |

Printed By: mmiller | Print Date: 8/30/2013 10:52:02 AM
File Name: J:\A-PA\DharmaRain\Dharma Rain-1\DharmaRain-1-05\Figures\CAD\DharmaRain-1-05-SP01.dwg | Layout: FIGURE 2

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|---|---|---|
| GeoDesign<br>15575 SW Sequoia Parkway - Suite 100<br>Portland OR 97224<br>OR 503.968.8787 Fax 503.968.3068 | DHARMARAIN-1-05 | SITE PLAN |
| | AUGUST 2013 | PROPOSED HOUSEHOLDER REFUGE AND TEMPLE<br>PORTLAND, OR |

**dstuart@ rsblaw.net**

**From:** SPENCER Tim <SPENCER.Tim@deq.state.or.us>
**Sent:** Thursday, May 26, 2016 9:27 AM
**To:** SPENCER Tim
**Subject:** FW: Dharma Rain Surcharge monitoring
**Attachments:** DharmaRain-1-05-031414-envt-1_Surcharge Monitoring.pdf

---

**From:** SPENCER Tim
**Sent:** Tuesday, July 22, 2014 3:37 PM
**To:** OBRIEN Audrey
**Subject:** FW: Dharma Rain Surcharge monitoring

Hi Audrey –This is the Dharma Rain monitoring report.

Tim

---

**From:** Mike F. Coenen [mailto:mcoenen@geodesigninc.com]
**Sent:** Friday, March 14, 2014 3:25 PM
**To:** SPENCER Tim; SCHWARZ Bob
**Cc:** DANA Kevin; kakumyo lowe-charde (kakumyo@gmail.com)
**Subject:** RE: Dharma Rain Surcharge monitoring

Hi Tim, Bob, and Kevin,

Here is the surcharge monitoring data. For most of the wells, the methane concentrations remained pretty stable. I'd say the fluctuations that we did see were from factors other than the surcharge. Take a look and let me know if you would like to discuss.

Thanks,

**Mike Coenen, P.E.**
Associate Engineer

503.726.3143 direct
503.730.1364 mobile
503.968.8787 main

**GeoDesign, Inc.**
15575 SW Sequoia Parkway – Suite 100
*Portland, OR 97224*

www.geodesigninc.com

Portland OR I Salem OR I Anaheim CA I Vancouver WA I Longview WA I Seattle WA I Tacoma WA

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**From:** SPENCER Tim [mailto:SPENCER.Tim@deq.state.or.us]
**Sent:** Thursday, March 13, 2014 2:56 PM
**To:** Mike F. Coenen; SCHWARZ Bob
**Subject:** RE: Dharma Rain Surcharge monitoring

Hi Mike,

Also, I can't seem to find an electronic copy of the surcharge gas-monitoring-plan that you developed for this monitoring program. If possible could you forward it to Bob, Kevin, and I.

Thanks a lot

Tim

**From:** Mike F. Coenen [mailto:mcoenen@geodesigninc.com]
**Sent:** Thursday, March 13, 2014 2:30 PM
**To:** SCHWARZ Bob
**Cc:** SPENCER Tim
**Subject:** RE: Dharma Rain Surcharge monitoring

Hi Bob,

Yes. I'll send over what we have.

Thanks,

**Mike Coenen, P.E.**
Associate Engineer

503.726.3143 direct
503.730.1364 mobile
503.968.8787 main

**GeoDesign, Inc.**
15575 SW Sequoia Parkway – Suite 100
Portland, OR 97224

www.geodesigninc.com

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**From:** SCHWARZ Bob [mailto:SCHWARZ.Bob@deq.state.or.us]
**Sent:** Thursday, March 13, 2014 12:01 PM
**To:** Mike F. Coenen

**Cc:** SPENCER Tim
**Subject:** FW: Dharma Rain Surcharge monitoring

Hi Mike,
Do you have landfill gas monitoring results from the wells mentioned in your email?
Bob

---

**From:** Mike F. Coenen [mailto:mcoenen@geodesigninc.com]
**Sent:** Friday, November 01, 2013 1:45 PM
**To:** SPENCER Tim
**Cc:** SCHWARZ Bob; DANA Kevin; 'kakumyo lowe-charde (kakumyo@gmail.com)'; Jeremy Zimber
**Subject:** RE: Dharma Rain Surcharge monitoring

Hi Tim,

Following up on our conversation on Tuesday, we were able to locate MW-29, MW-30, MW-31, and MW-32 along the southern perimeter. We will continue to monitor these and MW-1 through MW-5 on the north side. MW-16, MW-17, and MW-22 will not be monitored as part of the surcharge monitoring described in our August 30th Work Plan. Please let me know if you have questions.

Thanks and have a good weekend. Mike

**Mike Coenen, P.E.**
Associate Engineer

503.726.3143 direct
503.730.1364 mobile
503.968.8787 main

**GeoDesign, Inc.**
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**From:** Mike F. Coenen
**Sent:** Tuesday, October 29, 2013 2:08 PM
**To:** 'SPENCER Tim'
**Cc:** SCHWARZ Bob; DANA Kevin; kakumyo lowe-charde (kakumyo@gmail.com); Jeremy Zimber
**Subject:** RE: Dharma Rain Surcharge monitoring

Thanks Tim. We're scheduled to meet with Jason tomorrow at 9 AM. As we discussed, it appears we have some access limitations on a couple of the probes identified in our Baseline and Surcharge Monitoring Plan. I'll send a follow up email after the site visit to let you know which wells will not be monitored during surcharge activities. Mike

**Mike Coenen, P.E.**
Associate Engineer

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**From:** SPENCER Tim [mailto:SPENCER.Tim@deq.state.or.us]
**Sent:** Tuesday, October 29, 2013 2:02 PM
**To:** Mike F. Coenen
**Cc:** SCHWARZ Bob; DANA Kevin
**Subject:** RE: Dharma Rain Surcharge monitoring

Hi Mike,

Interesting question. I forget how many hours per day the blower currently runs. Jason, Mike Hashem's field person, would know the current schedule. As we discussed, the goal is to try to detect maximum gas levels that occur in select perimeter probes during the surcharge. So it would be good to determine the blower schedule and check the designated probes with blower turned off for the maximum period. That would provide useful feedback on whether blower operations should be extended or individual LFG extraction wells adjusted during the surcharge on the Dharma Rain property.

Please let me know if you have additional questions or comments.

Tim

---

**From:** Mike F. Coenen [mailto:mcoenen@geodesigninc.com]
**Sent:** Tuesday, October 29, 2013 12:28 PM
**To:** SPENCER Tim
**Subject:** Dharma Rain Surcharge monitoring

Hi Tim,

Should we have the blower off when we do the monitoring from the perimeter gas probes?

Thanks,

**Mike Coenen, P.E.**
Associate Engineer

503.726.3143 direct
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**TABLE 1**
**Surcharge Methane Monitoring Results**
**Dharma Rain Zen Center Proposed Householder Refuge and Temple**
**LaVelle Landfill**
**Portland, Oregon**

| Location I.D. | Date | Barometric Pressure (inches Hg) | | Pressure (IOW) | Concentration (pbv) | | | Comments |
|---|---|---|---|---|---|---|---|---|
| | | Initial | Final | | Methane | Carbon Dioxide | Oxygen | |
| MW-1s | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 0.8 | 18.7 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 0.7 | 18.5 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.9 | 18.8 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.4 | 19.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.5 | 19.1 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.4 | 19.3 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 6.08 | 0.0 | 0.3 | 19.0 | Surcharge, System Off |
| MW-1d | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 1.3 | 18.6 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 1.5 | 18.2 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 1.3 | 18.5 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 1.0 | 18.6 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.5 | 19.3 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.7 | 19.2 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 0.0 | 0.4 | 19.2 | Surcharge, System Off |
| MW-2s | 09/24/13 | 29.63 | 29.61 | -0.01 | 0.0 | 0.8 | 18.2 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 1.1 | 17.8 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -0.01 | 0.0 | 0.3 | 19.1 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.3 | Surcharge, System Off |
| | *11/19/13* | *29.63* | *29.60* | *-0.02* | *0.0* | *0.1* | *19.6* | *Surcharge, System Off* |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.5 | 19.3 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.01 | 0.0 | 0.1 | 19.4 | Surcharge, System Off |
| MW-2d | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 0.2 | 19.2 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 0.2 | 18.8 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.4 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.1 | 19.7 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.2 | 19.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 0.0 | 0.1 | 19.5 | Surcharge, System Off |
| MW-3s | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.6 | 10.5 | 8.1 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.5 | 12.8 | 6.3 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -0.02 | 2.0 | 18.5 | 2.0 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 10.5 | 12.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.02 | 1.8 | 7.9 | 13.3 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 3.4 | 16.3 | Surcharge, System Off |
| | *01/13/14* | *30.35* | *30.34* | *0.00* | *6.8* | *12.6* | *6.3* | *Surcharge, System Off* |

**TABLE 1**
**Surcharge Methane Monitoring Results**
**Dharma Rain Zen Center Proposed Householder Refuge and Temple**
**LaVelle Landfill**
**Portland, Oregon**

| Location I.D. | Date | Barometric Pressure (inches Hg) | | Pressure (IOW) | Concentration (pbv) | | | Comments |
|---|---|---|---|---|---|---|---|---|
| | | Initial | Final | | Methane | Carbon Dioxide | Oxygen | |
| MW-3d | 09/24/13 | 29.63 | 29.61 | -133.35 | 0.0 | 0.5 | 19.0 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -141.25 | 0.0 | 0.6 | 18.3 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -143.25 | 0.0 | 0.5 | 19.1 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -141.11 | 0.1 | 0.5 | 19.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -160.09 | 0.0 | 0.6 | 19.4 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -148.47 | 0.0 | 1.5 | 19.2 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -150.00 | 0.1 | 2.3 | 18.3 | Surcharge, System Off |
| MW-4s | 09/24/13 | 29.63 | 29.61 | -0.01 | 23.6 | 27.8 | 0.0 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -0.01 | 16.8 | 23.7 | 3.2 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -0.04 | 15.7 | 27.5 | 0.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 4.74 | 8.4 | 23.6 | 0.9 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.02 | 9.2 | 20.5 | 1.7 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 1.2 | 15.9 | 1.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.02 | 20.2 | 21.5 | 0.0 | Surcharge, System Off |
| MW-4d | 09/24/13 | 29.63 | 29.61 | -117.61 | 0.2 | 1.2 | 18.7 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -36.34 | 0.0 | 0.2 | 18.6 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -31.66 | 0.0 | 0.3 | 19.2 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -95.59 | 0.1 | 0.5 | 19.3 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -65.85 | 0.0 | 0.3 | 19.5 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -35.20 | 0.0 | 0.2 | 19.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -95.48 | 0.1 | 0.6 | 19.3 | Surcharge, System Off |
| MW-5s | 09/24/13 | 29.63 | 29.61 | -0.01 | 0.0 | 4.6 | 14.1 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 7.1 | 10.1 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 4.8 | 14.7 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.01 | 0.1 | 1.3 | 18.7 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.03 | 0.0 | 1.3 | 18.6 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.01 | 0.0 | 2.1 | 14.5 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.03 | 0.1 | 4.7 | 12.5 | Surcharge, System Off |
| MW-5d | 09/24/13 | 29.63 | 29.61 | -0.01 | 3.5 | 22.3 | 0.0 | Baseline |
| | 10/30/13 | 29.98 | 29.86 | -0.01 | 10.3 | 25.5 | 0.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.01 | 0.0 | 7.4 | 13.2 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -0.04 | 0.1 | 3.6 | 17.2 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.06 | 0.0 | 3.5 | 17.6 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.6 | 6.7 | 7.5 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -0.01 | 0.0 | 17.0 | 3.7 | Surcharge, System Off |
| MW-14s | 09/24/13 | 29.63 | 29.61 | 0.00 | 0.0 | 3.3 | 14.0 | Baseline |

**TABLE 1**
**Surcharge Methane Monitoring Results**
**Dharma Rain Zen Center Proposed Householder Refuge and Temple**
**LaVelle Landfill**
**Portland, Oregon**

| Location I.D. | Date | Barometric Pressure (inches Hg) | | Pressure (IOW) | Concentration (pbv) | | | Comments |
|---|---|---|---|---|---|---|---|---|
| | | Initial | Final | | Methane | Carbon Dioxide | Oxygen | |
| MW-16s | 09/24/13 | 29.63 | 29.61 | -0.02 | 0.0 | 4.5 | 14.1 | Baseline |
| MW-17s | 09/24/13 | 29.63 | 29.61 | -0.02 | 0.0 | 5.6 | 12.5 | Baseline |
| MW-29 | 10/30/13 | 29.98 | 29.86 | -0.82 | 32.6 | 15.4 | 0.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | -4.32 | 29.5 | 10.9 | 0.2 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -1.53 | 28.2 | 7.4 | 0.0 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -0.98 | 5.0 | 2.3 | 14.7 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -2.31 | 12.1 | 5.7 | 8.7 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -6.77 | 22.4 | 7.4 | 0.0 | Surcharge, System Off |
| MW-30 | 10/30/13 | 29.98 | 29.86 | 6.18 | 1.0 | 0.4 | 17.1 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.2 | 19.1 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | -7.56 | 8.3 | 0.9 | 1.0 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -150.56 | 0.6 | 0.6 | 13.4 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -142.69 | 0.1 | 0.3 | 18.5 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -200.85 | 0.3 | 0.3 | 19.0 | Surcharge, System Off |
| MW-31 | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.0 | 0.1 | 19.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | 0.00 | 0.0 | 0.6 | 19.3 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | 0.00 | 0.0 | 0.4 | 19.6 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | 0.00 | 0.0 | 0.6 | 19.0 | Surcharge, System Off |
| MW-32 | 10/30/13 | 29.98 | 29.86 | 0.00 | 0.5 | 0.9 | 18.0 | Baseline, System Off |
| | 11/05/13 | 29.91 | 29.94 | 0.00 | 0.0 | 0.1 | 19.3 | Surcharge, System Off |
| | 11/13/13 | 30.17 | 30.11 | 0.00 | 0.1 | 0.1 | 19.4 | Surcharge, System Off |
| | 11/19/13 | 29.63 | 29.60 | -9.57 | 0.4 | 6.9 | 6.5 | Surcharge, System Off |
| | 12/19/13 | 30.08 | 30.06 | -10.88 | 3.0 | 10.3 | 2.8 | Surcharge, System Off |
| | 01/13/14 | 30.35 | 30.34 | -13.93 | 4.5 | 10.7 | 0.0 | Surcharge, System Off |

Notes:
Hg: Mercury
IOW: Inches of water
pbv: percent by volume

Gas Measurements, LaVelle Landfill, June 5, 2014

I visited the site on Thursday, June 5th. The meter was calibrated for all three gases before leaving the office and static pressure was zeroed at each well before making any connections. It was sunny and downright hot.

General Conditions

I was able to locate all seven wells on the list fairly easily. MW-29 and -30 are in yards and are well exposed. MW-32 and -31 are marked with four-foot tall lathing posts. MW-5 is in the middle of a sidewalk and MW-4s and -3s are in a grassy, brushy area but are marked with five-foot-tall metal pipes with orange stripes. I don't think I would have found MW-32, -4, and -3 without the posts. All the wells have flush mount vaults and the three mentioned are in densely vegetated areas and well hidden. There are no usable bolts on any of the flush mount lids; they are either missing entirely or are stripped out.

Well Status

MW-29 was easily accessible. The interior of the vault was dry and the connectors seemed to latch well. The vault at MW-30 is free of standing water but the well casing and the PVC well itself are still full of water, leaving no headspace in which gases could accumulate so no readings were taken. If you want, I could go out a few days before the next monitoring event and bail or pump it dry to see on coming back for the next round of measurements the well would be usable.

MW-31 is full of gravel and soil and only has a four inch deep headspace. In addition, the female coupling is either corroded or jammed and the ball bearings that hold the connectors together are retracted and will not extend to engage the male connector in an air tight seal. I have a spare female connector and could replace it a few days before the next event to give it time to equilibrate (maybe at the same time that MW-30 is pumped dry), but with the small headspace and having no way to determine whether or not the material in the well will allow gas circulation from the subsurface, I don't know if that would be a good use of time.

At MW-32, after all the readings were recorded, the connectors were uncoupled which resulted in an audible rush of air into the well. This seems to me to indicated that there is a very poor connection between the well and the surrounding formation and a partial vacuum was created during sampling.

MW-5d has a different fitting than the other wells; a 1/4 inch brass nipple with a valve to control when the pressure reading is taken. MW-4s and -3s are in the fenced area to the east. There is a new gate installed across the access road for the construction that is underway but I assume that it will be open during normal working hours. Even with the pipe markers it still took a while to locate them in the grass and blackberries. They also do not have standard flush mount vaults and have large lids that appear "home made."

Results

Many of the measurements show near atmospheric concentrations. I have a suspicion that the female connectors are corroded or dirty enough that they are not closing tightly around the male probe. As described for MW-32, the ball bearing tensionors could be partially jammed and not making the connection air tight. They might be freed up with something as simple as an application of WD-40 or some other solvent. I don't think a solvent would show up in the gas measurement (right?). Again, this would have to be done a few days before the next event to allow pressures and concentrations to equilibrate again. Only MW-29 has been measured twice and the readings match fairly well.

If the schedule is to do the measurements every two weeks the next round should be done on or around June 19th. If you want any of the extra work done before that I'm free to do it on June 16th. It appears that the wells haven't undergone any maintenance for quite a while.

| Well ID | Static Pressure | CH4 | CO2 | O2 |
|---|---|---|---|---|
| MW-29 5/27/2014 | 0.5 | 6.3 | 2.4 | 3.5 |
| MW-29 6/5/2014 | -1.8 | 1.8 | 0.7 | 9.3 |
| MW-30 | NA | NA | NA | NA |
| MW-31 | 0.1 | 0 | 0.6 | 20.7 |
| MW-32 | 0 | 3.5 | 7.9 | 2.9 |
| MW-5d | 0 | 0 | 1.8 | 19.5 |
| MW-4s | 0 | 0 | 8.9 | 6.4 |
| MW-3s | 0 | 0.1 | 2 | 19.5 |

Oregon
John A. Kitzhaber, MD, Governor

Department of Environmental Quality
Northwest Region
2020 SW 4th Ave, Suite 400
Portland, OR 97201
(503) 229-5263
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TTY 711

Certified Mail No. 7012 1010 0003 0263 7476

July 30, 2014

Mike Hashem
PSFM Limited Partnership
PO Box 1587
Clackamas, OR 97015

RE: Pre-Enforcement Notice PEN NWR-SW-14-01
H.G. LaVelle Landfill
Solid Waste Disposal Permit 211
Multnomah County

Dear Mr. Hashem:

The Oregon Department of Environmental Quality has determined that PSFM Limited Partnership is in violation of Oregon Administrative Rules 340-095-0080 and Solid Waste Disposal Site Closure Permit Number 211(the Permit) for the H.G. LaVelle Landfill, a closed construction and demolition landfill located east of NE 82nd Avenue between NE Siskiyou Street and NE Russell Street in Portland. OAR 340-095-0080(1) requires PSFM to carry out post-closure operations, maintenance, and monitoring of the closed landfill, including the landfill gas control system, and to comply with all conditions of the closure permit issued by DEQ on Nov. 14, 2011.

DEQ has been working with the Dharma Rain Zen Center to develop its part of the HG LaVelle Landfill property under a Prospective Purchaser Agreement (PPA). The initial phase of their project involved placing soil surcharges to reduce the potential for future settlement under planned structures. DEQ asked Dharma Rain to monitor select methane monitoring wells before and during the surcharge process to determine if the compressive effect of the soil load caused increased landfill gas migration. Dharma rain took gas readings at wells MW-29, MW-30, MW-31, MW-32, MW-1s, MW-1d, MW-2s, MW-2d, MW-3s, MW-3d, MW-4s, MW-4d, MW-5s and MW-5d on six occasions. Their gas readings indicated that methane levels exceeded the limits established in Condition 9.4 of the Permit at wells MW-29, MW-30, MW-3s, MW-4s, and MW-5d.

DEQ discussed these tests with you and also forwarded the results to you. You indicated that the high readings occurred because the gas control blower system had been out of commission as a result of vandalism and that you repaired the system after the final Dharma Rain readings were taken on January 13, 2014.

In addition to the Dharma Rain information, DEQ conducted methane monitoring at the landfill on May 27, 2014 and on June 5, 2014. During these monitoring events DEQ determined that many of the wells have not been properly maintained and cannot be accurately tested to determine landfill gas concentrations. As you know, methane gas is explosive in air at concentrations of 5 to 15 percent by volume. Maintaining the landfill gas monitoring system in functioning condition and conducting regular gas monitoring is critical to prevent explosion risks to adjacent businesses and residents. Elevated concentrations of methane in soil at the landfill perimeter could pose a safety risk to nearby residents and commercial businesses.

After review, DEQ has determined that PSFM Limited Partnership has not complied with OAR Chapter 340 Division 95 and the Permit. DEQ has concluded that the PSFM is responsible for the following violations of the Permit and Oregon environmental law:

VIOLATION 1: Pursuant to Condition 7.2 of the Permit, "by no later than October 15, 2012 the permittee must prepare an updated post-closure operations and maintenance plan and submit the plan to DEQ for review and approval." To date, DEQ has not received an updated post-closure operations and maintenance plan from PSFM. This is a Class II violation according to OAR 340-012-0053(2)(a).

This plan must be prepared and stamped by a registered engineer with current Oregon registration. Closed disposal sites require long-term operations and maintenance to protect human health and safety and the environment. The purpose of this plan is to describe the steps and procedures necessary to accomplish the closure permit requirements.

VIOLATION 2: Pursuant to Condition 7.4 of the Permit, "[t]he permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Refer to methane compliance limits in permit Section 9.4. The permittee must notify DEQ about any damaged, defective, or worn-out gas-system equipment, replace or repair such equipment immediately, and provide a written description of any such work in the annual post-closure maintenance and monitoring report."

On March 14, 2014 in response to DEQ's request, you indicated that the gas blower system was not functioning, causing high readings of gas. Allowing the gas blower system to malfunction is a violation of OAR 340-095-0020(9) and Condition 7.4 of the Permit. This is a Class I violation according to OAR 340-012-0065(1)(f).

When not properly maintained, the landfill gas control system cannot efficiently collect and vent landfill gas. Effective controls are needed to prevent landfill gas from migrating to adjacent residential and commercial properties. If landfill gas migrates toward neighbors of the permitted facility, there is an increased risk of fire or explosion due to higher methane concentrations in subsurface soils.

VIOLATION 3: Pursuant to Condition 7.5 of the Permit "the permittee must equip each landfill gas monitoring probe with appropriate sampling ports and valves, protect and maintain each probe, and repair or modify damaged or non-functional probes."

While conducting sampling in May and June 2014, DEQ determined that the gas monitoring probes have not been adequately maintained. Some monitoring probe lids would not close, some probes had stripped bolts, and some probes were plugged with gravel and soil so monitoring could not be done. This is a Class I violation according to OAR 340-012-0065(1)(f).

The landfill gas monitoring system must be maintained in functioning order to accurately measure landfill gas levels and ensure that the landfill gas control system operates effectively and prevents landfill gas migration to adjacent properties.

VIOLATION 4: Pursuant to Condition 9.4 of the Permit "[t]he concentration of methane must not exceed:

- 25 percent of the Lower Explosive Limit for methane in onsite structures (excluding gas control structures or gas recovery system components); and
- the Lower Explosive Limit for methane in soil gas at the facility boundary.

Note: The Lower Explosive Limit for methane is 5 percent by volume."

On January 13, 2014, methane concentrations exceeded the compliance limit at monitoring wells MW-29, MW-30, MW-3S, MW-4s, and MW-5d. In addition, DEQ's site monitoring on May 27, 2014, found methane concentrations above the compliance limit at MW-29. Methane gas is explosive in air at concentrations of 5 to 15 percent by volume. Elevated concentrations of methane in soil at the landfill perimeter pose a safety risk to nearby residents and commercial businesses. These are violations of OAR 340-095-0030(4)(a) and Condition 9.4 of the Permit. These are Class II violations according to OAR 340-012-0053(2)(a).

VIOLATION 5: Pursuant to Condition 10.2 of the Permit, prior to May 31, 2013, the permittee must submit a financial assurance plan to DEQ for review and approval. The permittee has not submitted a financial assurance plan as required in the permit. This is a Class I violation according to OAR 340-012-0065(1)(i).

VIOLATION 6: Pursuant to Condition 10.4 of the Permit, the permittee must submit to DEQ an annual update of financial assurance.

DEQ rules require that landfills maintain sufficient financial assurance funds to adequately perform post-closure care to protect public health and safety and the environment. PSFM has not developed a financial assurance plan that includes an estimate of post-closure care costs nor a mechanism to ensure funds are available to carry out post-closure care requirements by the deadline required in the permit, nor has PSFM submitted the required annual updates to this plan. This is a Class II violation per OAR 340-012-0053(2)(a).

VIOLATION 7: Pursuant to Condition 11.3 of the Permit, by February 15 of each year the permittee must submit to DEQ three copies of an annual post-closure maintenance and monitoring report for the past year's monitoring and maintenance period. DEQ requests one electronic copy and two paper copies. The permittee must submit this annual report to DEQ by February 15 for each year this permit is in effect.

The DEQ solid waste permit was issued on Nov. 14, 2011 so the first annual post-closure maintenance and monitoring report was due February 15, 2012 and reports were also due to DEQ on February 15, 2013, and February 15, 2014. PSFM has not submitted any annual reports since the permit was issued. These are Class II violations according to OAR 340-012-0053(2)(a).

This annual report must document all monitoring and maintenance and operations activities associated with the landfill's post-closure care as described in the post-closure plan and the landfill gas monitoring plan including an annual summary of landfill gas monitoring results and details about the landfill gas control system's performance. Specific requirements for the landfill gas monitoring plan are addressed in Condition 8.2 of the Permit.

VIOLATION 8: Pursuant to Condition 8.2 of the Permit, by March 31, 2012, the permittee must submit an updated landfill gas (LFG) plan to DEQ for review and approval. In addition, "[t]he plan updates must be prepared and stamped by a registered geologist or registered engineer with current Oregon registration." PSFM has not submitted an updated landfill gas monitoring plan to DEQ. This is a Class II violation according to OAR 340-012-0053(2)(a).

VIOLATION 9: Pursuant to Condition 8.9 of the Permit, detailing Quality Assurance Testing, "[e]ach year the permittee must retain the services of an independent DEQ-approved consultant to conduct at least one of the required landfill gas monitoring events."

The permittee has not retained the services of a qualified consultant to conduct independent landfill gas testing for any year that the current permit has been in effect. These is a Class II violation according to OAR 340-012-0053(2)(a).

Class I violations are the most serious violations; Class III violations are the least serious.

**Corrective action:**

DEQ requests that you and PSFM submit to DEQ, by August 25, 2014, a written proposal to bring the facility into compliance with the Permit and all applicable rules. The proposal must include at least the following:

1. A detailed plan and time schedule for achieving compliance in the shortest practicable time;
2. A description of the interim steps that will be taken to reduce the impact of the Permit violations until the permitted facility is in compliance with the Permit; and
3. A statement that you have reviewed all other conditions and limitations of the Permit and no other violations of the Permit were discovered.

PSFM must immediately retain the services of a qualified consultant to repair the landfill gas control and monitoring systems and independently conduct landfill gas testing. Please submit to DEQ a plan for repairs to the landfill gas monitoring system and the landfill gas control system by August 29, 2014.

As a result of Violation #3 above, DEQ is referring these violations to DEQ's Office of Compliance and Enforcement for formal enforcement action, which may include assessment of civil penalties or issuance of a DEQ order. DEQ may assess a civil penalty for each day of violation.

If you believe any of the facts in this pre-enforcement notice are in error, you may provide information to me via email or in writing at the address shown at the top of the letter. DEQ will consider new information you submit and take appropriate action.

DEQ will continue to assist you in your compliance efforts. Should you have any questions about the content of this letter or desire any follow-up technical assistance, please feel free to contact me in writing at spencer.tim@deq.state.or.us or by phone at 503-229-5826.

Sincerely,

Tim Spencer
Project Manager

cc: Bob Schwarz , DEQ ER (schwarz.bob@deq.state.or.us)
Audrey O'Brien, DEQ NWR (obrien.audrey@deq.state.or.us)
Office of Compliance and Enforcement, DEQ Headquarters

## CERTIFICATE OF SERVICE

On June 24, 2016, mailed the foregoing DECLARATION OF RICHARD D. SENDERS IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY DETERMINATION in OAH Case No. 1604492.

***Sent By Email and by First Class Mail to:***

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Refferal@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*Kieran.ODONNELL@state.or.us*

Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 24 day of June, 2016.

ROSE, SENDERS AND BOVARNICK, LLC

Richard D. Senders, OSB #742931
Attorney for Plaintiff
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | OAH Case No. 1604492 |
| | ) | Agency Case No. LQ/SW-NWR-15-048 |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM,** | ) | **DECLARATION OF MIKE HASHEM IN SUPPORT OF MOTION FOR SUMMARY DETERMINATION** |
| | ) | |
| Respondents. | ) | |
| | ) | |

I, Mike Hashem, do hereby declare as follows:

I am a respondent in the above-captioned case. I am over the age of 21 and have personal knowledge of the matters stated herein. This declaration is submitted in support of respondents Hashem and Skidmore's motion for summary determination.

In 1996, I participated in the formation of PSFM Limited Partnership ("PSFM'). The general partner of PSFM is M.M.D.F. Corp. I was the president of M.M.D.F. Corp. Attached hereto as Exhibit 1 is PSFM's Certificate of Limited Partnership. As the president of M.M.D.F. Corp., I was involved in the acquisition of a portion of the 33-acre site known as the Lavelle Landfill, and I was involved PSFM's administration of the closure permit issued to PSFM.

Rose City Sand & Gravel Co., the owner and operator of the former landfill, had subdivided the 33-acre tract into five parcels and put the property on the market for sale. In or about 1997, PSFM acquired Parcel No. 4, which was approximately 21 acres. At about the same time, M. Hashem Limited Partnership acquired Parcel 2, which was 1.5 acres, and Parcel 3, which was approximately 4.5 acres. The General

Partner of M. Hashem Limited Partnership was N.M.B. Corp. I was the president of N.M.B. Corp. Parcel 1, which is approximately one-half acre, was sold by Rose City Sand & Gravel Co. to an individual who built a carpet store. Parcel 5, which amounted to approximately five acres, was sold by Rose City Sand & Gravel Co. to a developer who built the Madison Place Apartments.

At the time that PSFM made its purchase, I was informed that the Lavelle Landfill was a former quarry pit that was operated by Rose City Sand & Gravel Co. Rose City had mined the property for sand and gravel to a depth of up to 80 feet. Beginning in 1972, mining operations ceased, and the quarry pit was operated as a demolition landfill. The landfill was permitted to receive building and demolition debris, wood products, metals, heavy industrial debris, and similar materials. The landfill closed in 1982. Following closure, the landfill was covered with a soil cover.

I was also informed that the landfill had a landfill gas control system that was designed and constructed along the landfill's north and west boundaries in 1979 to monitor and to extract methane gas from the landfill. The system included a network of extraction wells connected to a header pipe running along the perimeter of the landfill. The header pipe is connected to an extraction blower. The system also includes monitoring wells that allow the sampling of methane gas levels at various locations and vents.

In 1998, PSFM assumed the solid waste disposal site closure permit that had previously been issued to Rose City Sand & Gravel Co. DEQ issued an amended solid waste disposal site closure permit on June 30, 1998 that names PSFM as the prermittee, owner, and operator. A copy of the 1984 permit issued to Rose City Sand & Gravel Co. Is attached as Exhibit 2. A copy of the 1994 extension of the permit is

attached as Exhibit 3. A copy of PSFM's assumption of the permit is attached as Exhibit 4. DEQ erroneously included my name on the permit. The permit should have identified the permittee as PSFM Limited Partnership, in care of Mike Hashem, rather than identifying the permittee as Mike Hashem PSFM Limited Partnership.

In March of 2000, PSFM sold its 21-acre parcel to Skidmore on contract. The contract was paid off in 2004. Skidmore is an Oregon limited partnership with Skidmore Management Corp. as its general partner. I was the president of Skidmore Management Corp. at that time.

The Lavelle Landfill closure permit was scheduled to expire on March 31, 2004. At the request of DEQ, PSFM submitted an application to renew the Permit on September 1, 2003. The application was signed by me, in my capacity as president. A copy of the application is attached hereto as Exhibit 5.

In 2004 or 2005, M Hashem Limited Partnership sold Parcel 2, which is approximately 1.5 acres, to Asian American Plaza LLC.

PSFM's application to renew the permit languished at DEQ for over seven years. During this time Skidmore made efforts to sell all or a major portion of its property to a big box retailer. The sale never materialized.

In February of 2009, DEQ issued PSFM an order requiring it to investigate and to take remedial action at the landfill due to high methane readings, even though its closure permit had expired. A work plan was prepared by PSFM's engineers and approved by DEQ. The work plan called for expansion of the active gas extraction and passive ventilating system that was installed at the landfill in 1979. Pursuant to the work plan, four new extraction wells were added to the system as well as additional low grade piping. This work was completed by the end of September 2009.

PSFM employed Jason Bennett to take monthly samples of methane gas levels from the various monitoring wells and provide the readings to DEQ. Mr. Bennett was trained by DEQ on how to sample methane gas levels.

In January of 2010, DEQ conducted a series of tests. DEQ concluded that the wells on the east side of the landfill did not require further monitoring, and it excluded monitoring wells 20, 28, 27, 19, 26, 25, 18, 24, 23, and 33 from the monitoring requirements. It was also recommended that the extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continued to be elevated along the landfill's south side where monitoring well 29 was located. A copy of DEQ's email regarding the monitoring wells is attached as Exhibit 6.

In or about late September or early October 2011, DEQ submitted a draft of a new solid waste disposal site closure permit to PSFM for its review and comments. The draft listed Mike Hashem, M. Hashem Limited Partnership, and PSFM as the permit holders. Attached as Exhibit 7 is the DEQ's Permit Evaluation dated September 29, 2011. Attached as Exhibit 8 is the draft permit. Mr. Hashem objected to naming M. Hashem Limit Partnership and himself as permit holders. Attached as Exhibit 9 is an email from Mike Hashem to Tim Spencer at DEQ and the Department's response. DEQ corrected the draft and issued the permit naming PSFM as the only permittee. The operator was also PSFM. Under owner, DEQ put both Mike Hashem's name and PSFM. This again was in error. PSFM, at the time, had no ownership interest in any of the property and neither did Mike Hashem. A copy of the permit dated November 18, 2011 is attached as Exhibit 10.

In 2012, M. Hashem Limited Partnership and Skidmore did a lot line adjustment. After the lot line adjustment, Skidmore retained 12.5 acres, and M. Hashem Limited

Partnership owned 13.7 acres. Following the lot line adjustment, M Hashem Limited Partnership entered into an agreement to sell all of the 13.7 acre parcel to Northwest Zen Sangha, dba Dharma Rain Zen Center ("Dharma"). In October 2012, Dharma and DEQ entered into a Consent Order and Prospective Purchase Agreement which allows Dharma to redevelop the property without liability for prior releases. As part of the development, Dharma is allowed to surcharge the soil, monitor methane gasses, and build structures on its property. It was also authorized to modify the extraction system and monitoring wells in order to build a street. PSFM was not a party to the negotiations or to the agreement. A copy of Consent Order and Prospective Purchase Agreement is attached as Exhibit 11.

On March 14, 2014, DEQ notified PSFM that monitoring well 29 was showing elevated methane readings, and it asked PSFM to increase the hours of blower operation for the extraction system in an effort to reduce the methane gasses. A copy of the email is attached as Exhibit 12. That same day, PSFM notified DEQ of a problem it had with the gas blower extraction system a couple of months earlier, and PSFM speculated that this was the likely cause of the higher than normal reading. In the same email, PSFM reported to DEQ that the extraction blower system had been repaired. PSFM agreed to follow DEQ's recommendations and to retest the monitoring wells that were producing the high readings. A copy of PSFM's email to DEQ is part of Exhibit 12. By March 20, 2014, PSFM was reporting that well 29 was in compliance. Attached as Exhibit 13 is an email chain between DEQ and PSFM.

On June 5, 2014, DEQ staff reviewed the condition of some of the monitoring wells. The staff found that some of the wells were in poor condition. In an email dated June 10, 2014, DEQ asked PSFM to repair certain monitoring wells. PSFM responded on June 11, 2014 that it would send out its technician to check the wells and make

needed repairs. A copy of the email chain is attached as Exhibit 14. On June 26, 2014, PSFM emailed DEQ that the monitoring wells were in good working order except for monitoring well 31, which had been placed in a manhole and was constantly inundated by water. Monitoring well 29 showed methane gas levels within compliance limits. A copy of the email is attached Exhibit 15.

On July 30, 2014, DEQ issued its Pre-Enforcement Notice. PSFM replied to the Notice and denied any violations of the closure permit. In May of 2015, DEQ issued the Notice of Civil Penalty Assessment and Order.

At all material times, the monitoring wells on Skidmore's property all showed methane gas levels within compliance limits. Monitoring well 29 is on property belonging to the Madison Apartments and is close to the Dharma property line. The blower and extraction pump for the LFGCS is located on property belonging to the carpet store.

Neither Skidmore nor I have ever applied to DEQ to assume PSFM's responsibilities under the closure permit. Neither Skidmore nor I have ever entered into a contract with PSFM by which either one of us assumes responsibility or liability for the performance of PSFM's obligations under the closure permit.

Since the issuance of the permit in 2011, DEQ has never notified me that it intended to issue or had issued formal findings that the Lavelle Landfill after 30 years of closure possess a significant hazard or risk to public health, safety or the environment. At no time has DEQ formally notified PSFM or me that the closure permit issued to PSFM will not expire 30 years after the Lavelle Landfill closed.

**I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.**

DATED this 22nd day of June, 2016.

Mike Hashem

522-424-85

FILED
JUN 13 1996
Secretary of State

CERTIFICATE OF LIMITED PARTNERSHIP
OF
PSFM LIMITED PARTNERSHIP

The undersigned, being the General Partner of PSFM Limited Partnership, hereby certifies as follows:

**ARTICLE I**

Name

The name of this limited partnership is PSFM Limited Partnership.

**ARTICLE II**

Date of Dissolution

The latest date upon which this limited partnership is to dissolve is December 31, 2075.

**ARTICLE III**

Records Office

The address of the office where records of the limited partnership will be kept is 120 SW Ankeny St., Suite 317, Portland, OR 97204.

**ARTICLE IV**

Registered Agent

The name and the street address of the initial Registered Agent is Joseph J. Hanna, Jr., 1300 S.W. Sixth Ave., Suite 300, Portland, OR 97201.

**ARTICLE V**

Notices

The address where the Corporation Division may mail notices is 1300 S.W. Sixth Avenue, Suite 300, Portland, OR 97201.

**ARTICLE VI**

General Partner

The name and business address of the General Partner is M, M, D, F Corp., 120 SW Ankeny St., Suite 317, Portland, OR 97204.

IN WITNESS WHEREOF, the undersigned executes this Certificate, under penalties of false swearing and perjury, that the facts stated in this Certificate are true this 12th day of June, 1996.

M, M, D, F CORP., General Partner

By: _____
Mike Hashem, President

Person to contact about this filing:

Joseph J. Hanna, Jr. (503) 273-2700
Name Daytime Telephone Number

FACILITY ID: 1040944
LOSE CITY SAND & GRAVEL
MAIL ID: 87120

Permit Number: 211
Expiration Date: 10/31/94
Page 1 of 5 Pages

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT

Department of Environmental Quality
522 Southwest Fifth, Portland, OR
Mailing Address: Box 1760, Portland, OR 97207
Telephone: (503) 229-5913

Issued in accordance with the provisions of ORS Chapter 459

ISSUED TO:

Rose City Sand & Gravel Co.
8196 S.W. Hall Blvd., Suite 230
Beaverton, OR 97005

OWNER: Rose City Sand & Gravel Co.

OPERATOR: Rose City Sand & Gravel Co.

FACILITY COVERED BY THIS PERMIT:

FACILITY NAME:

H.G. LaVelle Landfill

FACILITY TYPE AND LOCATION:

Demolition Landfill
Sec 28, T1N, R2E, W.M.
Multnomah County

ISSUED IN RESPONSE TO: An application received March 15, 1984.

ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY

Fred Hansen, Director — Date: DEC 1 1984

## Permitted Activities

Until such time as this permit expires or is modified or revoked, the permittee is authorized to close and maintain a solid waste land disposal site in conformance with the requirements, limitations, and conditions set forth in attached schedules as follows:


| | Page |
|---|---|
| Schedule A--Authorized and Prohibited Activities | 2 |
| Schedule B--Minimum Monitoring and Reporting Requirements | 2 |
| Schedule C--Compliance Conditions and Schedules | - |
| Schedule D--Special Conditions | - |
| Schedule E--Closure and Post-Closure Maintenance Requirements | 3 |
| Schedule F--Financial Assurance Requirements | 4 |
| General Conditions and Disclaimers | 5 |


This permit does not relieve the permittee from responsibility for compliance with other applicable federal, state, or local laws, rules, or standards.



P.04/08
DEC-16-2008 22:59

## SCHEDULE A

Authorized and Prohibited Activities

1. The permittee is prohibited from accepting solid waste as defined in ORS 459.005 without written authorization by the Department.

2. The permittee is prohibited from accepting hazardous waste as defined in ORS 459.410.

3. Any prohibited wastes shall be removed from the authorized solid waste as soon as discovered and shall be transported to a disposal site authorized to accept such waste. Such wastes shall be transported within 48 hours, unless otherwise approved by the Department. Temporary storage and transportation shall be carried out in accordance with the rules of the Department.

4. No burning of any solid waste shall be allowed at the disposal site.

5. The permittee may accept soil, rock, and concrete or asphalt rubble as fill material to bring area up to final grade.

## SCHEDULE B

Minimum Monitoring and Reporting Requirements

1. The permittee shall monitor the disposal site operation and maintain records of the following required data to be submitted to the Department of Environmental Quality:

| Item or Parameter | Minimum Monitoring Frequency |
|---|---|
| a. Percent methane in each gas monitoring well | At least twice each month unless more frequent monitoring is required by the Department |

2. The reporting period is the calendar quarter. Reports must be submitted to the Department's Solid Waste Division, P.O. Box 1760, Portland, Oregon 97207, by the 15th day of the month following the end of each quarter.

3. Prior to July 1st of each year that this closure permit is in effect or as otherwise required by the Department, the permittee shall submit a report to the Department which contains, but is not limited to:

   a. An evaluation of the approved closure plan discussing the current status, unanticipated occurrences, revised closure date projections, necessary changes to the plan, completed and planned closure and post-closure maintenance activities, etc.

   b. Other information requested by the Department to determine compliance with the rules of the Department.

4. The permittee shall notify the Department immediately of any occurrence which causes or threatens to cause the unauthorized discharge of leachate or landfill gas to the environment or which affects or threatens to affect the operation of the disposal site or any of its facilities.



DEC-16-2008 22:59 P.05/08

5. The permittee shall report to the Department any changes of ownership of the disposal site property, or of the permittee's or operator's corporation, partnership, or similar entity within ten days of such changes of ownership.

SCHEDULE E

Closure and Post-Closure Maintenance Requirements

1. The permittee shall close and maintain the disposal site in accordance with the closure plan submitted February 25, 1983 and approved by the Department on March 15, 1983.

2. The permittee shall maintain the final surface contours of the disposal site so that rainfall is shed without creating either erosion or ponded water and so that all waste remains covered with soil. The permittee shall refill with approved soil, grade, and seed all areas that have settled or where water ponds and all areas where the cover soil has been damaged by cracking or erosion. Areas where vegetation has not been fully established shall be fertilized, re-seeded, and maintained.

3. The permittee shall establish and maintain suitable vegetation over the closed areas of the disposal site consistent with the proposed final use.

4. The permittee shall maintain the disposal site in a manner which minimizes leachate production. Leachate shall be controlled so as to prevent escapement to public waters in violation of any applicable state or federal water quality rules or regulations.

5. The permittee shall construct, operate, and maintain, in good working order, the landfill gas containment, collection, removal, and treatment system approved by the Department so that nuisance odors are minimized and so that the methane concentration does not exceed 1.25 percent within on-site structures (excluding gas control or gas recovery system components) or exceed 5 percent of the soil atmosphere beyond the landfill property boundary.

6. The permittee shall protect, maintain, and operate each landfill gas monitoring well or device so that samples, representative of actual conditions, can be collected. Any damage shall be immediately reported to the Department and the wells or devices shall be replaced or repaired within 14 days unless otherwise approved in writing by the Department.

7. The permittee shall divert surface water drainage away from areas where solid waste has been placed and shall maintain such surface water diversion ditches or structures to allow the free flow of water at all times.

8. Erosion of soil shall be controlled so that covered waste is not exposed and so that sediment entering surface waters from the disposal site is minimized.

9. The permittee shall immediately and thoroughly extinguish all fires and within 24 hours report them to the Department's Portland office at 229-5288.



DEC-16-2008 22:59 P.06/08

10. The permittee shall maintain the disposal site so that it is reasonably free of litter at all times.

11. The permittee shall control public access to the disposal site to prevent unauthorized entry and dumping.

12. The permittee shall physically inspect the entire disposal site to determine compliance with this permit and the rules of the Department at least once each month, or more often if necessary due to extreme weather or rainfall conditions or other unusual occurrences.

13. Any future use, activity, or construction of buildings, structures, or utilities on this disposal site shall be done in a manner which protects the integrity of the final cover soil, and protects the operation of any environmental control devices, such as leachate or landfill gas containment, collection, removal, or treatment facilities and surface water drainage diversion facilities.

14. This closure permit remains in effect and is a binding obligation of the permittee until it expires or until the Department terminates the permit according to OAR 340-61-028(6) or (7), or upon issuance of a new closure permit for the site to another person following receipt of a complete and acceptable application.

15. The permittee shall maintain this disposal site for a period of at least 10 years. The Department may amend this permit to extend the expiration date beyond that time if it finds that there is a need to protect against a significant hazard or risk to public health or safety or the environment.

SCHEDULE F

Financial Assurance Requirements

1. Financial assurance requirements are not applicable to this site.

JV:b
PSW211



DEC-16-2008 23:00 P.07/08

TOTAL P.08



General Conditions and Disclaimers

G1. Terms in this permit are used as defined in Oregon Administrative Rule 340-61-010.

G2. The conditions of this permit shall be binding upon the permittee. The permittee shall be responsible for all acts and omissions of all of the permittee's contractors and agents.

G3. The disposal site shall be operated in compliance with Oregon Administrative Rules, Chapter 340, Division 61, regarding disposal of solid waste.

G4. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

G5. The Department of Environmental Quality, its officers, agents, or employes shall not sustain any liability on account of the issuance of this permit or on account of the construction or maintenance of facilities because of this permit.

G6. The permittee shall allow representatives of the Department of Environmental Quality access to the disposal facility at all reasonable times for the purpose of making inspections, surveys, collecting samples, obtaining data, and carrying out other necessary functions related to this permit.

G7. This permit may be modified, suspended, or revoked in whole or in part during its term for cause including but not limited to the following:

a. Violation of any terms or conditions of this permit or any applicable rule, standard, or order of the Commission;

b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;

c. A significant change in the quantity or character of solid waste received or in the method of disposal site operation.

G8. This permit, or a photocopy thereof, shall be displayed where it can be readily referred to by operating personnel.



P.08/08



DEC-16-2008 23:00

Permit Number: 211
Expiration Date: 3/31/2004
Page 1 of 1 Pages

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT

Department of Environmental Quality
811 S.W. Sixth Avenue, Portland, OR 97204
Telephone: (503) 229-5263

Issued in accordance with the provisions of ORS Chapter 459.

**ISSUED TO:**

Rose City Sand & Gravel Co.
4875 S.W. Griffith Dr.
Beaverton, OR 97005
Tel: (503) 644-2800

**OWNER:** Rose City Sand & Gravel Co.

**OPERATOR:** Rose City Sand & Gravel Co.

**FACILITY COVERED BY THIS PERMIT:**

**FACILITY NAME:**

H.G. LaVelle Landfill

**FACILITY TYPE AND LOCATION:**

Demolition Landfill
Sec. 28, T1N, R2E, W.M.
Multnomah County

**ISSUED IN RESPONSE TO:** A renewal application dated February 25, 1994.

**ISSUED BY DEPARTMENT OF ENVIRONMENTAL QUALITY**

Tom Bispham, Administrator
Northwest Region

4-8-94
Date

## ADDENDUM NO. 1

In accordance with Oregon Administrative Rules 340-14-040, Solid Waste Disposal Site Closure Permit No. 211 is hereby amended as follows:

The expiration date is changed to March 31, 2004.

This Addendum shall be attached to and made part of Solid Waste Disposal Site Closure Permit No. 211.

*This modification shall be effective 20 days from receipt.*

PSW211 (4/94)



DEC-16-2008 22:59 P.03/08

COPY

Permit Number: 211
Expiration Date: 3/31/2004
Page 1 of 1

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT:
## Construction and Demolition Waste Landfill

**Oregon Department of Environmental Quality**
**750 Front Street NE, Suite 120**
**Salem, OR 97310**
**Telephone: (503) 378-8240**

**Issued in accordance with the provisions of ORS Chapter 459**

**ISSUED TO:**

Mike Hashem
PSFM Limited Partnership
120 SW Ankeny #200
Portland, OR 97204

**FACILITY NAME AND LOCATION:**

H.G. LaVelle Landfill
Sec. 28, T1N, R2E, W.M.
Multnomah County

**OWNER:**

PSFM Limited Partnership
120 SW Ankeny #200
Portland, OR 97204

**OPERATOR:**

PSFM Limited Partnership
120 SW Ankeny #200
Portland, OR 97204

**ISSUED IN RESPONSE TO:**

- Notification of change of ownership received May 6, 1998.

**ISSUED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

Neil Mullane, Northwest Region Administrator — Date: 6-30-98

## ADDENDUM NO. 2

In accordance with Oregon Administrative Rules 340-14-040, Solid Waste Permit No. 211 is hereby amended as follows:

The permittee for this facility is changed as follows:

The new permittee is Mike Hashem of PSFM Limited Partnership.

This Addendum must be attached to and made part of Solid Waste Disposal Permit No. 211. The addendum is effective upon receipt.



DEC-16-2008 22:59 P.02/08

State of Oregon
Department of
Environmental
Quality

# Application
# For Renewal Of A Solid Waste Disposal Site Permit

Oregon Department of
Environmental Quality

**A. REFERENCE INFORMATION** *(Please Print clearly. SEE INSTRUCTIONS ON BACK.)*

1. PSFM Limited partnership
Legal Name of Applicant Registered (See #23 below.)

2. Ph. 503-631-3671 FAX 503-631-3672

3. PSFM Limited Partnership 82nd Ave Range -
Legal Name of Business/Facility (May be same as above.)

4. PO Box 1587
Mailing Address of Applicant

Clackamas OR 97015
City State Zip

5. Same as above -
Legal Name of Property Owner

6. Saa
Mailing Address of Property Owner

saa
City State Zip

7. Ph. _____ FAX _____

8. HG Forrest Landfill
82nd Ave Golph Range -
Common Name of Facility

9. 2806 NE 82nd
Facility Address

Portland OR 97204
City State Zip

10. PO Box 1587
Facility's Mailing Address

Clackamas OR 97015
City State Zip

MKHL20@aol.com
E-Mail at Facility

PSFMLP c/o
11. Mike Hashem Ph. 503-631-3671
Name of Facility Operator

12. Mult
County in which Facility is Located

13. Enter Facility Location by LATITUDE and LONGITUDE, SECTION, TOWNSHIP, and RANGE.

Section: 28 Township: 1N Range: 2 East

| LATITUDE | | | LONGITUDE | | |
|---|---|---|---|---|---|
| Degrees | Minutes | Seconds | Degrees | Minutes | Seconds |
| N00 | 43 | 30E | N89 | 56' | 00W |

**B. TYPE OF PERMIT REQUESTED** I am applying for the following permit renewal (check one): *for more information, call DEQ Western Region at (503) 378-8240, Ext. 252 or Northwestern Region at (503)-229-5353.*

- ☐ 14. Transfer Station/Material Recovery Facility Permit
- ☐ 15. Solid Waste Treatment Facility Permit
- ☐ 16. Landfill Permit
- ☑ 17. Closure Permit
- ☐ 18. Compost Facility Permit or Registration Authorization
- ☑ 19. Solid Waste Letter

**C. SIGNATURE** I hereby certify by my signature below that the information contained in this application, and the documents I have attached, are true and correct to the best of my knowledge and belief.

Mike Hashim President 9-1-03

20. Signature of Legally Authorized Representative (*See Instructions.*) Print Name Title Date

Continue on Back

**Numbers 14, 15, 16, 17 & 18: NO APPLICATION FEES ARE DUE WITH RENEWAL**

**Number 19 The RENEWAL FEE FOR SOLID WASTE LETTER AUTHORIZATION IS $500**

**dstuart@ rsblaw.net**

**From:** SPENCER Tim <SPENCER.Tim@deq.state.or.us>
**Sent:** Thursday, May 26, 2016 2:25 PM
**To:** SPENCER Tim
**Subject:** FW: HG LaVelle Landfill - Jan 14 inspection report
**Attachments:** Site inspection rpt-2009-01-14.doc

---

**From:** SCHWARZ Bob
**Sent:** Thursday, January 28, 2010 4:54 PM
**To:** 'mklll20@aol.com'
**Cc:** SCHWARZ Bob; SPENCER Tim; CAMERON Kenneth A
**Subject:** HG LaVelle Landfill - Jan 14 inspection report

Mike,
Attached is our inspection report following our Jan. 14 inspection. If you have concerns about our recommendations, please let me know. Ken Cameron will handle most of our site inspection work from now on. We would like to schedule a site visit with Jason in February as noted in the report.
Thanks.
Bob
**********

Bob Schwarz
Oregon Department of Environmental Quality
400 E. Scenic Drive, Suite 307
The Dalles, Oregon 97058
Phone: 541-298-7255 **x230**
Fax: 541-298-7330
Email: schwarz.bob@deq.state.or.us

**State of Oregon**
**Department of Environmental Quality Site inspection summary**

**Date:** January 20, 2010

**To:** file

**From:** Tim Spencer, Bob Schwarz

**Subject:** H.G. LaVelle Landfill, ECSI # 5118; January 14, 2010 site inspection

**Attendees:** DEQ: Tim Spencer, Ken Cameron, Bob Schwarz
Landfill owner rep: Jason Bennett

We arrived at the site at noon. Weather: Partly cloudy, 48F. The purpose of the trip was to measure landfill gas concentrations in key gas monitoring wells, and to compare readings using DEQ's monitor (LandTec GEM500 gas analyzer and extraction monitor) and the landfill owner's monitor (Gas Tech GT Land Surveyor).

Well locations are shown on the attached site map. Results are summarized in Table 1

**Table 1**
**Landfill gas readings, January 14, 2010**

| Monitoring well | Owner's Meter – Max. $CH_4$ | Owner's Meter - Steady State $CH_4$ | Owner's Meter – $O_2$ | DEQ Meter – Max. $CH_4$ | DEQ meter Steady State $CH_4$ | DEQ Meter – $O_2$ | DEQ Meter- $CO_2$ |
|---|---|---|---|---|---|---|---|
| MW-32 | 1 | 0 | 20 | 0 | 0 | 19 | |
| MW-31 | 0 | 0 | 20 | 0 | 0 | 20 | |
| MW-29 | 24 | 7 | 15 | 15.5 | 15.1 | 9.5 | |
| MW-29 (second reading) | | | | 7 | | 15 | |
| MW-17 | 0 | 0 | 17.2 | 0 | 0 | 16 | 3.4 |
| Beauty School (first reading) | 7 | 1 | 1 | 4.5 | 4.2 | 1.1 | |
| Beauty School (second reading) | | 2 | 0.8 | | | | |

**Observations**

In addition to the monitoring wells listed in this table, we also attempted to take gas readings at wells MW-5, 6 and 7. Each of these locations has paired shallow and deep wells. These are denoted here as S (shallow) and D (deep). MW-5S and 5D had caps that we were unable to remove. They did not have quick connect valves. MW-6S and 6D had no caps, and so were open to the atmosphere. Hart Crower's May 11, 2009 report notes that these wells are partially filled with soil. MW-7S and 7D had caps but no valve fittings. For these reasons, we did not measure gas at any of these three well pairs.

The site map (attached figure) indicates there are two pairs of wells on the south side of the landfill quite close to each other. These are MW-14 and 21, and MW-16 and 22. Jason said he has only ever found one well at each of these locations.

MW-30 and the manhole in which it sits, was filled with water. (This was also the case during our previous inspection on December 3, 2009.) We bailed approximately 12 gallons of water from the manhole and well casing but it returned quickly. We were therefore unable to measure gas at this well.

**Recommendations:**

1. All wells should be equipped with caps with quick-connect fittings for attaching the gas meter. DEQ concluded that wells on the east side of the landfill do not require further monitoring. The following wells are therefore excluded from this requirement (listed from north to south): MW-20, 28, 27, 19, 26, 25, 18, 24, 23, and 33.

2. Landfill gas should be measured at all monitoring wells on the north, west and south sides of the landfill.

3. The extraction blower run time should be increased from 8 hours per day to 12 hours per day to address methane concentrations that continue to be elevated along the landfill's south side.

4. The next round of readings should be done in February 2010. DEQ should collect readings from selected wells also, to provide additional information on how well the two meters correlate.

5. MW-30 is adjacent to a home and high methane readings have been recorded there in the past. It should therefore be pumped out so that it can be sampled from now on. A pump with sufficient capacity should be used so that water can be removed quickly.

# Permit Evaluation

Oregon Department of Environmental Quality
Northwest Region Office
2020 SW 4th Avenue
Portland OR 97204

Sept. 29, 2011

**Site:** **H.G. LaVelle Landfill**
**Solid Waste Disposal Permit No. 211**
**Closed Demolition and Construction Waste Landfill**
**Multnomah County**

**From:** **Tim Spencer, Project Manager**
**503-229-5826, spencer.tim@deq.state.or.us**

**Subject:** **Permit Renewal**

## Background

From 1972 to 1982, Harold LaVelle operated a demolition landfill at NE 82nd Avenue and NE Siskiyou Street. A former quarry pit, the site was owned by Rose City Sand & Gravel during its active landfill phase. The current owner, Mike Hashem, acquired the property in 1998.

Before landfill operations began, the original gravel quarry was excavated to a maximum depth of about 80 feet. The 23-acre landfill contains approximately 2 million cubic yards of solid waste, mostly construction and demolition debris. Demolition debris typically includes inert material such as brick and concrete and organic matter like land clearing debris, yard waste, and wood. DEQ records also indicate that commercial haulers disposed of some food waste at the landfill site, which violated DEQ permit requirements in effect then. The organic materials are biodegradable and will continue to generate landfill gas.

In the late 1970s, methane gas migrated from the landfill to neighboring properties north of the landfill along Siskiyou Street. DEQ required the landfill operator, Harold LaVelle, to install an active gas extraction and venting system in 1979 to protect the surrounding neighborhood. The landfill gas control system included 21 evenly-spaced extraction wells located along the landfill's north and west perimeters.

The extraction wells were connected by horizontal header pipes to a motor-blower unit which provided suction to the system. Although the original system was designed for future expansion along the east and south sides of the landfill, that expansion did not occur. In addition, DEQ required Mr. LaVelle to install a network of 34 landfill gas (LFG) monitoring probes around the entire site perimeter. The probes enabled the site owner to monitor methane concentrations,

evaluate the gas control system's effectiveness and comply with regulatory requirements. Some of the probes are no longer functional.

Large commercial entities, including Lowe's and Walmart, have considered the site for redevelopment but their proposals were unsuccessful mainly because they lacked local community support. A golf driving range operated on the site for about ten years and closed in the late 1990s. Remnants of this facility still exist on the property. The current landfill owner, Mr. Hashem, continues to explore redevelopment opportunities.

One prospective developer installed two deep groundwater monitoring wells and sampled the wells as part of their due diligence investigation to assess the site's environmental and legal liabilities. Although this investigation indicated the landfill had not impacted regional groundwater resources, it did confirm that the landfill still generates significant amounts of methane gas.

In September 2009 Mr. Hashem's consultant, Energyneering Solutions, Inc. installed four (4) new landfill gas extraction wells and collection pipes along the landfill's southern boundary. After connecting the new wells to the main header pipe located near 82nd Avenue, Energyneering, Inc. field staff adjusted the new wellfield to optimize well vacuum pressures and gas extraction rates and to integrate the new wells into the existing site-wide gas control system

The current closure permit was issued on January 30, 1998 and expired on April 4, 2004. The site owner submitted a permit renewal application to DEQ on September 1, 2003. Because the renewal application was on time, the existing permit has remained in force beyond the original expiration date, per OAR 340-093-0070 (7)(b)(iii).

**Compliance History**

As indicated above, the landfill's history includes violations of methane compliance limits that prompted DEQ to require corrective actions to protect public and safety.

On February 25th 2009, DEQ issued a Unilateral Cleanup Order to the site owner in response to detections of elevated methane levels in monitoring probes along the landfill's southern boundary near Knott Street and residential homes. The Order directed the landfill owner to expand and improve site methane controls and monitoring techniques. DEQ and the landfill owner conducted follow-up monitoring of the homes on Northeast Knott Street. Test locations included confined spaces such as utility vaults, building crawl spaces and home interiors. No methane was detected within or beneath these buildings or in exterior confined spaces near the Knott Street homes.

**Landfill Site Characteristics**

The landfill site is a former sand and gravel quarry. The depth to regional groundwater is approximately 200 feet below ground surface. Within the landfill footprint sand and gravel was completely mined out down to a fined-grained, silty-clay confining layer. This low-permeability

layer protects the regional sand and gravel aquifer from landfill related contaminants. The site geology, however, tends to promote subsurface methane gas migration.

Because of local topography and drainage patterns, stormwater runoff is routed toward a series of shallow dry wells located near the southeast corner of the landfill site. Under existing conditions, however, most runoff infiltrates into surface soils or ponds on and around the landfill before reaching the sumps.

DEQ will require that any site redevelopment projects include substantial improvements to the landfill cover such as impervious surfaces and increased surface slopes to promote drainage and reduce rainwater seepage into the landfill. If the site is not redeveloped and surface conditions improved within the next three or four years, DEQ should consider modifying the permit to require progress on these aspects of site management. In any case Mr. Hashem should explore possible sources of clean soil. Then he can begin the process of filling low spots on the landfill surface when the weather and soil conditions allow for earthwork and grading activities.

**Groundwater Quality Impacts**

Past sampling of two deep monitoring wells indicates that the landfill has not impacted groundwater quality within the uppermost aquifer, although existing data are inadequate to assess long-term groundwater quality trends and environmental risks. Because of its location, one of the wells was decommissioned during construction of the neighboring Asian American Plaza facility.

The landfill does not have a bottom liner or leachate collection system. Consequently, environmental protection relies completely on the soil cover and surface grading to limit infiltration and promote stormwater runoff, and on the properties of the native soils under the landfill to retain and attenuate leachate constituents before they reach groundwater. The existing cover system consists of about two feet of moderately permeable soil and is vegetated with grass.

**Landfill Gas Monitoring**

The previous permit required the permittee to test the landfill gas monitoring probes every two weeks. The proposed permit reduces that frequency to monthly. The landfill's increasing age, lower methane generation rates, and required improvements in methane monitoring techniques offset this reduction in monitoring frequency. Per requirements of the Unilateral Order, the permittee's consultants prepared an updated landfill gas monitoring plan. This plan includes detailed monitoring procedures and evaluates the condition and performance of the gas monitoring probe network.

**Financial Assurance**

The previous closure permit did not require H.G. LaVelle Landfill to provide financial assurance for funding post-closure maintenance and monitoring activities. The proposed permit will require financial assurance based on DEQ's current understanding of the site's environmental risks and on current DEQ rules and policies pertaining to all permitted landfills in Oregon.

## Summary of Proposed Permit

The draft permit includes the following new requirements and conditions.

- Enhanced landfill gas monitoring techniques and quarterly reporting of monitoring data.
- More comprehensive reporting of landfill gas testing results.
- Independent auditing of landfill gas monitoring results.
- Documentation and reporting of site maintenance activities
- A fully funded financial assurance program to cover costs of post-closure maintenance and monitoring.
- Preparation of a post-closure operations and maintenance plan for the site.
- Submission of annual post-closure maintenance and monitoring reports.

## Other DEQ Permits

There are no other DEQ permits currently issued for this landfill.

## DEQ Recommendation

The proposed closure permit should be issued to current site owner Mike Hashem.

State of Oregon
Department of
Environmental
Quality

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT
## Construction and Demolition Waste Landfill

**Oregon Department of Environmental Quality**
**2020 SW Fourth Avenue, Suite 400**
**Portland, OR 97201**
**Telephone: 503-229-5353**

**Issued in accordance with the provisions of ORS Chapter 459 and subject to the land use compatibility statement referenced below.**

DRAFT

**ISSUED TO:**

Mike Hashem
M. Hashem Limited Partnership/PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**FACILITY NAME AND LOCATION:**

H.G. Lavelle Landfill
Sec. 28, T1N, R2E, WM
Multnomah County

**OWNER:**

Mike Hashem
M. Hashem Limited Partnership/PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**OPERATOR:**

Mike Hashem
M. Hashem Limited Partnership/PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**ISSUED IN RESPONSE TO:**

- a solid waste permit renewal application received September 16, 2003

The determination to issue this permit is based on findings and technical information included in the permit record.

**ISSUED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

Audrey O'Brien
Solid Waste Manager
Northwest Region

Date

## Permitted Activities

Until such time as this permit expires or is modified or revoked, the permittee is authorized to maintain and monitor a solid waste land disposal site in conformance with the requirements, limitations, and conditions set forth in this document including all attachments.

## TABLE OF CONTENTS

**Introduction**

This document is a solid waste permit issued by the Oregon Department of Environmental Quality in accordance with Oregon Revised Statutes (ORS) 459 and Oregon Administrative Rules (OAR), Chapter 340.

**In this document**

This document contains the following sections:


| Section | Topic | See Page |
|---|---|---|
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| ---- | **Compliance Schedule** | |
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# PERMIT ADMINISTRATION

## 1.0 ISSUANCE

| | | |
|---|---|---|
| 1.1 | **Contents** | This section describes the administrative aspects of the permit including the following information:<br>• permittee<br>• permit number<br>• permit term<br>• facility type<br>• facility owner/operator<br>• basis for permit issuance<br>• definitions |
| 1.2 | **Permittee** | This permit is issued to Mike Hashem and PSFM Limited Partnership. |
| 1.3 | **Permit number** | This permit will be referred to as **Solid Waste Permit Number 211.** |
| 1.4 | **Permit term** | This permit is issued on the date this document is signed.<br>This permit's expiration date is **August 31, 2021.** |
| 1.5 | **Facility type** | The facility is permitted as a closed construction and demolition waste landfill. |
| 1.6 | **Facility owner/ operator** | The owner of this facility is:<br>Mike Hashem<br>PSFM Limited Partnership<br>PO Box 1587<br>Clackamas OR 97015<br><br>The operator of this facility is:<br>Mike Hashem<br>PSFM Limited Partnership<br>PO Box 1587<br>Clackamas OR 97015 |
| 1.7 | **Basis for permit issuance** | This permit is issued based upon the following documents submitted by the permittee:<br>• solid waste permit application received September 16, 2003. |
| 1.8 | **Definitions** | Unless otherwise specified, *all terms are as defined in OAR 340-93-030* |
| 1.9 | **Legal control of property** | The permittee must at all times maintain legal control of the disposal site property; including maintaining a current permit, contract or agreement that allows the operation of the facility if the site is not owned by the permittee. |

## 2.0 DISCLAIMERS

| | | |
|---|---|---|
| 2.1 | **Contents** | This section contains disclaimers for :<br>• property rights and<br>• department liability |
| 2.2 | **Property rights** | The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights. |
| 2.3 | **Department liability** | The Department and its officers, agents, and employees do not sustain any liability on account of the issuance of this permit or on account of the construction, maintenance, or operation of facilities pursuant to this permit. |

## 3.0 AUTHORITY

| | | |
|---|---|---|
| 3.1 | **Contents** | This section describes the Oregon Department of Environmental Quality's (DEQ's or The Department's) authority to issue this permit, and includes the following topics:<br>• 10 year permit<br>• documents superseded<br>• permittee responsibility<br>• other compliance<br>• penalties |
| 3.2 | **Ten year permit** | This permit is issued for a maximum of 10 years as authorized by Oregon Revised Statutes 459.245 (2). |
| 3.3 | **Documents superseded** | This document is the primary solid waste permit for the facility superseding all other solid waste permits DEQ has issued to Mike Hashem and PSFM Limited Partnership. |
| 3.4 | **Permittee responsibility and liability** | Conditions of this permit *are binding upon the permittee. The permittee must conduct* all facility activities in compliance with the provisions of this permit. The permittee is liable for all acts and omissions of the permittee's contractors and agents in carrying out the operations and other responsibilities pursuant to this permit. |
| 3.5 | **Other compliance** | The issuance of this permit does not relieve the permittee from the responsibility to comply with all other applicable federal, state, or local laws or regulations, including the following solid waste requirements, and any future updates or additions to these requirements:<br>• solid waste permit application received September 16, 2003.<br>• Oregon Revised Statutes, Chapters 459 and 459A;<br>• *Oregon Administrative Rules Chapter 340, and*<br>• any documents submitted by the permittee and approved by DEQ. |

| | | |
|---|---|---|
| **3.6** | **Penalties** | Violation of permit conditions will subject the permittee to civil penalties of up to $25,000 for each day of each violation [ORS 459.995(1)(a)]. |
| **3.7** | **DEQ access to disposal site** | The permittee must allow representatives of DEQ access to the permitted facility at all reasonable times for the purpose of making inspections, surveys, collecting samples, obtaining data and carrying out other necessary functions related to this permit. Reference: OAR 340-093-0050(6) |

## 4.0 PERMIT MODIFICATION

| | | |
|---|---|---|
| **4.1** | **Contents** | This section describes the permit-modification steps, including:<br>• permit review<br>• permit modification<br>• modification and revocation by DEQ<br>• modification by permittee<br>• public participation<br>• changes in ownership or address |
| **4.2** | **Permit review** | At any time during the permit's term, DEQ may review and amend the permit if necessary.<br><br>DEQ will consider the following factors in making this determination:<br>• the facility's compliance history;<br>• changes in the post-closure use or maintenance of the facility;<br>• changes in state or federal rules which should be incorporated into the permit;<br>• a significant release of leachate or landfill gas from the facility to the environment;<br>• proposals to redevelop the site or change its current use; or<br>• other significant information or events. |
| **4.3** | **Permit modification** | DEQ or the permittee may propose to change the permit at any time during the permit's term.<br><br>Once approved by DEQ, any permit-required plans become part of the permit by reference. DEQ may provide *notice and opportunity for review of permit-required* plans. |
| **4.4** | **Modification and revocation by DEQ** | DEQ's Director may, at any time before the permit expiration date, modify, suspend, or revoke this permit in whole or in part, in accordance with Oregon Revised Statutes 459.255 for reasons including but not limited to the following:<br>• violation of any terms or conditions of this permit or any applicable statute, rule, standard, *or order of the Commission*;<br>• obtaining this permit by misrepresentation or failure to disclose fully all relevant facts, or<br>• a significant change in the post–closure management or monitoring of the facility. |
| **4.5** | ***Modification by permittee*** | The permittee must apply for a permit modification if there is a significant change in *facility operations or management or monitoring or a deviation from permitted activities.* |

| | | |
|---|---|---|
| 4.6 | **Public participation** | DEQ will issue a public notice to inform the public of any significant changes to the permit. |
| 4.7 | **Changes in ownership** | The permittee must report to DEQ any change in the facility's ownership or the permittee's or operator's name and address at least ten (10) days prior to the change. |

## ALLOWABLE ACTIVITIES

### 5.0 AUTHORIZATIONS

| | | |
|---|---|---|
| 5.1 | **Contents** | This section describes the activities the permittee is authorized to conduct, including:<br>• post-closure care<br>• authorization of other activities<br>• other site activities determined by DEQ to be necessary or appropriate |
| 5.2 | **Post-closure care** | This permit authorizes the permittee to provide post-closure maintenance and monitoring at the facility. The permittee may accept clean soil or rock as needed to re-grade and maintain the surface contours of the landfill cover. |
| 5.3 | **Authorization of other activities** | The permittee must conduct all facility activities in accordance with the provisions of this permit and in accordance with DEQ-approved plans and procedures. DEQ-approved plans become part of the permit by reference. DEQ's conditions of approval of a plan also become part of this permit unless the permittee contests this action within 30 days after receipt of a conditional approval. |
| 5.4 | **Other site activities** | Before the permittee operates any other activities on this site, DEQ must approve these activities. |

### 6.0 PROHIBITIONS

| | | |
|---|---|---|
| 6.1 | **Contents** | This section describes specific activities the permittee is prohibited from conducting, including:<br>• waste acceptance<br>• open burning<br>• site changes |
| 6.2 | **Waste receipt** | The facility is a permanently closed construction and demolition landfill. The permittee is prohibited from accepting any waste for disposal or disposing of any waste at this site. |
| 6.3 | **Open burning** | The permittee must not conduct any open burning at the site. |
| 6.4 | **Site changes** | The permittee must not modify the landfill facility without the Department's written approval. |

# FACILITY POST-CLOSURE MANAGEMENT

## 7.0 POST-CLOSURE OPERATIONS AND MAINTENANCE

**7.1 Contents**

This section describes the post-closure operation and maintenance requirements for the landfill facility including:

- post-closure operations and maintenance plan
- post closure maintenance
- landfill gas control system
- landfill gas monitoring probes
- cover system maintenance
- surface grading, contours
- surface water control system
- leachate prevention
- stormwater control system
- routine inspections
- site redevelopment
- discovery of prohibited wastes
- spills notification
- access control
- fire protection
- submittals to DEQ
- submittal address

**7.2 Post-closure plan**

The permittee must prepare an updated post-closure operations and maintenance plan and submit the plan to DEQ for review and approval by no later than October 15, 2012. The post-closure plan must describe in detail how the permittee intends to carry out all activities identified in sections 7.4 to 7.12 of this permit as well as other requirements of this permit and must be prepared and stamped by a registered engineer with current Oregon registration.

The permittee must revise the post-closure plan as necessary to keep it reflective of current facility conditions and procedures. Plan revisions must be submitted to DEQ for approval.

Reference: *Solid Waste Landfill Guidance*, September 1996, provides information on applicable elements of a post-closure plan.

**7.3 *Post-closure* maintenance**

The permittee *must maintain the disposal site in accordance with the DEQ approved* post-closure plan and any amendments to the plan approved in writing by DEQ.

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| | | |
|---|---|---|
| **7.4** | **Landfill gas control system** | The permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Refer to methane compliance limits in permit Section 9.4<br><br>The permittee must notify DEQ about any damaged, defective, or worn-out gas-system equipment, replace or repair such equipment immediately, and provide a written description of any such work in the annual post-closure maintenance and monitoring report. |
| **7.5** | **Landfill gas monitoring probes** | To ensure accurate landfill gas monitoring results, the permittee must equip each landfill gas monitoring probe with appropriate sampling ports and valves, protect and maintain each probe, and repair or modify damaged or non-functional probes. |
| **7.6** | **Cover system maintenance** | The permittee must prevent soil erosion, protect the landfill cover's overall integrity, and mow cover vegetation or otherwise manage onsite vegetation to minimize fire hazards and potential nuisance conditions. Any construction or redevelopment proposals involving the landfill must include an evaluation of potential impacts to the cover system and a plan to restore and enhance the cover.. |
| **7.7** | **Surface contour maintenance** | The Permittee must maintain landfill-cover surface contours of at least 2 percent to minimize leachate generation by promoting storm water drainage and minimizing standing water and ponding. For any construction or redevelopment proposals involving the landfill, the permittee and prospective developer must evaluate the landfill's existing surface drainage deficiencies and propose engineering measures to enhance surface drainage and stormwater control. |
| **7.8** | **Surface *water control*** | The permittee must, at all times, divert surface water drainage around or away from the landfill *and* maintain *surface* water *diversion ditches or structures in good working* condition and free of obstructions and debris. |
| **7.9** | **Leachate prevention and control** | The permittee must maintain the landfill in a manner that deters leachate production to the maximum extent practicable. |
| **7.10** | **Stormwater control system** | The permittee must maintain perimeter stormwater drainage ditches in good working condition and free of debris and obstructions. |
| ***7.11*** | **Inspections** | *At* least once *each month the permittee must physically inspect the entire landfill site to* determine compliance with this permit and DEQ rules to assure that all environmental control systems and monitoring equipment are well maintained and functional. More frequent inspections may be necessary during or after extreme weather events or other unusual occurrences.<br><br>*The permittee must record any post-closure repairs performed. Inspection records* must be made available to DEQ upon request. The permittee must summarize the inspection results in the annual post-closure maintenance and monitoring report submitted to DEQ. |

| | | |
|---|---|---|
| 7.12 | **Future site development and use** | Any future redevelopment, use, activity, or construction of buildings, structures or utilities on this landfill site must have DEQ's prior written approval. Any future development must be accomplished in a manner that complies with DEQ's Hazardous Substance Remedial Action Rules (OAR 340 Division 122), this permit, and other applicable DEQ solid waste and cleanup laws and regulations. Any such development must also protect:<br>• the environment and public health and safety<br>• the integrity of the landfill cover (or provide an effective DEQ-approved replacement)<br>• landfill stability<br>• existing landfill gas control and monitoring facilities and equipment<br>• stormwater diversion and control facilities and any other surface water control systems |
| 7.13 | **Discovery of prohibited wastes** | Any solid wastes discovered at the facility must be isolated or removed immediately. Non-hazardous prohibited waste must, within 48 hours, be transported to a disposal site authorized to accept such waste, unless otherwise approved in writing by DEQ.<br>In the event that discovered wastes are hazardous or suspected to be hazardous, the permittee must, within 7 days, notify DEQ and initiate procedures to identify and remove the waste. Hazardous wastes must be removed within 90 days, unless otherwise approved by DEQ. Temporary storage and transportation must be carried out in accordance with DEQ rules. |
| 7.14 | **Spills notification** | Oregon Revised Statue 466.635 and Oil and Hazardous Materials Emergency Response Rules, Chapter 340, Division 142 require <u>immediate</u> notification to Oregon Emergency Response System (OERS) after taking any required emergency actions to protect human health and the environment when oil or hazardous materials are spilled. The spill must be immediately reported to OERS at 1-800-452-0311 if the spill is of a reportable quantity. Reportable quantities include:<br>• *any* amount of oil spilled to waters of the state;<br>• oil spills on land in excess of forty-two (42) gallons;<br>• two hundred (200) pounds or twenty-five (25) gallons or more of spilled pesticide residue; and<br>• spills of hazardous materials that are equal to, or greater than, the quantity listed in the Code of Federal Regulations, 40 CFR Part 302 (List of Hazardous Substances and Reportable Quantities), and amendments adopted before July 1, 2002.<br>For a complete list of hazardous materials required to be reported, refer to OAR 340-142-0050. |
| 7.15 | **Access control** | The permittee must control public access to the facility as necessary to prevent unauthorized entry and dumping. |
| 7.16 | **Fire *protection*** | The permittee must make arrangements with the local fire control agency to *immediately acquire their services when needed and provide adequate on-site fire* control protection, as determined through the local fire control agency.<br>Fires must be immediately and thoroughly extinguished and promptly reported to DEQ. |

**7.17 Annual Reporting Requirement**

By February 15, 2013 the permittee must submit to DEQ three copies of an annual post-closure maintenance and monitoring report for the past year's (2012) monitoring and maintenance period. DEQ requests one electronic copy and two paper copies. Paper copies should be printed on both sides of the paper whenever possible. Thereafter, the permittee must submit this annual report to DEQ by February 15 for each year this permit is in effect.

This annual report must document all monitoring and maintenance and operations activities associated with the landfill's post-closure care as described in the post-closure plan and the landfill gas monitoring plan including an annual summary of landfill gas monitoring results and details about the landfill gas control system's performance. Specific requirements for the landfill gas monitoring plan are addressed in permit section 8.2.

**Annual report contents:**

- describe all significant events that occurred at the site during the last year;
- describe the condition and performance of the landfill gas monitoring network including any repairs or changes to specific monitoring probes;
- tabulate and summarize all the gas monitoring data collected in the past year;
- discuss any methane exceedances and response measures including increased monitoring and corrective actions taken;
- describe the landfill gas control system's operations, maintenance, condition, and performance including the vacuum blower unit and extraction wells, and any required system adjustments or modifications;
- tabulate and summarize any landfill gas control system test data (for blower and/or extraction wells);
- describe general site maintenance activities including mowing, cover repairs, site grading, debris removal from stormwater drainage ditches, etc.

**7.18 Submittal address**

The permittee must submit all required documents to : Oregon Department of Environmental Quality Manager, Solid Waste Program

2020 SW 4th *Avenue, Suite 400*
Portland, OR 97201
Telephone: 503-229-5353
Fax: 503 229-6945

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# LANDFILL GAS MONITORING

## 8.0 LANDFILL GAS MONITORING REQUIREMENTS

| | | |
|---|---|---|
| 8.1 | **Contents** | This section describes the required landfill gas monitoring program including :<br>• monitoring plan<br>• monitoring equipment<br>• equipment calibration<br>• additional monitoring points<br>• gas probe purging<br>• monitoring schedule<br>• monitoring parameters<br>• quality assurance testing<br>• confined space monitoring<br>• summary of LFG monitoring procedures<br>• reporting requirements<br>• submittal address |
| 8.2 | **LFG monitoring plan** | The permittee must update the landfill gas (LFG) monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-required monitoring procedures. The current plan, dated April 3, 2009, was prepared by Hart Crowser, Inc. By March 31, 2012, the permittee must submit an updated plan to DEQ for review and approval. The plan updates must be prepared and stamped by a registered geologist or registered engineer with current Oregon registration. |
| 8.3 | **LFG monitoring equipment** | The permittee or the permittee's representatives must use DEQ-approved methane test equipment for conducting routine landfill gas monitoring. Some instruments lack built-in pressure measurement capabilities. With such instruments, use a separate magnehelic or equivalent approved pressure gauge to measure static pressure. |
| 8.4 | **Monitoring equipment calibration** | The permittee must properly calibrate the DEQ-approved methane meter the day of every monitoring event and before commencing monitoring activities. |
| 8.5 | **Additional monitoring points** | At any time during the permit's term DEQ may require the permittee to install additional landfill gas monitoring probes to address changes in site conditions or increases in landfill gas related health and safety risks. The permittee must incorporate any new or replacement monitoring probes or devices into the *LFG Monitoring Plan* and submit the updated plan to DEQ for review and approval. |
| 8.6 | **Gas probe purging** | During LFG monitoring events, the permittee must purge each monitoring probe sufficiently to obtain accurate gas concentration measurements that reflect soil gas characteristics *at the landfill property boundary*.<br>For each probe, calculate optimum purge times based on: 1) the monitoring probe depth; 2) probe casing diameter; 3) LFG test meter purge (flow) rates; and 4) purge time required for methane concentrations to stabilize in previous monitoring events. Updated purging procedures for each probe should be documented in the landfill gas *monitoring plan*.<br>**Note:** Refer to LFG monitoring plan for individual probe details. |
| 8.7 | **LFG Monitoring schedule** | The permittee must test all designated compliance monitoring probes at least once per month. Designated compliance monitoring probes are listed in section 9.3 of this permit. DEQ may require more frequent monitoring at any time if routine testing shows upward-trending methane concentrations or if changed site conditions cause increased risk to public health and safety. |

| | | |
|---|---|---|
| 8.8 | **LFG Monitoring parameters** | The required landfill gas parameters for each monitoring event are: static pressure, methane concentration, oxygen, and carbon dioxide. The permittee must first measure and record static pressure before purging the probes. The permittee must then record peak and steady-state methane concentrations and steady-state oxygen and carbon dioxide concentrations. In addition, the permittee must record ambient atmospheric conditions on the day of each monitoring event including barometric pressure and temperature. |
| 8.9 | **Quality assurance testing** | Each year the permittee must retain the services of an independent DEQ-approved environmental consultant to conduct at least two of the required landfill gas monitoring events. The consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee must submit the quality assurance test results to DEQ as an attachment to the annual maintenance and monitoring report. |
| 8,10 | **Confined space monitoring** | As needed to assess potential human health and safety risks, DEQ may require the permittee to monitor methane concentrations in confined spaces or structures that exist on or near the landfill property. |
| 8.11 | **Summary of LFG probe monitoring procedures** | The permittee must carry out LFG probe monitoring procedures as follows:<br>1. Review the up-to-date landfill gas monitoring plan and follow the plan's prescribed steps.<br>2. Record that day's barometric pressure, air temperature and weather conditions.<br>3. Use DEQ-approved LFG test equipment<br>4. Calibrate the test equipment (gas meter) before each use<br>5. Measure static pressure in each probe with meter's built-in pressure setting or with separate magnehelic gauge.<br>6. Purge each probe sufficiently to obtain representative soil gas samples<br>7. Record maximum and steady-state concentrations of methane, carbon dioxide, and oxygen.<br>8. Record all data and information on field data forms provided in the LFG Monitoring Plan.<br>9. Report test data to DEQ every three months.<br>10. Before February 15 submit to DEQ all prior year's monitoring data in the annual post-closure and monitoring report. |
| 8.12 | **Reporting require-ments** | At the end of each calendar quarter, the permittee must report monthly landfill gas monitoring results to DEQ for the last three months and may report these results to DEQ by email. Landfill gas monitoring results for the entire year must be included in the annual Post-Closure Maintenance and Monitoring Report discussed in permit section 7.17. |
| 8.13 | **Submittal address** | The Permittee must submit all required documents to DEQ at:<br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW 4th Avenue, Suite 400<br>Portland, OR 97201<br>Telephone: 503-229-5353<br>Fax: 503 229-6945 |

## 9.0 ENVIRONMENTAL MONITORING STANDARDS

| | | |
|---|---|---|
| 9.1 | **Contents** | This section describes the applicable environmental standards and designated compliance monitoring locations :<br>• compliance with DEQ rules<br>• compliance points<br>• methane limits<br>• methane exceedances |
| 9.2 | **Compliance with applicable DEQ rules** | The permittee must not allow the release of any landfill-related substance into groundwater, surface water, or any other media which will result in a violation of any applicable federal or state air or water limit, drinking water rules, or regulations beyond the solid waste boundary of the disposal site or an alternative boundary specified by DEQ. |
| 9.3 | **Compliance points** | The following landfill gas monitoring probes are designated methane compliance points:<br>MW-1s, MW-1d, MW-2s, MW-2d, MW-3s, MW-3d, MW-4s, MW4-d, MW-5s, MW-5d, MW-6s, MW-6d, MW-7s,MW-7d, MW-8s, MW-8d, MW-9, MW-10, MW-11, MW-12, MW-13, MW-14, MW-15, MW-16, MW-17, MW-22, MW-29, MW-30, MW-31, MW-32. |
| 9.4 | **Methane compliance limits** | The concentration of methane must not exceed:<br>• 25 percent of the Lower Explosive Limit for methane in onsite structures (excluding gas control structures or gas recovery system components); and<br>• the Lower Explosive Limit for methane in soil gas at the facility boundary.<br>Note: The Lower Explosive Limit for methane is 5 percent by volume. |
| 9.5 | **Methane exceedance** | If methane levels exceed the specified compliance limits, the permittee must:<br>1. Immediately take all necessary steps to ensure protection of human health and safety and report the exceedance to DEQ;<br>2. Within 7 days of the detection (unless DEQ approves an alternative schedule), notify DEQ in writing about the exceedance and describe measures taken to protect human health and safety;<br>3. Immediately increase *the frequency of monitoring at the affected compliance* monitoring probe or probes to a weekly testing schedule, or more frequently if DEQ requires, until methane concentrations return to levels below the compliance limits for a period of at least two weeks;<br>4. Adjust or modify the landfill gas control system as needed to increase vacuum levels (suction pressure) and gas extraction rates in the affected area;<br>5. Within 60 days of the exceedance, submit to DEQ for review and approval a written report plan describing the corrective actions implemented. |
| 9.6 | **Submittal address** | The Permittee must submit all required documents to the Department at:<br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>*2020 SW 4th Avenue, Suite 400*<br>Portland, OR 97201<br>Telephone: 503-229-5353<br>Fax: 503 229-6945 |

## 10.0 FINANCIAL ASSURANCE

**10.1 Contents**

This section describes the requirements for financial assurance at the facility, including:

- financial assurance plan
- cost estimate
- recertification of financial assurance
- use of financial assurance
- long-term financial responsibility
- submittal address

**10.2 Financial assurance plan**

Prior to May 31, 2013, the permittee must prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval. The plan also needs to propose a financial assurance mechanism. The permittee must revise the financial assurance plan in the future as necessary to reflect current post-closure and corrective action costs and the current financial assurance mechanism. The permittee must submit any future plan revisions to DEQ for review and approval and maintain an up-to-date copy of this plan in the permitted facility administrative records.

Reference: The plan must be prepared in accordance with OAR 340-095-0090. Acceptable mechanisms are described in OAR 340-095-0095.

**10.3 Cost Estimate**

The permittee must calculate the cost estimate for post-closure care based on a minimum of 20 years of post-closure care. The permittee must update the cost estimate annually and each update must continue financial assurance coverage for at least 20 years of post-closure care, unless notified in writing by DEQ of a change in this requirement.

Reference: The permittee must prepare the cost estimate in accordance with DEQ financial assurance regulations for non-municipal landfills, OAR 340-095-0090.

**10.4 Recertification of financial assurance**

The permittee must annually review and update financial assurance requirements. The permittee must submit the *annual* update *to DEQ prior to May 31 of each year, beginning in* 2014.

Note: The permittee must prepare the annual review according to OAR 340-095-0090(6)(d)(A).

**10.5 Use of financial assurance**

The permittee must not use the financial assurance funds for any purpose other than to finance the permitted facility's approved post-closure activities, to guarantee that those activities will be completed, or to finance required corrective actions at the facility.

**10.6 Long-term financial responsibility**

The permittee must continuously maintain financial assurance for the facility until DEQ no longer requires the permittee or other person owning or controlling the site to demonstrate financial responsibility for post-closure maintenance, monitoring or corrective actions.

**10.7 Submittal address**

All submittals to DEQ under this section must be sent to:

Oregon Department of Environmental Quality
Manager, Solid Waste Program
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
Telephone: 503-229-5353

## 11.0 POST-CLOSURE RECORDKEEPING AND REPORTING

| | | |
|---|---|---|
| 11.1 | **In this section** | This section describes requirements for facility post-closure recordkeeping and reporting.<br>• Non-compliance reporting<br>• Evaluation<br>• Fees<br>• Permit display<br>• Access to records<br>• Deed record<br>• Submittal address |
| 11.2 | **Non-compliance reporting** | The permittee must take immediate corrective action for any violations of permit conditions or DEQ rules and notify DEQ at:<br>(503) 229-5353<br>DEQ response: DEQ may investigate the nature and extent of the compliance problem and evaluate the adequacy of the permittee's corrective action plans. |
| 11.3 | **Evaluation** | Prior to February 15 of each year, the permittee must evaluate the facility's status and submit to DEQ, as part of the annual post-closure maintenance and monitoring report, the following information:<br>• a discussion of implementation of the post-closure plans<br>• a description of unanticipated occurrences and any changes to the post-closure plans |
| 11.4 | **Fees** | The permittee must pay the solid waste fee each year this permit is in effect. An invoice indicating the amount of the fee will be mailed prior to the date due. |
| 11.5 | **Permit display** | The permittee must display this permit where operating personnel can easily refer to it. |
| 11.6 | **Access to records** | DEQ must have easy access to all records and reports related to the permitted facility |
| 11.7 | **Deed record** | Upon issuance of this permit, the permittee must modify the property deed record on file with the appropriate county recording authority to include a detailed description of the site including a plat. The description should include, at a minimum, the general types and location of wastes deposited, depth of waste and other information of probable interest to future land owners. A copy of this deed, with the modification, must be submitted to DEQ within 120 days after the issuance of this permit.<br>Reference: OAR 340-094-0130(1)(a) |

**11.8 Submittal address**

All submittals to DEQ under Section **11.4** must be sent to:

**Oregon Department of Environmental Quality**
**Land Quality Division**
**Solid Waste Program**
**811 SW Sixth Ave**
**Portland, OR 97204**
**Phone: (503) 229-5409**

All submittals to DEQ under Section 11 (except Section 11.4) must be sent to:

Oregon Department of Environmental Quality
Manager, Solid Waste Program
2020 SW Fourth Avenue, Suite 400
Portland, OR 97201
(503) 229-5353

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# COMPLIANCE SCHEDULE

## 12.0 SUMMARY OF DUE DATES

**12.1 Summary** The following is a summary of the permit-required reporting activities and due dates.

| Due Date | Activity | See section... |
|---|---|---|
| Each calendar quarter by March 15, June 15, September 15 and, December 15, beginning in 2012, for each year the permit is in effect | Submit landfill gas test data for the preceding three months | 8.11 Summary of LFG probe monitoring procedures<br>8.12 Landfill gas monitoring. |
| By March 31, 2012 | Submit updated landfill gas monitoring plan | 8.2 Landfill gas monitoring plan |
| Within 120 days of issuance of this permit | Submit modified property deed record | 11.7 Deed record |
| By February 15, beginning in 2013, for each year the permit is in effect | Submit an annual post-closure maintenance and monitoring report | 7.17 Annual reporting requirements<br>11.3 Evaluation |
| By May 31, 2013 | Submit financial assurance plan | 10.2 Financial assurance plan |
| By May 31 of each year, beginning in 2014 | Submit annual financial assurance update | 10.4 Recertification of financial assurance |

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State of Oregon
Department of
Environmental
Quality

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT
## Construction and Demolition Waste Landfill

**Oregon Department of Environmental Quality**
**2020 SW Fourth Avenue, Suite 400**
**Portland, OR 97201**
**Telephone: 503-229-5353**

**Issued in accordance with the provisions of ORS Chapter 459 and subject to the land use compatibility statement referenced below.**

---

**ISSUED TO:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**FACILITY NAME AND LOCATION:**

H.G. Lavelle Landfill
Sec. 28, T1N, R2E, WM
Multnomah County

**OWNER:**

Mike Hashem
PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**OPERATOR:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

***ISSUED IN RESPONSE TO:***

- a notification by the site Owner dated November 17, 2011

***ISSUED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY***

Audrey O'Brien — November 18, 2011

Audrey O'Brien
*Solid Waste Manager*
Northwest Region

Date

---

## ADDENDUM NO. 1

In accordance with Oregon Administrative Rules 340-93-0070(7)(a) and 340-93-0113, Solid Waste Permit No. 211 is hereby amended as follows:

*The name of the permittee and operator is PSFM Limited Partnership.*

Permit expiration date: August 31, 2021. This Addendum must be attached to and made part of Solid Waste Disposal Permit No. . The addendum is effective upon receipt.

Gmail by Google

M Hashem <mikehashem7@gmail.com>

# 20110929-211-RenewalClosurePermit-DRAFT.pdf - Adobe Reader

**mike hashem** <mikehashem7@gmail.com> Mon, Oct 10, 2011 at 11:40 AM
To: SPENCER Tim <SPENCER.Tim@deq.state.or.us>

thank you Tim for providing me with a copy of the proposed permit . we need to remove any reference to Mikehashem or M Hashem LP since they were not on the permit being renewed . PSFMLp was and willcontinue to operate the permit adding me personally and the M Hashem would do nothing but cause us to have a conflict and cost us legal fees and make me withdraw the request for a permit.

just renew the permitas it was before without any predetermined penalties I am sure DEQ would be able to levy penalties without have them in te permit. this is another thing to argue about.
otherwise you need to incude all the owners of the land which constitute the old landfill in this permit like the carpet store and the asian center and the appartement owners . DEQ is com[plicating this and making me personally responsible for a landfill they permited when I was not envolved . As you know I was always responsive to DEQ"s needs and you have to admit that I have done my part but DEQ did not . we are going on 8 years since this application for renewal was made . I am sure a judge would agree that DEQ is a little late in renewing this.

my goal is to maintain the site as I have done for the last 14 years and as you know I stepped up and spent the money and extended the extraction system to include the area DEQ failed to include for 11 years . you have no need to make all those changes for a renewal of the permit which expired 8 years ago. you spent 2 years with me at the site and you know we have very little methane to manage and we are doing so without the added language in the permit.
I can't possibly agree to many of those changes I have addressed starting with the additions of the names beyond the PSFM LP and the penalties and if DEQ persist on including them accept this e mail as my notice of withdrawing my request for a permit renewal . I am not doing any landfil work and no closure is needed it is more landfill management permit not a closure permit what is needed.
[Quoted text hidden]

Gmail by Google

M Hashem <mikehashem7@gmail.com>

# 20110929-211-RenewalClosurePermit-DRAFT.pdf - Adobe Reader

**SPENCER Tim** <SPENCER.Tim@deq.state.or.us> Mon, Oct 10, 2011 at 2:43 PM
To: mike hashem <mikehashem7@gmail.com>

Hi Mike,

Thank you for your comments. You have raised several concerns for us to consider. I can't respond to all of your comments without further review of their impact on the permit but I can respond today about your point regarding our use of your name as the designated permittee on the permit. We will consider changing this aspect of the permit based on your concerns. I will discuss this with DEQ management today or tomorrow and get back to you. Thanks again.

Tim Spencer,
DEQ, NWR Solid Waste Program

---

From: mike hashem [mikehashem7@gmail.com]
Sent: Monday, October 10, 2011 11:40 AM
To: SPENCER Tim
Subject: Re: 20110929-211-RenewalClosurePermit-DRAFT.pdf - Adobe Reader

[Quoted text hidden]

State of Oregon
Department of
Environmental
Quality

# SOLID WASTE DISPOSAL SITE CLOSURE PERMIT
## Construction and Demolition Waste Landfill

**Oregon Department of Environmental Quality**
**2020 SW Fourth Avenue, Suite 400**
**Portland, OR 97201**
**Telephone: 503-229-5353**

**Issued in accordance with the provisions of ORS Chapter 459 and subject to the land use compatibility statement referenced below.**

**ISSUED TO:**

PSFM Limited Partnership
PO Box 1587
Clackamas OR 97015

**FACILITY NAME AND LOCATION:**

H.G. Lavelle Landfill
Sec. 28, T1N, R2E, WM
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Mike Hashem
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**ISSUED IN RESPONSE TO:**

- a notification by the site Owner dated November 17, 2011

**ISSUED BY THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

Audrey O'Brien — November 18, 2011

Audrey O'Brien
Solid Waste Manager
Northwest Region

Date

## ADDENDUM NO. 1

In accordance with Oregon Administrative Rules 340-93-0070(7)(a) and 340-93-0113, Solid Waste Permit No. 211 is hereby amended as follows:

*The name of the permittee and operator is PSFM Limited Partnership.*

Permit expiration date: August 31, 2021. This Addendum must be attached to and made part of Solid Waste Disposal Permit No. . The addendum is effective upon receipt.

## TABLE OF CONTENTS

**Introduction**

This document is a solid waste permit issued by the Oregon Department of Environmental Quality in accordance with Oregon Revised Statutes (ORS) 459 and Oregon Administrative Rules (OAR), Chapter 340.

**In this document**

This document contains the following sections:


| Section | Topic | See Page |
|---|---|---|
| ---- | **Permit Administration** | |
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| ---- | **Compliance Schedule** | |
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# PERMIT ADMINISTRATION

## 1.0 ISSUANCE

| | | |
|---|---|---|
| 1.1 | **Contents** | This section describes the administrative aspects of the permit including the following information:<br>• permittee<br>• permit number<br>• permit term<br>• facility type<br>• facility owner/operator<br>• basis for permit issuance<br>• definitions |
| 1.2 | **Permittee** | This permit is issued to PSFM Limited Partnership. |
| 1.3 | **Permit number** | This permit will be referred to as **Solid Waste Permit Number 211.** |
| 1.4 | **Permit term** | The issue date of this permit is the date this document is signed.<br>The expiration date of this permit is **August 31, 2021.** |
| 1.5 | **Facility type** | The facility is permitted as a construction and demolition waste landfill. |
| 1.6 | **Facility owner/ operator** | The owner of this facility is:<br>Mike Hashem<br>PSFM Limited Partnership<br>PO Box 1587<br>Clackamas OR 97015<br><br>The operator of this facility is:<br>PSFM Limited Partnership<br>PO Box 1587<br>Clackamas OR 97015 |
| 1.7 | **Basis for permit issuance** | This permit is issued based upon the following documents submitted by the permittee:<br>• solid waste permit application received September 16, 2003. |
| 1.8 | **Definitions** | Unless otherwise specified, all terms are as defined in OAR 340-93-030 |

## 2.0 DISCLAIMERS

| | | |
|---|---|---|
| 2.1 | **Contents** | This section contains disclaimers for :<br>• property rights and<br>• department liability |
| 2.2 | **Property rights** | The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights. |
| 2.3 | **Department liability** | The Department and its officers, agents, and employees do not sustain any liability on account of the issuance of this permit or on account of the construction, maintenance, or operation of facilities pursuant to this permit. |

## 3.0 AUTHORITY

| | | |
|---|---|---|
| 3.1 | **Contents** | This section describes the Oregon Department of Environmental Quality's (DEQ's or The Department's) authority to issue this permit, and includes the following topics:<br>• 10 year permit<br>• documents superseded<br>• permittee responsibility<br>• other compliance<br>• penalties |
| 3.2 | **Ten year permit** | This permit is issued for a maximum of 10 years as authorized by Oregon Revised Statutes 459.245 (2). |
| 3.3 | **Documents superseded** | This document is the primary solid waste permit for the facility superseding all other solid waste permits DEQ has issued to Mike Hashem and PSFM Limited Partnership. |
| 3.4 | **Permittee responsibility and liability** | Conditions of this permit are binding upon the permittee. The permittee must conduct all facility activities in compliance with the provisions of this permit. The permittee is liable for all acts and omissions of the permittee's contractors and agents in carrying out the operations and other responsibilities pursuant to this permit. |
| 3.5 | **Other compliance** | The issuance of this permit does not relieve the permittee from the responsibility to comply with all other applicable federal, state, or local laws or regulations, including the following solid waste requirements, and any future updates or additions to these requirements:<br>• solid waste permit application received September 16, 2003.<br>• Oregon Revised Statutes, Chapters 459 and 459A;<br>• Oregon Administrative Rules Chapter 340, and<br>• any documents submitted by the permittee and approved by DEQ. |

| | | |
|---|---|---|
| 3.6 | **Penalties** | Violation of permit conditions will subject the permittee to civil penalties of up to $25,000 for each day of each violation [ORS 459.995(1)(a)]. |
| 3.7 | **DEQ access to disposal site** | The permittee must allow representatives of DEQ access to the permitted facility at all reasonable times for the purpose of making inspections, surveys, collecting samples, obtaining data and carrying out other necessary functions related to this permit. Reference: OAR 340-093-0050(6) |

## 4.0 PERMIT MODIFICATION

| | | |
|---|---|---|
| 4.1 | **Contents** | This section describes the permit-modification steps, including:<br>• permit review<br>• permit modification<br>• modification and revocation by DEQ<br>• modification by permittee<br>• public participation<br>• changes in ownership or address |
| 4.2 | **Permit review** | At any time during the permit's term, DEQ may review and amend the permit if necessary.<br><br>DEQ will consider the following factors in making this determination:<br>• the facility's compliance history;<br>• changes in the post-closure use or maintenance of the facility;<br>• changes in state or federal rules which should be incorporated into the permit;<br>• a significant release of leachate or landfill gas from the facility to the environment;<br>• proposals to redevelop the site or change its current use; or<br>• other significant information or events. |
| 4.3 | **Permit modification** | DEQ or the permittee may propose to change the permit at any time during the permit's term.<br><br>Once approved by DEQ, any permit-required plans become part of the permit by reference. DEQ may provide notice and opportunity for review of permit-required plans. |
| 4.4 | **Modification and revocation by DEQ** | DEQ's Director may, at any time before the permit expiration date, modify, suspend, or revoke this permit in whole or in part, in accordance with Oregon Revised Statutes 459.255, for reasons including but not limited to the following:<br>• violation of any terms or conditions of this permit or any applicable statute, rule, standard, or order of the Commission;<br>• obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or<br>• a significant change in the post-closure management or monitoring of the facility. |
| 4.5 | **Modification by permittee** | The permittee must apply for a permit modification if there is a significant change in facility operations or management or monitoring or a deviation from permitted activities. |

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| 4.6 | **Public participation** | DEQ will issue a public notice to inform the public of any significant changes to the permit. |
| 4.7 | **Changes in ownership** | The permittee must report to DEQ any change in the facility's ownership or the permittee's or operator's name and address at least ten (10) days prior to the change. |

## ALLOWABLE ACTIVITIES

## 5.0 AUTHORIZATIONS

| | | |
|---|---|---|
| 5.1 | **Contents** | This section describes the activities the permittee is authorized to conduct, including:<br>• post-closure care<br>• authorization of other activities<br>• other site activities determined by DEQ to be necessary or appropriate |
| 5.2 | **Post-closure care** | This permit authorizes the permittee to provide post-closure maintenance and monitoring at the facility. The permittee may accept clean soil or rock as needed to re-grade and maintain the surface contours of the landfill cover. |
| 5.3 | **Authorization of other activities** | The permittee must conduct all facility activities in accordance with the provisions of this permit and in accordance with DEQ-approved plans and procedures. DEQ-approved plans become part of the permit by reference. DEQ's conditions of approval of a plan also become part of this permit unless the permittee contests this action within 30 days after receipt of a conditional approval. |

## 6.0 PROHIBITIONS

| | | |
|---|---|---|
| 6.1 | **Contents** | This section describes specific activities the permittee is prohibited from conducting, including:<br>• waste acceptance<br>• open burning<br>• site changes |
| 6.2 | **Waste receipt** | The facility is a permanently closed construction and demolition landfill. The permittee is prohibited from accepting any waste for disposal or disposing of any waste at this site. |
| 6.3 | **Open burning** | *The permittee must not conduct any open burning at the site.* |
| 6.4 | **Site changes** | The permittee must not modify the landfill facility without DEQ written approval. |

# FACILITY POST-CLOSURE MANAGEMENT

## 7.0 POST-CLOSURE OPERATIONS AND MAINTENANCE

**7.1 Contents**

This section describes the post-closure operation and maintenance requirements for the landfill facility including:

- post-closure operations and maintenance plan
- post closure maintenance
- landfill gas control system
- landfill gas monitoring probes
- cover system maintenance
- surface grading, contours
- surface water control system
- leachate prevention
- stormwater control system
- routine inspections
- site redevelopment
- discovery of prohibited wastes
- spills notification
- access control
- fire protection
- submittals to DEQ
- submittal address

**7.2 Post-closure plan**

The permittee must prepare an updated post-closure operations and maintenance plan and submit the plan to DEQ for review and approval by no later than October 15, 2012. The post-closure plan must describe in detail how the permittee intends to carry out all activities identified in sections 7.4 to 7.12 of this permit as well as other requirements of this permit and must be prepared and stamped by a registered engineer with current Oregon registration.

The permittee must revise the post-closure plan as necessary to keep it reflective of current facility conditions and procedures. Plan revisions must be submitted to DEQ for approval.

Reference: *Solid Waste Landfill Guidance*, September 1996, provides information on applicable elements of a post-closure plan.

**7.3 Post-closure maintenance**

The permittee must maintain the disposal site in accordance with the DEQ approved post-closure plan and any amendments to the plan approved in writing by DEQ.

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| 7.4 | **Landfill gas control system** | The permittee must operate and maintain the landfill gas control system (LFGCS) in effective working order. The LFGCS must function such that methane concentrations do not exceed regulatory compliance limits and odors do not exceed nuisance thresholds. Refer to methane compliance limits in permit Section 9.4<br><br>The permittee must notify DEQ about any damaged, defective, or worn-out gas-system equipment, replace or repair such equipment immediately, and provide a written description of any such work in the annual post-closure maintenance and monitoring report. |
| 7.5 | **Landfill gas monitoring probes** | To ensure accurate landfill gas monitoring results, the permittee must equip each landfill gas monitoring probe with appropriate sampling ports and valves, protect and maintain each probe, and repair or modify damaged or non-functional probes. |
| 7.6 | **Cover system maintenance** | The permittee must prevent soil erosion, protect the landfill cover's overall integrity, and mow cover vegetation or otherwise manage onsite vegetation to minimize fire hazards and potential nuisance conditions. Any construction or redevelopment proposals involving the landfill must include an evaluation of potential impacts to the cover system and a plan to restore and enhance the cover.. |
| 7.7 | **Surface contour maintenance** | The Permittee must maintain landfill-cover surface contours of at least 2 percent to minimize leachate generation by promoting storm water drainage and minimizing standing water and ponding. For any construction or redevelopment proposals involving the landfill, the permittee and prospective developer must evaluate the landfill's existing surface drainage deficiencies and propose engineering measures to *enhance surface drainage and stormwater control.* |
| 7.8 | **Surface *water control*** | The permittee must, at all times, divert surface water drainage around or away from the *landfill and maintain surface water diversion ditches or structures in good working* condition and free of obstructions and debris. |
| 7.9 | **Leachate prevention and control** | The permittee must maintain the landfill in a manner that deters leachate production to the maximum extent practicable. |
| 7.10 | **Stormwater control system** | The permittee must maintain perimeter stormwater drainage ditches in good working condition and free of debris and obstructions. |
| 7.11 | **Inspections** | At least once each month the permittee must physically inspect the entire landfill site to determine compliance with this permit and DEQ rules to assure that all environmental *control systems and monitoring equipment are well maintained and functional.* More frequent inspections may be necessary during or after extreme weather events or other unusual occurrences.<br><br>The permittee must record any post-closure repairs performed. Inspection records must be made available to DEQ upon request. The permittee must summarize the inspection results in the annual post-closure maintenance and monitoring report submitted to DEQ. |

| | | |
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| 7.12 | **Future site development and use** | Any future redevelopment, use, activity, or construction of buildings, structures or utilities on this landfill site must have DEQ's prior written approval and must be accomplished in a manner that protects:<br>• the environment and public health and safety<br>• the integrity of the landfill cover (or provide an effective DEQ-approved replacement)<br>• landfill stability<br>• existing landfill gas control and monitoring facilities and equipment<br>• stormwater diversion and control facilities and any other surface water control systems |
| 7.13 | **Discovery of prohibited wastes** | Any solid wastes discovered at the facility must be isolated or removed immediately. Non-hazardous prohibited waste must, within 48 hours, be transported to a disposal site authorized to accept such waste, unless otherwise approved in writing by DEQ.<br>In the event that discovered wastes are hazardous or suspected to be hazardous, the permittee must, within 7 days, notify DEQ and initiate procedures to identify and remove the waste. Hazardous wastes must be removed within 90 days, unless otherwise approved by DEQ. Temporary storage and transportation must be carried out in accordance with DEQ rules. |
| 7.14 | **Spills notification** | Oregon Revised Statue 466.635 and Oil and Hazardous Materials Emergency Response Rules, Chapter 340, Division 142 require immediate notification to Oregon Emergency Response System (OERS) after taking any required emergency actions to protect human health and the environment when oil or hazardous materials are spilled. The spill must be immediately reported to OERS at 1-800-452-0311 if the spill is of a reportable quantity. Reportable quantities include:<br>• *any* amount of oil spilled to waters of the state;<br>• oil spills on land in excess of forty-two (42) gallons;<br>• two hundred (200) pounds or twenty-five (25) gallons or more of spilled pesticide residue; and<br>• spills of hazardous materials that are equal to, or greater than, the quantity listed in the Code of Federal Regulations, 40 CFR Part 302 (List of Hazardous Substances and Reportable Quantities), and amendments adopted before July 1, 2002.<br>For a complete list of hazardous materials required to be reported, refer to OAR 340-142-0050. |
| 7.15 | **Access control** | The permittee must control public access to the facility as necessary to prevent unauthorized entry and dumping. |
| 7.16 | **Fire protection** | The permittee must notify the local fire control agency about the presence of methane gas and any other site conditions that may pose a safety risk to local fire control agency personnel in the event of a fire.<br>Fires must be immediately and thoroughly extinguished and promptly reported to DEQ. |

**7.17 Annual Reporting Requirement**

By February 15, 2013 the permittee must submit to DEQ three copies of an annual post-closure maintenance and monitoring report for the past year's (2012) monitoring and maintenance period. DEQ requests one electronic copy and two paper copies. Paper copies should be printed on both sides of the paper whenever possible.

Thereafter, the permittee must submit this annual report to DEQ by February 15 for each year this permit is in effect.

This annual report must document all monitoring and maintenance and operations activities associated with the landfill's post-closure care as described in the post-closure plan and the landfill gas monitoring plan including an annual summary of landfill gas monitoring results and details about the landfill gas control system's performance. Specific requirements for the landfill gas monitoring plan are addressed in permit section 8.2.

**Annual report contents:**

- describe all significant events that occurred at the site during the last year;
- describe the condition and performance of the landfill gas monitoring network including any repairs or changes to specific monitoring probes;
- tabulate and summarize all the gas monitoring data collected in the past year;
- discuss any methane exceedances and response measures including increased monitoring and corrective actions taken;
- describe the landfill gas control system's operations, maintenance, condition, and performance including the vacuum blower unit and extraction wells, and any required system adjustments or modifications;
- tabulate and summarize any landfill gas control system test data (for blower and/or extraction wells);
- describe general site maintenance activities including mowing, cover repairs, site grading, debris removal from stormwater drainage ditches, etc.

***7.18 Submittal address***

*The permittee must submit all required documents to:*

Oregon Department of Environmental Quality
*Manager, Solid Waste Program*
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
Telephone: 503-229-5353
Fax: 503 229-6945

## LANDFILL GAS MONITORING

## 8.0 LANDFILL GAS MONITORING REQUIREMENTS

| | | |
|---|---|---|
| 8.1 | **Contents** | This section describes the required landfill gas monitoring program including :<br>• monitoring plan<br>• monitoring equipment<br>• equipment calibration<br>• additional monitoring points<br>• gas probe purging<br>• monitoring schedule<br>• monitoring parameters<br>• quality assurance testing<br>• confined space monitoring<br>• summary of LFG monitoring procedures<br>• reporting requirements<br>• submittal address |
| 8.2 | **LFG monitoring plan** | The permittee must update the landfill gas (LFG) monitoring plan as needed to reflect any changes in landfill conditions, monitoring practices, or new DEQ-required monitoring procedures. The current plan, dated April 3, 2009, was prepared by Hart Crowser, Inc. By March 31, 2012, the permittee must submit an updated plan to DEQ for review and approval. The plan updates must be prepared and stamped by a registered geologist or registered engineer with current Oregon registration. |
| 8.3 | **LFG monitoring equipment** | The permittee or the permittee's representatives must use DEQ-approved methane test equipment for conducting routine landfill gas monitoring. Some instruments lack built-in pressure measurement capabilities. With such instruments, use a separate *magnehelic or equivalent approved pressure gauge to measure static pressure.* |
| 8.4 | **Monitoring equipment calibration** | The permittee must properly calibrate the DEQ-approved methane meter the day of every monitoring event and before commencing monitoring activities. |
| 8.5 | **Additional monitoring points** | At any time during the permit's term DEQ may require the permittee to install additional landfill gas monitoring probes to address changes in site conditions or increases in landfill gas related health and safety risks. The permittee must incorporate any new or replacement monitoring probes or devices into the LFG Monitoring Plan and submit the updated plan to DEQ for review and approval. |
| 8.6 | **Gas probe purging** | During LFG monitoring events, the permittee must purge each monitoring probe sufficiently to obtain accurate gas concentration measurements that reflect soil gas *characteristics at the landfill property boundary.*<br><br>For each probe, calculate optimum purge times based on: 1) the monitoring probe depth; 2) probe casing diameter; 3) LFG test meter purge (flow) rates; and 4) purge time required for methane concentrations to stabilize in previous monitoring events. Updated purging procedures for each probe should be documented in the landfill gas monitoring plan.<br><br>**Note:** Refer to LFG monitoring plan for individual probe details. |

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| 8.7 | **LFG Monitoring schedule** | The permittee must test all designated compliance monitoring probes at least once per month. Designated compliance monitoring probes are listed in section 9.3 of this permit. DEQ may require more frequent monitoring at any time if routine testing shows upward-trending methane concentrations or if changed site conditions cause increased risk to public health and safety. |
| 8.8 | **LFG Monitoring parameters** | The required landfill gas parameters for each monitoring event are: static pressure, methane concentration, oxygen, and carbon dioxide. The permittee must first measure and record static pressure before purging the probes. The permittee must then record peak and steady-state methane concentrations and steady-state oxygen and carbon dioxide concentrations. In addition, the permittee must record ambient atmospheric conditions on the day of each monitoring event including barometric pressure and temperature. |
| 8.9 | **Quality assurance testing** | Each year the permittee must retain the services of an independent DEQ-approved environmental consultant to conduct at least one of the required landfill gas monitoring events. The consultant's monitoring events must be at least three months apart to account for seasonal variations in methane concentrations. The consultant must perform the monitoring side by side with the permittee's representatives and compare both sets of test data to cross-check the accuracy of the permittee's monitoring equipment and monitoring techniques. The permittee must submit the quality assurance test results to DEQ as an attachment to the annual maintenance and monitoring report. |
| 8.10 | **Confined space monitoring** | As needed to assess potential human health and safety risks, DEQ may require the permittee to monitor methane concentrations in confined spaces or structures that exist on the landfill property. |
| 8.11 | **Summary of LFG probe monitoring procedures** | The permittee must carry out LFG probe monitoring procedures as follows:<br>1. *Review the up-to-date landfill gas monitoring plan and follow the plan's* prescribed steps.<br>2. Record that day's barometric pressure, air temperature and weather conditions.<br>3. Use DEQ-approved LFG test equipment<br>4. Calibrate the test equipment (gas meter) before each use<br>5. Measure static pressure in each probe with meter's built-in pressure setting or with separate magnehelic gauge.<br>6. Purge each probe sufficiently to obtain representative soil gas samples<br>7. Record maximum and steady-state concentrations of methane, carbon dioxide, and oxygen.<br>8. Record all data and information on field data forms provided in the LFG Monitoring Plan<br>9. Report test data to DEQ every three months.<br>10. Before February 15 submit to DEQ all prior year's monitoring data in the annual post-closure and monitoring report. |
| 8.12 | **Reporting requirements** | At the end of each calendar quarter, the permittee must report monthly landfill gas monitoring results to DEQ for the last three months and may report these results to DEQ by email. Landfill gas monitoring results for the entire year must be included in the annual Post-Closure Maintenance and Monitoring Report discussed in permit section 7.17. |

| | | |
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| 8.13 | **Submittal address** | The Permittee must submit all required documents to DEQ at:<br><br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW 4th Avenue, Suite 400<br>Portland, OR 97201<br>Telephone: 503-229-5353<br>Fax: 503 229-6945 |

## 9.0 ENVIRONMENTAL MONITORING STANDARDS

| | | |
|---|---|---|
| 9.1 | **Contents** | This section describes the applicable environmental standards and designated compliance monitoring locations :<br>• compliance with DEQ rules<br>• compliance points<br>• methane limits<br>• methane exceedances |
| 9.2 | **Compliance with applicable DEQ rules** | The permittee must not allow the release of any landfill-related substance into groundwater, surface water, or any other media which will result in a violation of any applicable federal or state air or water limit, drinking water rules, or regulations beyond the solid waste boundary of the disposal site or an alternative boundary specified by DEQ. |
| 9.3 | **Compliance points** | The following landfill gas monitoring probes are designated methane compliance points:<br><br>MW-1s, MW-1d, MW-2s, MW-2d, MW-3s, MW-3d, MW-4s, MW4-d, MW-5s, MW-5d, MW-6s, MW-6d, MW-7s,MW-7d, MW-8s, MW-8d, MW-9, MW-10, MW-11, MW-12, *MW-13, MW-14, MW-15, MW-16, MW-17, MW-22, MW-29, MW-30, MW-31, MW-32.* |
| 9.4 | **Methane compliance limits** | The concentration of methane must not exceed:<br>• 25 percent of the Lower Explosive Limit for methane in onsite structures (excluding gas control structures or gas recovery system components); and<br>• the Lower Explosive Limit for methane in soil gas at the facility boundary.<br><br>Note: The Lower Explosive Limit for methane is 5 percent by volume. |

**9.5 Methane exceedance**

If methane levels exceed the specified compliance limits, the permittee must:

1. Immediately take all necessary steps to ensure protection of human health and safety and report the exceedance to DEQ;
2. Within 7 days of the detection (unless DEQ approves an alternative schedule), notify DEQ in writing about the exceedance and describe measures taken to protect human health and safety;
3. Immediately increase the frequency of monitoring at the affected compliance monitoring probe or probes to a weekly testing schedule, or more frequently if DEQ requires, until methane concentrations return to levels below the compliance limits for a period of at least two weeks;
4. Adjust or modify the landfill gas control system as needed to increase vacuum levels (suction pressure) and gas extraction rates in the affected area;
5. Within 60 days of the exceedance, submit to DEQ for review and approval a written report plan describing the corrective actions implemented.

**9.6 Submittal address**

The Permittee must submit all required documents to the Department at:

Oregon Department of Environmental Quality
Manager, Solid Waste Program
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
Telephone: 503-229-5353
Fax: 503 229-6945

## 10.0 FINANCIAL ASSURANCE

**10.1 Contents**

This section describes the requirements for financial assurance at the facility, including:

- financial assurance plan
- cost estimate
- recertification of financial assurance
- use of financial assurance
- long-term financial responsibility
- submittal address

**10.2 Financial assurance plan**

Prior to May 31, 2013, the permittee must prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval. The plan also needs to propose a financial assurance mechanism. The permittee must revise the financial assurance plan in the future as necessary to reflect current post-closure and corrective action costs and the current financial assurance mechanism. The permittee must submit any future plan revisions to DEQ for review and approval and maintain an up-to-date copy of this plan in the permitted facility administrative records.

Reference: The plan must be prepared in accordance with OAR 340-095-0090. Acceptable mechanisms are described in OAR 340-095-0095.

| | | |
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| 10.3 | **Cost Estimate** | The permittee must calculate the cost estimate for post-closure care based on a minimum of 20 years of post-closure care. The permittee must update the cost-estimate annually and each update must continue financial assurance coverage for at least 20 years of post-closure care, unless notified in writing by DEQ of a change in this requirement.<br><br>Reference: The permittee must prepare the cost estimate in accordance with DEQ financial assurance regulations for non-municipal landfills, OAR 340-095-0090. |
| 10.4 | **Recertification of financial assurance** | The permittee must annually review and update financial assurance requirements. The permittee must submit the annual update to DEQ prior to May 31 of each year, beginning in 2014.<br><br>Note: The permittee must prepare the annual review according to OAR 340-095-0090(6)(d)(A). |
| 10.5 | **Use of financial assurance** | The permittee must not use the financial assurance funds for any purpose other than to finance the permitted facility's approved post-closure activities, to guarantee that those activities will be completed, or to finance required corrective actions at the facility. |
| 10.6 | **Long-term financial responsibility** | The permittee must continuously maintain financial assurance for the facility until DEQ no longer requires the permittee or other person owning or controlling the site to demonstrate financial responsibility for post-closure maintenance, monitoring or corrective actions. |
| 10.7 | **Submittal address** | All submittals to DEQ under this section must be sent to:<br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW 4th Avenue, Suite 400<br>Portland, OR 97201<br>Telephone: 503-229-5353 |

## 11.0 POST-CLOSURE RECORDKEEPING AND REPORTING

| | | |
|---|---|---|
| 11.1 | **In this section** | This section describes requirements for facility post-closure recordkeeping and reporting.<br>• Non-compliance reporting<br>• Evaluation<br>• Fees<br>• Permit display<br>• Access to records<br>• Deed record<br>• Submittal address |

| | | |
|---|---|---|
| 11.2 | **Non-compliance reporting** | The permittee must take immediate corrective action for any violations of permit conditions or DEQ rules and notify DEQ at:<br>(503) 229-5353<br>DEQ response: DEQ may investigate the nature and extent of the compliance problem and evaluate the adequacy of the permittee's corrective action plans. |
| 11.3 | **Evaluation** | Prior to February 15 of each year, the permittee must evaluate the facility's status and submit to DEQ, as part of the annual post-closure maintenance and monitoring report, the following information:<br>• a discussion of implementation of the post-closure plans<br>• a description of unanticipated occurrences and any changes to the post-closure plans |
| 11.4 | **Permit display** | The permittee must display this permit where operating personnel can easily refer to it. |
| 11.5 | **Access to records** | DEQ must have easy access to all records and reports related to the permitted facility |
| 11.6 | **Deed record** | Upon issuance of this permit, the permittee must verify that the property deed record on file with the appropriate county recording authority includes a detailed description of the site including a plat. The description should include, at a minimum, the general types and location of wastes deposited, depth of waste and other information of probable interest to future land owners. If such a deed record does not exist the permittee must modify the deed as described above. A copy of the deed or the modified deed must be submitted to DEQ within 180 days after the issuance of this permit.<br>Reference: OAR 340-094-0130(1)(a) |
| 11.7 | **Submittal address** | All submittals to DEQ under Section 11 must be sent to:<br>Oregon Department of Environmental Quality<br>Manager, Solid Waste Program<br>2020 SW Fourth Avenue, Suite 400<br>Portland, OR 97201<br>(503) 229-5353 |

# COMPLIANCE SCHEDULE

## 12.0 SUMMARY OF DUE DATES

**12.1 Summary** The following is a summary of the permit-required reporting activities and due dates.

| Due Date | Activity | See section... |
|---|---|---|
| Each calendar quarter by March 15, June 15, September 15 and, December 15, beginning in 2012, for each year the permit is in effect | Submit landfill gas test data for the preceding three months | 8.11 Summary of LFG probe monitoring procedures<br>8.12 Landfill gas monitoring. |
| By March 31, 2012 | Submit updated landfill gas monitoring plan | 8.2 Landfill gas monitoring plan |
| Within 180 days of issuance of this permit | Submit existing or modified property deed record | 11.6 Deed record |
| By February 15, beginning in 2013, for each year the permit is in effect | Submit an annual post-closure maintenance and monitoring report | 7.17 Annual reporting requirements<br>11.3 Evaluation |
| By May 31, 2013 | Submit financial assurance plan | 10.2 Financial assurance plan |
| By May 31 of each year, beginning in 2014 | Submit annual financial assurance update | 10.4 Recertification of financial assurance |

**STATE OF OREGON**
**DEPARTMENT OF ENVIRONMENTAL QUALITY**

| | |
|---|---|
| In the Matter of: | DEQ No. 12-12 |
| Northwest Zen Sangha dba Dharma Rain Zen Center,<br><br>Respondent. | ORDER ON CONSENT - PPA |

Pursuant to ORS 465.260(4) and 465.327, the Director, Oregon Department of Environmental Quality ("DEQ"), issues this Order on Consent ("Consent Order") to Northwest Zen Sangha dba Dharma Rain Zen Center ("Respondent"). This Consent Order contains the following provisions:

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Exhibit A: Vicinity Map

Exhibit B: Property Legal Description

Exhibit C: Basis of Design and Engineering Approach

Exhibit D: Form of Easement and Equitable Servitudes

1. Purpose

The mutual objectives of DEQ and Respondent (collectively "Parties") are: (a) to protect public health, safety, and welfare and the environment in accordance with applicable provisions of ORS 465.200 through 465.420, regulations promulgated thereto, and (b) to facilitate productive reuse of property; and (c) to provide Respondent with protection from potential liabilities in accordance with applicable law.

2. Stipulations

A. Respondent consents and agrees:

(1) To issuance of this Consent Order;

(2) To perform and comply with all provisions of this Consent Order;

(3) In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;

(4) To waive any right Respondent might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;

(5) To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent's compliance with this Consent Order; and

(6) To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Respondent discharges Respondent's duty to fully perform all remaining provisions of this Consent Order.

B. DEQ and Respondent stipulate:

(1) For the purposes of this Consent Order, the "Facility," as defined in ORS 465.200(13), means: (a) the Property; and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the Property, or that has migrated, might have migrated, or hereafter migrates to anywhere from the Property.

(2) For the purposes of this Consent Order, "Existing Hazardous Substance Releases" means: (a) any release of hazardous substances, as defined in ORS 465.200, at the Facility existing as of the date of Respondent's acquisition of ownership or operation of the Property; (b) any spill or release of oil or hazardous material, as defined in ORS 466.605, at the Facility existing as of the date of Respondent's acquisition of ownership or operation of the Property; and (c) the entry of oil into the waters of the state, as defined in ORS 468B.300, from the Facility before the date of Respondent's acquisition of ownership or operation of the Property.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Respondent:

A. Northwest Zen Sangha, which does business as Dharma Rain Zen Center, is an Oregon nonprofit corporation.

B. The property proposed for acquisition by Respondent, currently owned by M. Hashem Limited Partnership, is an approximately 13.75-acre site located east of NE 82nd Avenue and south of NE Siskiyou Street in NE Portland, Multnomah County, Oregon, in Section 28, Township 1 N, Range 2 E of the Willamette Meridian (the "Property"). The location of the Property is illustrated generally in the Vicinity Map, Exhibit A to this Consent Order. The legal description of the Property is set forth in Exhibit B to this Consent Order. All exhibits attached to this Consent Order are incorporated by reference.

C. According to historical information the Property was part of a larger gravel quarry from at least 1936 until 1972, during which time it was excavated to a reported depth of 80 feet. In at least 1948, five small buildings associated with this former gravel quarry were present on the central-eastern portion of the Property. These buildings had been removed by 1956, and the Property has remained devoid of structures through the present. Between 1972 and 1982, the former gravel quarry received construction and demolition debris, land clearing debris, and other solid waste materials as the H. G. LaVelle Solid Waste Landfill. Organic debris buried at the landfill began generating methane gas, and in 1979 a methane gas extraction system was installed along the northern and western boundaries of the

Property to protect neighboring properties. In 1982, waste disposal activities ceased at the landfill property. Additional methane gas collection wells were installed on the southern portion of the property in 2009, and the Property has remained essentially unchanged since that time.

D. Methane migration from biodegrading organic material is a primary concern at the site. The landfill was active from 1972 to 1982, and continues to generate methane. The solid waste permit for the LaVelle Landfill stipulated that only demolition and construction waste were authorized for disposal. Storm water that infiltrates the landfill cover and subsurface seepage of shallow groundwater produce leachate within the landfill which may contain low concentrations of hazardous substances including heavy metals and volatile organic compounds. Additionally, the presence of asbestos-containing demolition debris may pose a concern if excavation takes place at the Property. The primary environmental issue at this site is landfill gas which mainly consists of methane, carbon dioxide and trace amounts of hydrogen sulfide and volatile organic compounds. Methane gas is a hazardous substance because of its explosive properties at certain concentrations in confined spaces. Limited groundwater monitoring indicates that groundwater contamination is not a significant concern.

E. Respondents plan is to develop a religious institution with a variety of uses. The central core of the site will be developed into a formal temple site, surrounded by landscaped and native open space areas, on-site parking, pedestrian paths through the site, and a small cluster of multi-dwelling residential housing on Siskiyou, which will become a co-housing community for members of the temple. The temple proper contains facilities for religious assembly, temple administration, classes, group housing for monastic residents, and children's programs. This creates an attractive, compatible, low-impact use that serves the local and regional community by restoring derelict land to productive use, drawing visitors to the area, and bringing a strong presence and value of stewardship to the land. All buildings are likely to be single story structures, possibly with the exception of some of the housing in the co-housing, which may include some two story structures. Buildings may use (a) a floating mat foundation, with adjustable jacks

supporting post and beam framed structures, and sub-slab ventilation measures or (b) another suitable foundation method. Respondents plan to dispose of all storm water on-site. To the extent practical, storm water will be conveyed off the landfill footprint so that it will not come into contact with waste as it percolates into the ground. Respondent's proposed use develops a large, prominent and controversial brownfield and develops it in accordance with the regional government's values and priorities. The landfill is central to the Madison South and Roseway neighborhoods and creating a thriving campus on the site would have significant benefits to the surrounding area for economic, aesthetic, recreational and environmental reasons. Use of the site would have commercial, residential and recreational components, providing a variety of resources to the area. Respondent's plan is to preserve open space and improve natural areas, establishing a lasting greenway from Rose City Golf Course, through Madison High School, Glenhaven Park, Siskiyou Square and up into Rocky Butte. Respondent's use also protects the public and the environment from the landfill by upgrading the landfill's soil cover and significantly reducing infiltration through the landfill as the storm water management plan is implemented and planned landscaping matures.

G. Pursuant to ORS 465.255(1)(b), Respondent could become liable to DEQ and other persons for releases of hazardous substances at or from the Property by becoming the owner or operator of the Property with actual or constructive knowledge of the releases. On July 5, 2012 Respondent applied to DEQ for a "prospective purchaser agreement" under ORS 465.327 and agreed to reimburse DEQ's costs of technical review and agreement preparation. In early August 2012, the City of Portland agreed to pay the costs of the preparation of the prospective purchaser agreement for the Property. This Consent Order is intended to protect Respondent from potential liability for pre-acquisition releases of hazardous substances at or from the Property, in return for Respondent undertaking certain obligations, as described in this Consent Order. In determining to propose this Consent Order, DEQ considered reasonably

anticipated future land uses at the Property and surrounding properties and consulted with The City of Portland.

H. On August 15, 2012 DEQ published notice of this proposed Consent Order and provided opportunity for public comment in accordance with ORS 465.320(1) and 465.327(3). [Insert public meeting date and oral comments received, if applicable] The comment period ended October 1, 2012. Comments were received and considered by DEQ, as documented in the administrative record.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

A. Respondent is a "person" within the meaning of ORS 465.200(21).

B. The contaminants described in Subsection 3.C. are "hazardous substances" within the meaning of ORS 465.200(16).

C. The presence of hazardous substances in the landfill constitutes a "release" or "threat of release" into the environment within the meaning of ORS 465.200(22).

D. The Property described in Subsection 3.B. is a "facility" within the meaning of ORS 465.200(13).

E. Respondent is not currently liable under ORS 465.255, 466.640, or 468B.310 for the existing hazardous substance releases.

F. Removal or remedial action is necessary at the Property to protect human health or the environment;

G. Respondent's ownership and operation of the Property will not cause, contribute to, or exacerbate existing contamination, increase health risks, or interfere with remedial measures at the Property;

H. A substantial public benefit will result from this Consent Order; and

I. The release from liability set forth in Subsection 8.A satisfies the criteria set forth in ORS 465.327(1).

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Measures to be Undertaken

A. Landfill Gas Mitigation MeasuresRespondent will perform landfill gas mitigation measures in accordance with the Basis of Design and Engineering Approach ("Basis of Design") prepared by Respondent's technical consultant, GeoDesign Inc., and attached to this Consent Order as Exhibit C, and the terms and schedules set forth in a DEQ-approved work plan.

B. Modification of Basis of Design or Related Work Plans

(1) If DEQ determines that modification to the work specified in the Basis of Design and/or in work plans developed pursuant to the Basis of Design is necessary, DEQ may require that such modification be incorporated in the Basis of Design and/or such work plans; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is consistent with the Basis of Design.

(2) Subject to dispute resolution under Subsection 7.M., Respondent will modify the Basis of Design and/or work plans as required by DEQ and implement any work required by the modifications. Before invoking dispute resolution under Subsection 7.M., Respondent and DEQ will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by informal discussions for no more than 30 days following notice from DEQ of a requested modification.

C. Additional Measures

Respondent may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the Basis of Design, necessary to address the release or threatened release of hazardous substances at the Property. Such additional measures are subject to prior approval by DEQ. DEQ's approval will be granted if DEQ determines that the additional measures are consistent with the objectives in the Basis of Design and will not threaten human health or the environment.

D. Site Restrictions and Periodic Reviews

(1) Within 30 days of the recording by Respondent of the deed to the Property, which recording is expected to occur no later than ten years from

the effective date of the Contract of Sale between the current owner of the Property to Respondent, which effective date is likely to be in late 2012 , Respondent will record with the County Clerk, Multnomah County, an Easement and Equitable Servitudes consistent with the Form of Easement and Equitable Servitudes attached to this Consent Order as Exhibit D.

(2) Respondent will provide DEQ a file-stamped copy of the Easement and Equitable Servitudes within five working days of recording.

(3) Property subject to the Easement and Equitable Servitudes may be freely alienated at any time after recording, provided the deed or other instrument of conveyance refers to or incorporates the Easement and Equitable Servitudes.

(4) Any deed, title, or other instrument of conveyance regarding the Property must contain a notice that the Property is the subject of this Consent Order.

(5) Respondent, in any such deed or conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as might be necessary to carry out Respondent's obligations under this Consent Order. (6)At least once every five years, DEQ will review the remedy to ensure that the Property remains protective of public health, safety, and welfare and the environment. Periodic reviews will include evaluation of monitoring data, progress reports, inspection and maintenance reports, land and water uses, compliance with institutional controls, and any other relevant information.

E. Grant of Access

Respondent will grant DEQ and its contractors, and the permittee of the former H.G. Lavelle landfill DEQ Solid Waste Disposal Closure Permit No. 211 or successor permit, access to the property to perform any post-closure maintenance and monitoring or corrective action required by the permit, or any continued or future remedial action. These activities may include, but are not limited to: landfill gas monitoring; maintenance and improvements to the existing landfill gas control and monitoring systems; and monitoring of, and maintenance and improvements to the landfill cap and stormwater control features

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of the Consent Order through issuance of a press release, at a minimum to a local newspaper of general circulation, describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before publication.

7. General Provisions

A. Project Managers

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order must be directed to:

| DEQ Project Manager: | Respondent Project Manager |
|---|---|
| Tim Spencer<br>Department of Environmental Quality<br>Northwest Region<br>2020 SW 4th Avenue Portland, OR 97201-4987 Phone: 503-229-5826[Email:<br>spencer.tim@deq.state.or.us | Kakumyo Lowe-Charde<br>Northwest Zen Sangha dba Dharma Rain Zen Center<br>2532149 SE Madison Street<br>Portland, OR 97214<br>503-341-6675<br>kakumyo@gmail.com |

(2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to complete the work required under this Consent Order.

B. Supervising Contractor

(1) All aspects of remedial work to be performed by Respondent pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor experienced in hazardous substance remediation and knowledgeable in applicable state and federal laws, regulations, and guidance.

(2) Within 30 days of the effective date of this Consent Order, Respondent will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ will notify Respondent in writing of the reasons for its disapproval within 14 days of

receipt of the initial notice from Respondent. Respondent, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternative supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above. DEQ approves GeoDesign Inc. as a qualified contractor for Respondent for purposes of this Consent Order.

(3) If, during the course of work required under this Consent Order, Respondent proposes to change its supervising contractor, Respondent will notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule specified in the preceding paragraph.

C. DEQ Approvals

(1) Where DEQ review and approval is required for any plan or activity under this Consent Order, Respondent may not proceed to implement the plan or activity prior to DEQ approval. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Respondent. Prior approval is not required in emergencies, provided Respondent notifies DEQ immediately after the emergency and evaluates the impact of its actions.

(2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Order, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part, and notify Respondent of its deficiencies and/or request modifications to cure the deficiencies.

(3) DEQ approvals, rejections, or identification of deficiencies will be given in writing within the time specified in the Basis of Design or as soon as practicable, and will state DEQ's reasons with reasonable specificity.

(4) In the event of DEQ disapproval or request for modification of a submission, Respondent will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, either correct the

deficiencies and resubmit the revised report or other item for approval, or invoke dispute resolution under Subsection 7.M.

(5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Respondent's failure to cure the original deficiency, DEQ may modify the submission to cure the deficiency.

(6) In the event of approval or modification of a submission by DEQ, Respondent will implement the actions required by the plan, report, or other item, as so approved or modified.

D. Access to Property

(1) Respondent will allow DEQ to enter all portions of the Property owned by or under the control of Respondent at all reasonable times for the purpose of overseeing Respondent's performance under this Consent Order, including but not limited to inspecting records relating to work under this Consent Order, conducting such tests and taking such samples as DEQ deems necessary, verifying data submitted to DEQ by Respondent, conducting periodic review, and using camera, sound recording, or other recording equipment. DEQ will make available to Respondent, upon Respondent's request, any photographs or recorded or videotaped material taken.

(2) Respondent will seek to obtain access to property not owned or controlled by Respondent as necessary to perform work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary and that Respondent has exhausted all good faith efforts to obtain access.

E. Records

(1) In addition to those reports and documents specifically required under this Consent Order, Respondent will provide to DEQ, within 10 days of DEQ's written request, copies of Quality Assurance/Quality Control ("QA/QC") memoranda and audits, raw data, final plans, task memoranda,

field notes (not made by or at the direction of Respondent's attorney), and laboratory analytical reports relating to activities under this Consent Order. Respondent will preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order, for at least five years after certification of completion under Section 12. Upon DEQ's request, Respondent will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after certification of completion, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Respondent has no further obligation to preserve documents or records.

(2) Subject to Paragraph 7.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any document or record submitted to or copied by DEQ pursuant to this Consent Order. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.

(3) Respondent will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work product privilege, except to the extent that such identifying information is itself subject to a privilege. Respondent may not assert attorney-client or work product privilege with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

(1) Respondent will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Respondent while performing work under this Consent Order. DEQ will provide Respondent with copies of all analytical data from such samples as soon as practicable.

(2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Respondent of any excavation, drilling, sampling, or other fieldwork at least 72 hours before such activity. Upon Respondent's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ, and will provide Respondent with copies of all analytical data for such samples. Respondent will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

(1) Respondent will conduct all sampling, sample transport, and sample analysis in accordance with QA/QC provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be consistent with DEQ's *Environmental Cleanup Quality Assurance Policy* (DEQ10-LQ-0063-QAG). Respondent will make every reasonable effort to ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.

(2) If DEQ conducts sampling or analysis in connection with this Consent Order, DEQ will conduct sampling, sample transport, and sample analysis

in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide Respondent with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Inspection and Progress Reports

(1) As used in this Agreement, the term "New Construction Period" shall mean monthly or quarterly periods where some new construction has occurred, i.e., new construction that could (i) physically affect the soil cover to the landfill, its solid waste contents, or its vapor extraction system or (ii) affect the protection of current or future occupants in structures on the Property from the dangers of residual landfill gas associated with the landfill.

(2) For each month following the later of the effective date of this Consent Order and the commencement of site activities by Respondent if such month contains a New Construction Period, Respondent will deliver to DEQ, on or before the tenth working day of the following month, an inspection and progress report ("Inspection and Progress Report").

(3) For each calendar quarter following the later of the effective date of this Consent Order and the commencement of site activities by Respondent, if such quarter includes a New Construction Period and Respondent has not already submitted an Inspection and Progress Report for each month of the quarter that included a New Construction Period, Respondent will deliver to DEQ, on or before the tenth working day of the following quarter, an Inspection and Progress Report containing the following:

(a) A description of the actions potentially affecting the engineering and institutional controls for the Property taken by Respondent under this Consent Order during the previous month or quarter, as appropriate;

(b) A description of the actions potentially affecting the engineering and institutional controls for the Property scheduled to be taken by Respondent in the next month or quarter, as appropriate;

(c) A summary of sampling, test results, and any other data generated or received by Respondent relating to public health, safety, or environmental aspects of the remedy during the previous month or quarter, as appropriate;

(d) A description of any public health, safety, or environmental problems relating to the Property experienced by Respondent during the previous month or quarter, as appropriate, and actions taken to resolve them;

(e) A photographic log that supports the report's narrative; and

(f) Documentation that the restrictions and prohibitions of this Consent Order are intact and continue to protect public health and the environment.

(4) The appropriate reporting frequency (monthly or quarterly) will be as approved by DEQ.

(5) DEQ may approve less frequent reporting by Respondent, if warranted, but in no case shall reporting be less frequent than once per year. Inspection and Progress Reports may be submitted in electronic form. If submitted in hard-copy written form, two copies must be provided to DEQ.

(6) The monthly and quarterly Inspection and Progress Reports required by this subsection 7(H) of this Consent Order may be considered by DEQ as meeting any reporting requirements set forth in any future Easement and Equitable Servitudes ("EES") for the Property, if the future EES is substantially similar to the Form of EES set forth in Exhibit D to this Consent Order.

I. Other Applicable Laws

(1) Subject to ORS 465.315(3), all activities under this Consent Order must be performed in accordance with all applicable federal, state, and local laws.

(2) All activities under this Consent Order must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection. If archeological objects or human

remains are discovered during any investigation, removal, or remedial activity at the Property, Respondent will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that Respondent and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 7.L.

J. Reimbursement of DEQ Costs

(1) To the extent not paid for by the City of Portland, DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ on or after July 5, 2012 in connection with any activity related to oversight and periodic review of Respondent's implementation of this Consent Order. Each invoice must include a summary of costs billed to date.

(2) DEQ oversight costs payable by Respondent include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 et seq. DEQ's direct cost summary must include a Land Quality Division ("LQD") direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the LQD allocable to DEQ oversight under this Consent Order and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Order and, upon request, will provide copies of such records to Respondent.

(3) Within 30 days of receipt of DEQ's invoice, Respondent will pay the amount of costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or invoke dispute resolution under Subsection 7.M. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, becomes a liquidated debt collectible under ORS 293.250 or other applicable law.

(4) Respondent will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 7.M begins to accrue 30 days from final resolution of any such dispute.

K. Force Majeure

(1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Order despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay caused by the event.

(2) If Respondent demonstrates to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but are not limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, delays in receiving governmental

approval or permit, unanticipated site conditions, fire, explosion, riot, sabotage, or acts of war. Normal inclement weather, increased cost of performance, or changed business or economic circumstances may not be considered Force Majeure.

L. Dispute Resolution

(1) Except as provided in Paragraph 7.M.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will invoke dispute resolution by promptly notifying DEQ in writing of its objection. DEQ and Respondent then will make a good-faith effort to resolve the disagreement within 14 days of Respondent's written objection. At the end of the 14-day period, DEQ will provide Respondent with a written statement of its position from DEQ's Northwest Region Cleanup Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the Region Cleanup Manager, will provide Respondent's position and rationale in writing to DEQ's Northwest Region Administrator. The Region Administrator may discuss the disputed matter with Respondent and, in any event, will provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's written position.

(2) If Respondent refuses or fails to follow DEQ's final position pursuant to Paragraph 7.M.(1), and DEQ seeks to enforce its final position, the Parties, subject to Sections 2 and 10, are entitled to such rights, remedies, and defenses as are provided by applicable law.

(3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.

(4) Dispute resolution under this subsection does not apply to: (a) DEQ approval or modification of any remedial design/remedial action work plan required under the Basis of Design (which approval or modification

is nonetheless subject to Subsection 7.C.); or (b) DEQ assessment of stipulated penalties under Subsection 7.N. (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

M. Stipulated Penalties

(1) Subject to Subsections 7.C., 7.L., and 7.M., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent will pay the stipulated penalties set forth in the following schedule:

(a) $5,000 for the first week of violation or delay and $2,500 per day of violation or delay thereafter, for failure to allow DEQ access to the Property as required under Subsection 7.D. or to provide records as required under Subsection 7.E.

(b) $2,500 for the first week of violation or delay and $1,000 per day of violation or delay thereafter, for:

(i) Failure to submit a final work plan in accordance with the Basis of Design's schedule and terms;

(ii) Failure to complete work in accordance with an approved work plan's schedule and terms;

(iii) Failure to submit a final report, in accordance with an approved work plan's schedule and terms; or

(iv) Failure to record or comply with site restrictions.

(c) $500 for the first week of violation or delay and $500 per day of violation or delay thereafter, for:

(i) Failure to submit a draft work plan in accordance with the Basis of Design's schedule and terms;

(ii) Failure to submit draft reports or progress reports in accordance with the Basis of Design's schedule and terms; or

(iii) Any other violation of the Consent Order, Basis of Design, or an approved work plan.

(2) Violations arising out of the same facts or circumstances or based on the same deadline are treated as one violation per day.

(3) Stipulated penalties do not begin to accrue under this subsection until Respondent receives a notice of violation from DEQ describing the violation and what is necessary to correct it. If the violation was not intentional, is capable of cure, and Respondent corrects the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ in its sole discretion may waive the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.N.(1)(a).

(4) Respondent will, within 30 days of receipt of DEQ's written notice or such longer cure period specified in the notice, pay the amount of such stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.N.(3) by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or request a contested case hearing in accordance with Paragraph 7.N.(5). Respondent will pay simple interest of 9% per annum on the unpaid balance of any stipulated penalties, which interest begins to accrue when payment is due. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.

(5) Respondent may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter 340, Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence or non-occurrence of the alleged violation, and not review the amount of penalty assessed. Further penalties regarding the alleged violation subject to the penalty assessment do not accrue from the date DEQ receives a request for a contested case, through disposition of that case.

(6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Respondent to comply with this Consent Order, DEQ may not

seek civil penalties for the same violation under ORS 465.900 or any other applicable law.

N. Effect of Consent Order

(1) In lieu of stipulated penalties under Subsection 7.N., DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties do not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.

(2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations asserted in this Consent Order.

(3) Subject to Subsection 2.G. and Section 10, nothing in this Consent Order prevents DEQ, the State of Oregon, or Respondent from exercising any rights each might have against any person not a party to this Consent Order.

(4) This Consent Order is void and of no effect if Respondent does not complete acquisition of the Property by November 1, 2013.

(5) DEQ and Respondent intend for this Consent Order to be construed as an administrative settlement by which Respondent has resolved its liability to the State of Oregon, within the meaning of Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f)(2), regarding Existing Hazardous Substance Releases, and for Respondent not to be liable for claims for contribution regarding Existing Hazardous Substance Releases to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2).

O. Indemnification and Insurance

(1) Respondent will indemnify and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.

(2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Respondent and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts or omissions constituting approval or disapproval of any activity of Respondent under this Consent Order). Respondent may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Order.

(3) Before commencing any on-site work under this Consent Order, Respondent will obtain and maintain for the duration of this Consent Order comprehensive general liability and automobile insurance with limits of $1 million, combined single limit per occurrence, naming as an additional insured the State of Oregon. Upon DEQ request, Respondent will provide DEQ a copy or other evidence of the insurance. If Respondent demonstrates by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, Respondent may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

P. Parties Bound

This Consent Order is binding on the Parties and their respective successors, agents, and

assigns. The undersigned representative of each Party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. Respondent will notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the Property during the term of this Consent Order.

Q. Modification

DEQ and Respondent may modify this Consent Order by written agreement.

R. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's Land Quality Division Administrator.

S. Recording

Within 14 days of the effective date of this Consent Order, Respondent will submit a copy or original of this Consent Order (whichever is required by the county) to be recorded in the real property records of Multnomah County, Oregon. Respondent will provide DEQ with written evidence of such recording within seven days of recording.

8. Release from Liability

A. Pursuant to ORS 465.327, and subject to Subsection 8.B. and the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to the State of Oregon under ORS 465.200 to 465.545 and 465.900, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases. Respondent bears the burden of proving by a preponderance of the evidence that a hazardous substance release (for all hazardous substances, hazardous materials, and oil described in Paragraph 2.B.(2)) existed as of the date of Respondent's acquisition of ownership or operation of the Property.

B. The release from liability under Subsection 8.A. does not affect liability of Respondent for claims arising from:

(1) A release of hazardous substances, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property on or after the date of Respondent's acquisition of ownership or operation of the Property;

(2) Contribution to or exacerbation, on or after the date of Respondent's acquisition of ownership or operation of the Property, of a release of hazardous substance, spill or release of oil or hazardous material, or entry of oil into the waters of the state at or from the Property;

(3) Interference or failure to cooperate, on or after the date of Respondent's acquisition of ownership or operation of the Property, with DEQ or other persons conducting remedial measures under DEQ's oversight at the Property;

(4) Failure to exercise due care or take reasonable precautions, on or after the date of Respondent's acquisition of ownership or operation of the Property, with respect to any hazardous substance at the Property;

(5) Disposal or management of hazardous substances or solid waste removed from the Property by or on behalf of Respondent;

(6) Criminal liability;

(7) Violation of federal, state, or local law on or after the date of Respondent's acquisition of ownership or operation of the Property;

(8) Any matters as to which the State of Oregon is owed indemnification under Paragraph 7.P.(1); and

(9) Claims based on any failure by Respondent to meet any requirements of this Consent Order.

9. Third-Party Actions

Subject to the satisfactory performance by Respondent of its obligations under this Consent Order, Respondent is not liable to any person under ORS 465.200 to 465.545, 466.640, or 468B.310 regarding Existing Hazardous Substance Releases.

10. Respondent Waivers

A. Respondent waives any claim or cause of action it might have against the State of Oregon regarding Existing Hazardous Substance Releases; provided, Respondent reserves all rights concerning the obligations of DEQ under this Consent Order.

B. Respondent waives any rights it might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial

Action Fund or the Orphan Site Account for costs incurred under this Consent Order or related to the Property.

11. Benefits and Burdens Run with the Land

A. Pursuant to ORS 465.327(5), the benefits and burdens of this Consent Order run with the land, provided the release from liability set forth in Section 8 limits or otherwise affects the liability only of persons who: (1) are not potentially liable under ORS 465.255, 466.640, or 468B.310 for Existing Hazardous Substance Releases; and (2) expressly assume in writing, and are bound by, the terms of this Consent Order applicable to the Property as of the date of their acquisition of ownership or operation.

B. Upon transfer of ownership of the Property, or any portion of the Property, from Respondent to another person or entity, Respondent and the new owner will provide written notice to the DEQ Project Manager within 10 days after the transfer. No change in ownership of the Property or the corporate or partnership status of Respondent in any way alters Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ.

12. Certification of Completion

A. Upon Respondent's completion of remedial work in accordance with the Basis of Design, Respondent will submit a final closeout report to DEQ signed by both a Oregon-registered professional engineer and Respondent's Project Manager certifying that the remedial action for the Property has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary supporting documentation.

B. DEQ will preliminarily determine whether the remedial action has been performed for the Property and all oversight costs and penalties have been paid in accordance with this Consent Order. Upon a preliminary determination that the remedial action for the Property has been satisfactorily performed and all costs and penalties paid, DEQ will provide public notice and opportunity to comment on a proposed certification decision in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after

receiving Respondent's closeout report, DEQ's Northwest Region Administrator will issue a final certification decision.

C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the remedial action and payment by Respondent of any and all outstanding costs and penalties, except that issuance of a certification of completion of the remedial action does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the remedial action or other productive reuse of the Property or Respondent's obligation to allow access to the property for purposes stated in subsection 5.E.

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent
Northwest Zen Sangha dba Dharma Rain Zen Center

By: Andrea Gyokuko Carlson Date: Oct 30, 2012

Andrea Gyokuko Carlson
President

STIPULATED, AGREED, and SO ORDERED:

State of Oregon,
Department of Environmental Quality

By: _____ Date: _____

Wendy Wiles
Administrator, Land Quality Division

receiving Respondent's closeout report, DEQ's Northwest Region Administrator will issue a final certification decision.

C. This Consent Order is satisfied upon issuance of DEQ's certification of completion for the remedial action and payment by Respondent of any and all outstanding costs and penalties, except that issuance of a certification of completion of the remedial action does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the remedial action or other productive reuse of the Property or Respondent's obligation to allow access to the property for purposes stated in subsection 5.E.

13. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent
Northwest Zen Sangha dba Dharma Rain Zen Center

By: _____ Date: _____

Andrea Gyokuko Carlson
President

STIPULATED, AGREED, and SO ORDERED:

State of Oregon,
Department of Environmental Quality

By: Wendy Wiles Date: Oct 30, 2012

Wendy Wiles
Administrator, Land Quality Division

NOTARY ACKNOWLEDGEMENTS

STATE OF OREGON )
) ss.
COUNTY OF Multnomah)

The foregoing instrument is acknowledged before me this 30th day of October, 2012, by Andrea Gyokuko Carlson, President of Northwest Zen Sangha dba Dharma Rain Zen Center, on its behalf.

Marie Scheller Encell
NOTARY PUBLIC FOR OREGON
My commission expires: Oct. 7, 2014

OFFICIAL SEAL
MARIE SCHELLER ENCELL
NOTARY PUBLIC - OREGON
COMMISSION NO. 452913
MY COMMISSION EXPIRES OCTOBER 07, 2014

STATE OF OREGON )
) ss.
COUNTY OF _____)

The foregoing instrument is acknowledged before me this _____ day of October, 2012, by Wendy Wiles, Administrator, Land Quality Division, of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires:_____

## NOTARY ACKNOWLEDGEMENTS

STATE OF OREGON )
) ss.
COUNTY OF _____)

The foregoing instrument is acknowledged before me this _____ day of October, 2012, by Andrea Gyokuko Carlson, President of Northwest Zen Sangha dba Dharma Rain Zen Center, on its behalf.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

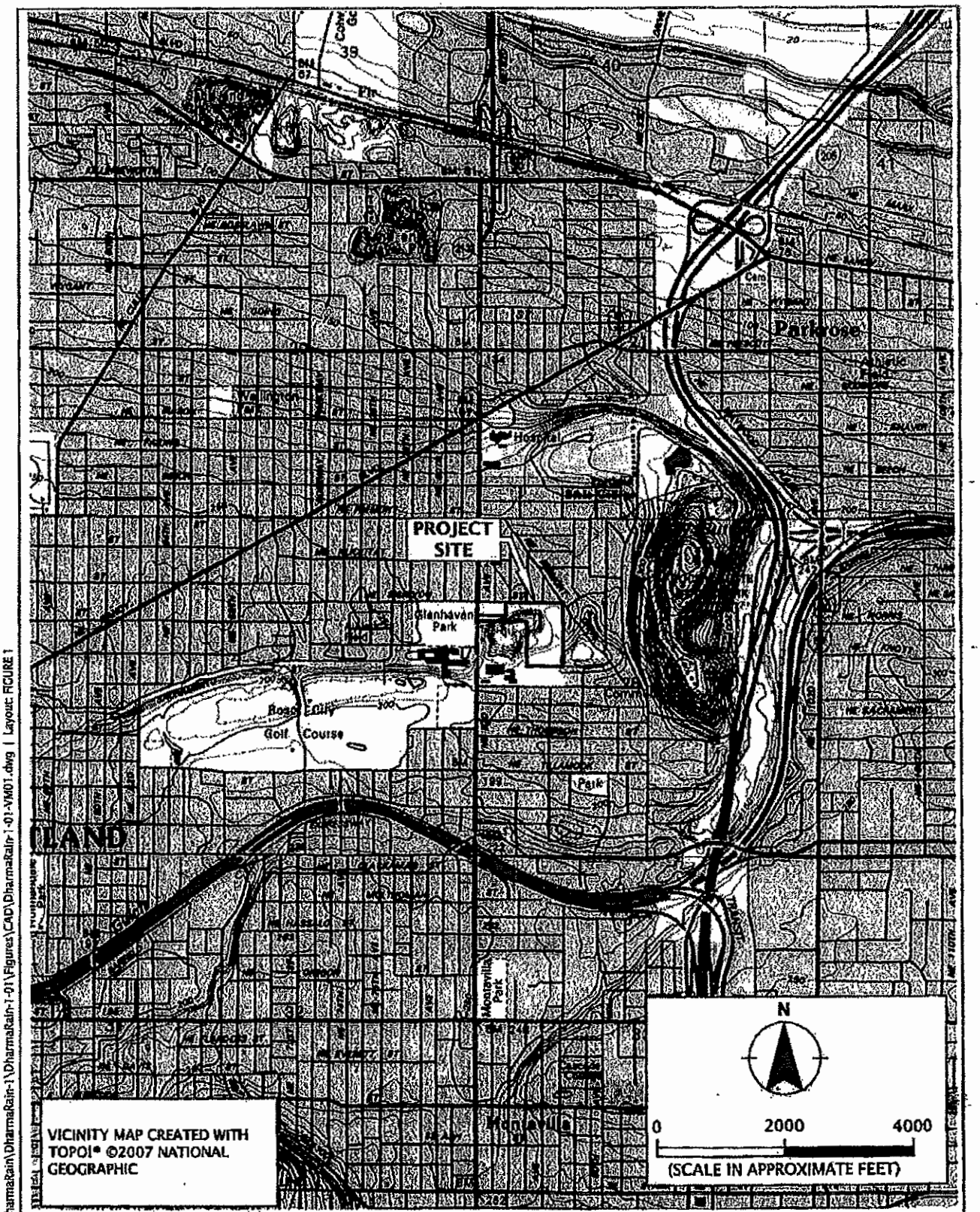
STATE OF OREGON )
) ss.
COUNTY OF Mult )

The foregoing instrument is acknowledged before me this 30th day of October, 2012, by Wendy Wiles, Administrator, Land Quality Division, of the Oregon Department of Environmental Quality, on its behalf.

OFFICIAL SEAL
DEBORAH K NESBIT
NOTARY PUBLIC-OREGON
COMMISSION NO. 452136
MY COMMISSION EXPIRES SEPTEMBER 12, 2014

Deborah K Nesbit
NOTARY PUBLIC FOR OREGON
My commission expires: 09/12/2014

Exhibit A:
Vicinity Map




| | | |
|---|---|---|
| GEODESIGN INC<br>15575 SW Sequoia Parkway - Suite 100<br>Portland OR 97224<br>Off 503.968.8787 Fax 503.968.3068 | DHARMARAIN-1-01 | EXHIBIT A OF DRZC PPA VICINITY MAP |
| | AUGUST 2012 | PROPOSED HOUSEHOLDER REFUGE AND TEMPLE<br>PORTLAND, OR — FIGURE 1 |

Printed By: aday | Print Date: 8/27/2012 4:12:06 PM
File Name: J:\A-D\DharmaRain\DharmaRain-1\DharmaRain-1-01\Figures\CAD\DharmaRain-1-01-VM01.dwg | Layout: FIGURE 1

# Exhibit B

## Property Legal Description

# Exhibit B

## Property Legal Description

A tract of land situated in the Northwest one-quarter of Section 28, Township 1 North, Range 2 East, Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Beginning at a brass screw with a brass washer stamped "LS 940" found at the Southwest corner of Parcel 3, PARTITION PLAT NO. 1998-22, Multnomah County Plat Records; thence, along the West line of said Parcel 3 and the East right of way line of N.E. 82nd Avenue, North 0°43'30" East, 27.00 feet to the Southwest corner of Parcel 2, said PARTITION PLAT NO. 1998-22; thence, along the South line of said Parcel 2 and its Easterly extension, South 89°53'15" East, 391.54 feet to a found 5/8 inches iron rod with a yellow plastic cap stamped "REPPETO & ASSOC. INC."; thence, North 0°43'30" East, 178.88 feet to a 5/8 inches iron rod with a yellow plastic cap stamped "REPPETO & ASSOC. INC." found on the North line of said Parcel 3; thence, along the North line of said Parcel 3 and the South right of way line of N.E. Siskiyou Street, South 89°54'49" East, 882.98 feet to a 5/8 inches iron rod with a yellow plastic cap stamped "WAKER ASSOCIATES, INC" found at the most Northerly Northeast corner of said Parcel 3; thence, along the Northerly line of said Parcel 3 and the Southerly right of way line of N.E. Fremont Drive, South 34°57'30" East, 53.16 feet to the most Easterly Northeast corner of said Parcel 3, being referenced by a found 3/4 inches iron pipe which bears South 0°38'26" West, 0.34 feet; thence, along the East line of said Parcel 3 and the West line of ROCKY BUTTE ADDITION, Multnomah County Plat Records, South 0°38'26" West, 888.87 feet to a 5/8 inches iron rod with a yellow plastic cap stamped "G & L LAND SURVEYING INC" found at the Northeast corner of Lot 11, MADISON PLACE, Multnomah County Plat Records; thence, along the North line of said MADISON PLACE, North 89°54'56" West, 551.99 feet to the Northeast corner of Lot 2, said MADISON PLACE; thence, North 0°43'30" East, 726.31 feet to a point on the South line of said Parcel 3; thence, along said South line, North 89°53'15" West, 754.86 feet to the point of beginning.

# Exhibit C

## Basis of Design and Engineering Approach

Exhibit C of the DRZC PPA

GEODESIGN INC

August 29, 2012

Oregon Department of Environmental Quality
400 East Scenic Drive, Suite 307
The Dalles, OR 97058

Attention: Mr. Bob Schwarz

**Basis of Design and Engineering Approach**
Proposed Householder Refuge and Temple
Eastern Half of Former H.G. LaVelle Landfill
NE 82nd Avenue and NE Siskiyou Street
Portland, Oregon
GeoDesign Project: DharmaRain-1-01

## INTRODUCTION

The Dharma Rain Zen Center (DRZC) is a prospective purchaser of an approximately 14-acre parcel of land located at the eastern half of the approximately 26-acre former H.G. LaVelle Landfill ("Eastern LaVelle Property") located southeast of the intersection of NE 82nd Avenue and NE Siskiyou Street in Portland, Oregon (project site). The current transaction with the seller, M. Hashem Limited Partnership, will take the form of a "land sale agreement" under which M. Hashem will retain the deed and access to the Eastern LaVelle Property until DRZC has paid the 10-year note on the Eastern LaVelle Property. The project site is currently undeveloped, and DRZC intends to construct site improvements comprised of approximately 30 residential units and a temple site that includes the temple building, bath house, dormitory spaces, assembly and classroom space, and administrative office space. The temple site buildings are estimated to encompass approximately 20,000 square feet. DRZC intends to enter into a Prospective Purchaser Agreement (PPA) with the Oregon Department of Environmental Quality (DEQ) that sets forth development requirements, restrictions, and provisions and also stipulates a release of liability by the State of Oregon for releases of hazardous substances on the property prior to purchase by DRZC.

## BACKGROUND

The entire LaVelle property is a former quarry pit that was operated by Rose City Sand and Gravel Company. Rose City Sand and Gravel developed the site as a sand and gravel mining operation and mined the pit to depths of up to 80 feet below ground surface. The quarry pit was

subsequently operated as a demolition landfill by LaVelle and Yett, Inc. beginning in 1972. The LaVelle Landfill was permitted to receive building and demolition debris, wood products, metals, heavy industrial debris, and similar materials. Approximately 2 million cubic yards of solid waste fill was deposited into the landfill between 1972 and the landfill's closure in 1982. Following closure, the landfill was covered with a soil cover. An active landfill gas (LFG) recovery system is in place and operational. The system includes a network of extraction wells connected to a header pipe running along the perimeter of the project site. In addition, passive vents and numerous gas monitoring wells exist at various locations around the perimeter of the landfill. The extraction blower and enclosure structure are located to the west of the project site.

## BASIS OF DESIGN

Based on our understanding of the site history, review of various documents and information, and experience at similar sites, LFG is present in the landfill material. Further, historical documentation indicates that LFG was previously detected beyond the limits of the former quarry in native gravels north of NE Siskiyou Street. An active LFG extraction system is present and operational around the perimeter of the landfill to mitigate potential for off-site migration of LFG to adjoining parcels. The landfill material has been in place for at least 30 years, and while LFG generation apparently has decreased over time, it is our professional opinion that engineering controls should be incorporated into the development plans that will address the potential for methane occurrence during and after the project site is developed.

The proposed development will include structures on the Eastern LaVelle Property at an area that is located on the former landfill. Preliminary environmental characterization of subsurface conditions is currently contemplated in the development area to provide additional information for the LFG mitigation design. An additional geotechnical evaluation of the property may also be necessary to further evaluate soil conditions and to provide appropriate recommendations for building foundations and parking areas to mitigate issues related to settlement.

With respect to LFG mitigation, the primary objectives for the basis of design will be to:

- mitigate potential for methane to accumulate in a confined space or structure at concentrations exceeding 25 percent by volume of the lower explosive limit.
- ensure that the proposed improvements do not exacerbate existing conditions on the property; for example, resulting in or increasing off-site methane migration through utility corridors or by accumulation beneath paved areas on the property.
- ensure that if the proposed site improvements or access improvements result in disturbance to the current methane monitoring and/or extraction system, the disturbances are minimal and temporary.

## DESIGN CONCEPTS

Conceptual design elements have been developed to support the project objectives as described above. The design concepts are based on the understanding that the existing active gas extraction system remains operational at the project site and provides added benefit by controlling methane migration. However, engineering design recommendations for the

proposed development are sufficiently conservative and protective. In our professional opinion the project objectives will be achieved regardless of future operation of the active extraction system. Furthermore, it is our understanding that the active gas extraction system is owned and operated by the current property owner under a solid waste landfill closure permit and the current owner and DEQ will continue to have access to the Eastern LaVelle Property for the purposes of inspecting, monitoring, and maintaining the portion of the LFG system that is located on the Eastern LaVelle Property. After DRZC pays off the note that the current property owner will hold, the current property owner will transfer the deed to DRZC, reserving an easement to allow the current property owner and DEQ to continue to inspect, monitor, and maintain the portion of the LFG extraction system that is located on the Eastern LaVelle Property, as may be required by the PPA for the Eastern LaVelle Property and the solid waste landfill closure permit for the entire former LaVelle Landfill property. In addition, the design of the development will preserve the access to these components of the LFG system after development.

At this time, preliminary recommendations have been developed that are believed to be conservative and for use in planning purposes. Additional methane investigation is planned by the prospective purchaser to document baseline conditions on the property. The results of the additional evaluation may support less rigorous recommendations, the results of which would be discussed with DEQ for concurrence prior to implementation. Preliminary recommendations for methane mitigation at this time include the following:

- Existing Active Gas Extraction System Piping: As indicated above, the header piping and extraction wells for the existing active gas extraction system are located along the perimeter of the landfill. We understand that the planned street access addition from NE Siskiyou Street to the Eastern LaVelle Property may cross a small portion of the extraction system piping and perhaps one or two monitoring wells, extraction wells, and/or passive vents. This may require slight modification of the extraction system layout. We recommend that this work is conducted by qualified personnel and that verification testing be conducted after modification to ensure proper operation.

- Building Foundations: Preliminary designs for the development include several single-level buildings with the possibility of two-level residential buildings. Various foundation and structural design concepts are currently being evaluated. Presently, focus is directed towards grade beam foundations in a grid array with wooden pony walls to facilitate adequate crawl space ventilation and foundation leveling in the event of differential settlement. We anticipate provisions in the building design to maintain adequate ventilation space beneath the buildings. These provisions will be based on the ***Buildings with Raised Floor Construction*** provision of the Los Angeles Department of Building and Safety Methane Mitigation Standard Plan (any structure depending on the final design). These provisions include maintaining a clear height above grade of at least 12 inches to girder, 18 inches to floor joist, and 24 inches to structural floors. The buildings will also be designed to have ventilation openings of the under-floor crawl space of either 1 percent of the under-floor area or openings of not less than 1.5 square feet per 25 linear feet of exterior wall. It is contemplated that design ventilation openings in the structures will substantially exceed these guidance recommendations. Alternatives to the design could include active mechanical ventilation of the building crawl spaces, possibly controlled with a methane detector, or the installation of

sub-slab passive venting systems and low permeable membranes beneath the slabs. The low permeable membrane, if warranted, could consist of either a 60-mil spray applied membrane or high-density polyethylene membrane. Either membrane type will be installed and inspected by qualified personnel. The vent systems would consist of flat piping or slotted polyvinyl chloride piping beneath the building slabs that would then be vented vertically through the structure roof.

- Paved Areas and Sidewalks: The landfill is currently covered with at least 2 feet of soil. The soil cover allows some level of atmospheric venting of LFG. During development, placement of less permeable surfaces such as pavement or concrete could exacerbate current conditions and allow methane to accumulate to unacceptable levels. Therefore, GeoDesign recommends incorporating landscaped areas into the less permeable areas to facilitate continued atmospheric venting from beneath newly paved or covered areas. Additional enhancements that may be warranted beneath these areas could include installation of passive vent piping in a grid array beneath the pavement to enhance venting beneath the less permeable areas.

  GeoDesign also recommends that, to the extent practical, efforts be made to avoid or limit excavations greater than approximately 2 feet deep (through the existing soil cover) during installation of catch basins, storm sewer piping, or other required improvements. Should deeper excavations be required, work that will be subject to DEQ approval should be conducted by knowledgeable personnel and backfilling and compaction should be conducted to adequately restore covered conditions.

- Utility Corridors: As part of the development, utility corridors for storm sewer, sanitary sewer, and other utilities will likely extend off site to existing trunk systems. To mitigate potential for uncontrolled migration through relatively permeable trench backfill and potentially off site, concrete-bentonite trench dams are recommended at all locations where utilities extend off site and also immediately adjacent to building footings such that methane does not migrate beneath planned structures. In addition, utility vaults will be equipped with vented covers and penetrations will be sealed. Further site characterization could indicate the need for additional utility protection considerations related to other landfill gases and/or soil conditions. It is our understanding that electrical power will be aboveground. In the event this changes, underground electrical conduits will be sealed where they daylight prior to electrical panels or junctions boxes where potential ignition sources could be present.

- Solid Waste Management and Health and Safety for Construction Workers: Various site grading and excavation work will be subject to DEQ approval and will be conducted as part of the site development. All workers at the site should conduct activities in accordance with a Site-Specific Health and Safety Plan that will be prepared prior to initiating site work. In addition, depending on the specific project requirements, deeper excavations may encounter solid waste. Excavated solid waste material must be properly managed and/or disposed in accordance with applicable rules and regulations, and appropriate site inspections are recommended during the site work. To address this potential condition, we recommend preparing a soil and solid waste management plan to establish the framework and guidelines

to properly handle solid waste, if encountered. Lastly, disturbed areas of the soil cover that will remain undeveloped must be restored to pre-existing conditions.

- Verification Sampling and Reporting: During construction, routine monitoring for LFG will be conducted to help ensure protection of on-site workers, particularly during grading and deep excavations, if necessary. Periodic monitoring will also be conducted at selected perimeter locations to evaluate site conditions during the development. Prior to occupancy, final sampling will be conducted at confined spaces, representative interior spaces, and vent systems (if applicable) to evaluate that the buildings and site are safe for occupancy and that the installed engineering controls are working effectively and as designed. Periodic site monitoring may be included as part of the long-term management requirements set forth in the PPA. As an alternative, installation of gas monitoring sensors in the crawl spaces and/or building interiors may be a cost-effective alternative to monitor that the engineering controls are effective over time.

- Reporting and Communication: GeoDesign, on behalf of the prospective purchaser, anticipates routine correspondence and collaboration with DEQ personnel throughout the development. Results of any supplemental investigations, site inspections, monitoring events, or other pertinent information will be communicated verbally or in writing to DEQ. Prior to construction, design plans and specifications for methane mitigation that have been prepared under the direct supervision of and stamped by an Oregon-registered professional engineer will be submitted to DEQ for review and approval. Upon completion of the construction project, a brief summary report will also be forwarded to DEQ documenting the results of all activities conducted during the development related to methane mitigation at the site.

**SCHEDULE**

This project is in the early stages of planning with only conceptual designs underway. The design elements described in this letter are dependent upon designs prepared by various technical disciplines (e.g., civil and utility design, foundation design, and architectural design). Therefore, LFG mitigation design elements will not be substantially completed until other discipline designs are further developed or near complete.

Based on preliminary timelines, detailed design development is tentatively scheduled for early to mid-2013. Based on this, LFG mitigation design documents should be available for regulatory review at that time.

♦ ♦ ♦

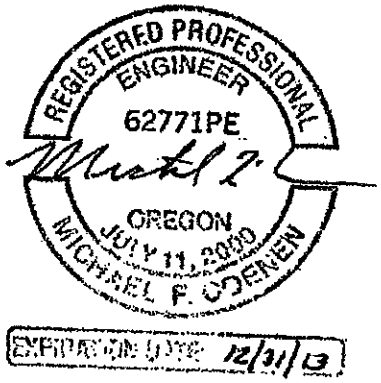
We appreciate your continued assistance and support on this project. Please call if you have questions regarding this submittal or if we may be of assistance in any regard.

Sincerely,

GeoDesign, Inc.

Mike F. Coenen, P.E.
Associate Engineer

Craig W. Ware, R.G.
Principal Geologist




cc: Mr. Tim Spencer, Oregon Department of Environmental Quality (via email only)
Ms. Cheyenne Chapman, Oregon Department of Environmental Quality (via email only)
Mr. Kakumyo Lowe-Charde, Dharma Rain Zen Center (via email only)
Mr. John Schultz, Ater Wynne (via email only)

SCN:MFC:CWW:kt
One copy submitted
Document ID: DharmaRain-1-01-082912-envl-Exh_C_of_PPA.docx
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# Exhibit D

## Form of Easement and Equitable Servitudes

**EXHIBIT D**

**FORM OF EASEMENT AND EQUITABLE SERVITUDES**

---

*Space above this line for Recorder's use.*

***After recording, return to:***

***Grantee***
Oregon DEQ
[Address]
[City, OR ZIP]
Attention: [Name]

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on [Date], 20[Year] between Northwest Zen Sangha dba Dharma Rain Zen Center ("Grantor") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "Grantee").

**RECITALS**

A. Grantor is the owner of an approximately 13.75-acre real property located at [Address, City, Zip] in Multnomah County, Oregon in Multnomah County Tax Map [#], Tax Lot [#] (the "Property") the location of which is more particularly described in Attachment 1 to this EES. The Property is referenced under the name H.G. LaVelle Landfill, ECSI #5118 in the files of DEQ's Environmental Cleanup Program at Northwest Region office located at 2020 SE 4th Ave, Portland, Oregon, and telephone [Region Phone #]. This EES applies only to the eastern approximately 13.75 acres of the H.G. LaVelle Landfill, which are owned by Grantor. Interested parties may contact the Northwest Region office to review a detailed description of the residual risks present at the Property and found in Phase I Environmental Site Assessment for Parcel B of Former LaVelle Landfill, Hahn & Associates, August 2012 and other reports from ECSI file.

B. On [Date], 2012, the Director of the Oregon Department of Environmental Quality or delegate selected the remedial action for the Property set forth in the Order on Consent – Prospective Purchaser Agreement for the Property of the same date. The remedial action selected requires, among other things: certain landfill gas mitigation measures relating to the Property and any improvements on the Property, Grantor entered into a Consent Order ("Order") with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional controls. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

C. Nothing in this Easement and Equitable Servitudes constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitudes.

## 1. DEFINITIONS

1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) [340-122-0115.

1.2 Beneficial use" has the meaning set forth in OAR 340-122-0115.

1.3 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

1.4 "Ecological receptor" has the meaning set forth in OAR 340-122-0115.

1.5 "Engineering control" has the meaning set forth in [OAR 340-122-0115 - "Hazardous substance" has the meaning set forth in ORS 465.200

1.6 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

1.7 "Remedial Action" has the meaning set forth in [ORS 465.200 and OAR 340-122-0115.

## 2. GENERAL DECLARATION

2.1 Grantor, in consideration of Grantee's Order, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

## 3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)

3.1 Respondent will perform landfill gas mitigation measures in accordance with the Basis of Design and Engineering Approach ("Basis of Design") prepared by Grantor's technical

consultant, GeoDesign Inc., and attached to the Order as Exhibit C, and the terms and schedules set forth in a DEQ-approved work plan associated with the Order.

3.2 Use of the Property. Owner may not occupy or allow other parties to occupy the Property unless the controls listed in Section 3 of this EES are maintained

## 4. EASEMENT (RIGHT OF ENTRY)

4.1 During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

## 5. RELEASE OF RESTRICTIONS

5.1 Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

5.2 Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

## 6. GENERAL PROVISIONS

6.1 **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided in Subsection 3.2 or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

6.2 **Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change

the base zone of the Property under the Multnomah County zoning code or any successor code. As of the date of this EES, the base zone of the Property is [insert zoning].

6.3 **Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

6.4 **Inspection and Annual Reporting.**

6.4.1 On or before September 1 of each year after the execution and recording of this EES, Owner will inspect the Property and will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES intended to maintain the engineering controls for protection of public health and the environment. In addition, Owner will prepare and submit an annual report to DEQ by October 1 of each year after the execution and recording of this EES. Annual reports must include sufficient detail to allow DEQ to determine compliance with EES requirements, and include a photographic log that supports the report's narrative. The annual inspection report will: (i) document and confirm that the restrictions and prohibitions of this EES are being complied with and that the engineering controls continue to protect public health and the environment, (ii) report on any actions that may have compromised the effectiveness of the key institutional and engineering controls, and the measures taken to address these issues consistent with the EES, and (iii) confirm that key institutional and engineering controls are working properly.

6.4.2 Instead of conducting an annual inspection and preparing and submitting to DEQ a separate annual report as set forth above, Owner may request in writing by October 1 of each year that DEQ consider the monthly and/or quarterly Inspection and Progress Reports submitted by Owner to DEQ during the reporting year pursuant to Section 7(H) of the PPA Consent Order for the Property meet the requirement in this EES for annual inspection of the Property and annual reporting.

6.4.3 Upon acceptance by DEQ of five years of annual inspection reports (which may include in whole or in part, the equivalent monthly and quarterly Inspection and Progress Reports), Owner may request in writing that DEQ reevaluate the scope and frequency of inspections based in part

on reasonable documentation of Owner's efforts to inspect and maintain the engineering controls for protection of public health and the environment. No change in the scope or frequency of the inspections or reports will be made without written approval by DEQ.

6.5 A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

6.6 Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.7 Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES as provided in the Order or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitudes as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS CONVEYANCE PURSUANT TO ORS 93.808.

**GRANTOR:** Northwest Zen Sangha dba Dharma Rain Zen Center

_____ **By:**
_____ **Date:** _____

[Name, Title]

STATE OF OREGON )
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by [Name] of Northwest Zen Sangha dba Dharma Rain Zen Center, on its behalf.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

**GRANTEE:** State of Oregon, Department of Environmental Quality

_____ **By:**
_____ **Date:** _____

[Name], [Tanks, Cleanup and Emergency Response] Manager, [Eastern/Northwest/Western] Region

STATE OF OREGON )
) ss.
County of _____)

The foregoing instrument is acknowledged before me this _____ day of _____, 20____, by _____ [Name] of the Oregon Department of Environmental Quality, on its behalf.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

# ATTACHMENT 1
# TO EXHIBIT D (FORM OF EASEMENT AND EQUITABLE SERVITUDES)

## Legal Description of the Property

A tract of land situated in the Northwest one-quarter of Section 28, Township 1 North, Range 2 East, Willamette Meridian, in the City of Portland, County of Multnomah and State of Oregon, being more particularly described as follows:

Beginning at a brass screw with a brass washer stamped "LS 940" found at the Southwest corner of Parcel 3, PARTITION PLAT NO. 1998-22, Multnomah County Plat Records; thence, along the West line of said Parcel 3 and the East right of way line of N.E. 82nd Avenue, North 0°43'30" East, 27.00 feet to the Southwest corner of Parcel 2, said PARTITION PLAT NO. 1998-22; thence, along the South line of said Parcel 2 and its Easterly extension, South 89°53'15" East, 391.54 feet to a found 5/8 inches iron rod with a yellow plastic cap stamped "REPPETO & ASSOC. INC."; thence, North 0°43'30" East, 178.88 feet to a 5/8 inches iron rod with a yellow plastic cap stamped "REPPETO & ASSOC. INC." found on the North line of said Parcel 3; thence, along the North line of said Parcel 3 and the South right of way line of N.E. Siskiyou Street, South 89°54'49" East, 882.98 feet to a 5/8 inches iron rod with a yellow plastic cap stamped "WAKER ASSOCIATES, INC" found at the most Northerly Northeast corner of said Parcel 3; thence, along the Northerly line of said Parcel 3 and the Southerly right of way line of N.E. Fremont Drive, South 34°57'30" East, 53.16 feet to the most Easterly Northeast corner of said Parcel 3, being referenced by a found 3/4 inches iron pipe which bears South 0°38'26" West, 0.34 feet; thence, along the East line of said Parcel 3 and the West line of ROCKY BUTTE ADDITION, Multnomah County Plat Records, South 0°38'26" West, 888.87 feet to a 5/8 inches iron rod with a yellow plastic cap stamped "G & L LAND SURVEYING INC" found at the Northeast corner of Lot 11, MADISON PLACE, Multnomah County Plat Records; thence, along the North line of said MADISON PLACE, North 89°54'56" West, 551.99 feet to the Northeast corner of Lot 2, said MADISON PLACE; thence, North 0°43'30" East, 726.31 feet to a point on the South line of said Parcel 3; thence, along said South line, North 89°53'15" West, 754.86 feet to the point of beginning.

**ATTACHMENT 2**
**TO EXHIBIT D (FORM OF EASEMENT AND EQUITABLE SERVITUDE)**

**SECTION 3 EXAMPLES**

1. **Groundwater Use Restrictions.** [Owner may not extract through wells or by other means or use the [shallow] groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws. [Extraction of groundwater from a deeper aquifer is also prohibited. -OR- Owner may extract groundwater from a deeper aquifer provided: (a) the well is located at least 100 feet from the edge of the contaminated shallow groundwater; (b) the well is located hydraulically upgradient of the contaminated groundwater; and (c) the well is constructed with a deep annulus seal. The location and construction of the well must be approved by DEQ before the well is installed.]]

2. **Soil Cap Engineering Control.** [Except upon prior written approval from DEQ, Owner may not conduct or allow operations or conditions on the Property or use of the Property in any way that might penetrate any soil cap at the Property or jeopardize the soil cap's protective function as an engineering control that prevents exposure to contaminated soil, including without limitation any excavation, drilling, scraping, or uncontrolled erosion. Owner will maintain the soil cap, if applicable, in accordance with the monitoring and maintenance plan as specified in [reference ROD or equivalent] and approved in writing by DEQ.]

3. **Vapor Barrier Engineering Control Use Restrictions.** [Except upon prior written approval from DEQ, Owner must not conduct operations on the Property or use the Property in any way that will or likely will penetrate the vapor barrier or jeopardize the vapor barrier's protective function as an engineering control that prevents exposure to contaminated soil and groundwater, including without limitation any excavation, drilling, scraping, or erosion.]

4. **Access Restrictions.** [Owner must install and maintain a fence around the Property and post warning signs at the Property as necessary to prohibit entry and warn of potential hazards of exposure to contaminants at levels that exceed acceptable risk levels[, in accordance with the [plan/ROD].]

5. **Warnings.** [Owner will post warning signs at the Property as necessary to warn of potential hazards of exposure to contaminants at levels that exceed acceptable risk levels specified in the [plan/ROD].]

6. **Building Maintenance.** [Owner will routinely inspect and maintain the condition of buildings on the Property to ensure that asbestos-containing materials, such as cement asbestos board siding and asbestos-containing roofing, do not degrade to a friable condition. Owner will comply with applicable law when undertaking any activity that might disturb asbestos-containing material.]

7. **Land Use Restrictions.** [The following operations and uses are prohibited on the Property: Ground floor urban residential/residential use of any type. -OR-

   a. Residential use of any type; and

   b. Agricultural (food-crop) use of any type.]

**dstuart@ rsblaw.net**

**From:** Mike7 <mikehashem7@gmail.com>
**Sent:** Friday, March 14, 2014 6:00 PM
**To:** SPENCER Tim
**Subject:** Re: Methane Levels

Tim ,
We had a vandalism to the pump at that time which we have fixes since and the wells are back below the 5% and consistent with the past readings . I asked jason to check on the pump weekly and asked our security company to increase night patrol to avoid any future problem . I assume the reading they provided you was done two month ago correct?
I will send you the new reading next week .
Thank you
Mike Hashem

Sent from my iPhone

On Mar 14, 2014, at 5:32 PM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

> Hello Mike,
> DEQ asked Dharma Rain to Conduct methane monitoring before and during their surcharge placement on the landfill to determine if the surcharge had an effect on methane levels. Their results indicate that methane levels are high again in the monitoring wells near Madison Place Apartments and were elevated before the surcharge was placed . Please increase the blower operating hours right away as this situation puts those residents at risk of hazardous conditions. In addition, please retest the wells along the south property boundary to make sure methane is back down below 5% by volume. Thank you for your immediate attention to this serious situation. I will contact you on Monday to discuss the methane issue further.
> Thanks again,
> Tim Spencer
> Tim Spencer, Project Manager
> DEQ NWR Solid Waste Program
> (503) 229-5826
> *spencer.tim@deq.state.or.us*

**dstuart@ rsblaw.net**

**From:** M Hashem <mikehashem7@gmail.com>
**Sent:** Monday, April 07, 2014 7:39 AM
**To:** SPENCER Tim
**Subject:** Re: March 2014 Readings

Tim,
Jason tested the wells last Friday and reported to me that the blower have been effective in reducing the methane in well 29 to 4% . the rest are reading 0 still. he will read check again this week to make sure things are working as planed. I will stay in touch.
Thank you.
Mike Hashem

M Hashem
503 593 9870
mikehashem7@gmail.com

On Fri, Apr 4, 2014 at 10:10 AM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

Bob,

As you can see from Mike's last email he agreed to recheck Mw-29 again and to increase blower hours of operation.

Tim

---

**From:** Mike7 [mailto:mikehashem7@gmail.com]
**Sent:** Friday, March 21, 2014 12:07 PM

**To:** SPENCER Tim
**Subject:** Re: March 2014 Readings

I will have jason read it next week and will increase hours of operation .

Mike .

Sent from my iPhone

On Mar 21, 2014, at 11:30 AM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

Mike,

Maximum methane concentration and stabilized (steady state) concentration are both important to consider in evaluating methane–related safety risk which is why we want to have both values reported. Sometimes the purging step removes gas that was initially present in a monitoring probe and there is insufficient gas present in surrounding soils to replenish the amount being withdrawn. That appears to have happened with the March reading at MW-29. It is unusual , though that the methane concentration went from 12% all the way to zero . The maximum reading is still significant because it exceeded the lower explosive limit at a location that is very close to residential structures. At a minimum this location (MW-29) should be retested very soon to confirm that methane concentrations have remained below 5%.

Thank you.

Tim Spencer

Tim Spencer, Project Manager

DEQ NWR Solid Waste Program

(503) 229-5826

spencer.tim@deq.state.or.us

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**From:** Mike7 [mailto:mikehashem7@gmail.com]
**Sent:** Thursday, March 20, 2014 3:10 PM
**To:** SPENCER Tim
**Subject:** Re: March 2014 Readings

Actually well 29 stabilized at 0 % today 'a reading . Well 32 is at 4% which is higher than usual and maybe a result of the work done at the zen center .

Mike

Sent from my iPhone

On Mar 20, 2014, at 3:00 PM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

> Mike, thank you for the methane readings. MW-29, near the apartments, still has elevated methane. Blower hours of operation should be extended to see If MW-29 methane levels drop below 5%. If that doesn't work the individual extraction wells may need to be tested and adjusted to increase extraction rates near MW-29. Energyneering (Benny Benson) definitely has the expertise and equipment to do that.
>
> Thanks again,
>
> Tim Spencer
>
> Tim Spencer, Project Manager

DEQ NWR Solid Waste Program

(503) 229-5826

spencer.tim@deq.state.or.us

**From:** Mike7 [mailto:mikehashem7@gmail.com]
**Sent:** Thursday, March 20, 2014 2:33 PM
**To:** SPENCER Tim
**Subject:** Fwd: March 2014 Readings

This is from today . Just got it .

Mike

Sent from my iPhone

Begin forwarded message:

> **From:** Jason Bennett <novembeast@gmail.com>
> **Date:** March 20, 2014 at 2:30:26 PM PDT
> **To:** M Hashem <Mikehashem7@gmail.com>
> **Subject: March 2014 Readings**

**dstuart@ rsblaw.net**

**From:** Mike7 <mikehashem7@gmail.com>
**Sent:** Wednesday, June 11, 2014 4:28 PM
**To:** SPENCER Tim
**Cc:** SCHWARZ Bob
**Subject:** Re: H. G. LaVelle Landfill-- Methane Gas Monitoring

Tim,
I asked jason to investigate the information you provided me and make needed repairs and report back to us .
I will be in touch .
Thank you
Mike Hashem

Sent from my iPhone

> On Jun 10, 2014, at 5:02 PM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:
>
>
> Hello Mike,
>
> On June 5th 2014, a DEQ environmental scientist visited your site (H.G. LaVelle landfill) and tested a limited number of perimeter gas monitoring wells . The purpose of this visit was to measure current levels of methane, carbon dioxide, oxygen, and static pressure and to cross-check the results of recent PSFM monitoring events. The wells that DEQ selected to monitor included some that have had elevated methane levels in the recent past. Specifically, DEQ attempted to monitor MW-29, MW-30, MW-31, MW-32, along the south boundary and MW-3s, MW-4s, and MW-5d along the north boundary of the landfill.
>
> During this site visit DEQ's scientist noted problems with the physical condition and functionality of some of these monitoring wells. Following is a summary of his observations:
>
> MW-29
> Condition ok, function ok.
>
> *MW-30*
> The vault was free of standing water but the well casing was flooded with water. So MW-30 , a very important probe located near residences, is non-functional and could not be tested.
>
> MW-31
> *This well has been partially filled with gravel and soil and is non-functional. In addition, the quick-connect coupling at* the top of the well is corroded or jammed and will not latch to the male connector on the test-meter tubing. The connector needs repair or replacement and gravel, soil and any other debris must be removed from the casing to restore this well to proper function.
>
> MW-32
> This well casing may also contain debris. After the readings were completed, and connectors uncoupled, an audible rush of air entered the well indicating that flow through the well screen is obstructed. This well needs to be evaluated and restored to proper function.
>
> MW-3s, MW-4s, Mw-5d

> Although these wells appeared otherwise functional during testing the quick connects appeared dirty and corroded and test results suggest the quick connects may not provide a tight seal when snapped to the male connector on the test meter tubing.
>
> Monitoring Results
> Methane levels slightly exceeded the compliance limit of 5% by volume at MW-29. The reading was 6.3 %. Other readings were below the compliance limit but DEQ is concerned about the condition of all the monitoring wells because testing accuracy may be compromised.
>
> Because of the public safety risks associated with methane gas it is extremely important that PSFM maintain all the gas monitoring wells in good working order. Accurate monitoring-well readings are the only way to determine if the gas control system is doing an adequate job of preventing off-site migration of landfill gas beneath neighboring properties.
>
> Please submit to DEQ a plan for evaluating the gas monitoring wells and restoring those that are in poor condition. In addition, we would like to schedule a site visit with you within the next 3 weeks to a month to conduct split PSFM-DEQ testing of the gas monitoring wells.
>
> Please contact me via email or by phone at 503 229-5826 if you have questions about this message. Thank you .
>
> Regards,
>
> Tim Spencer, Project Manager
> DEQ NWR Solid Waste Program
>
>
>
>
>
>
>
>
>

**dstuart@ rsblaw.net**

**From:** Mike7 <mikehashem7@gmail.com>
**Sent:** Monday, June 30, 2014 8:37 AM
**To:** SPENCER Tim
**Subject:** Re: 82nd Overview

Jason said he did the following on those two wells "I removed some dirt and gravel from MW 31 casing andI've replaced the valves on MW 29,31, 32, 3, 4 , and 5 now. "
I hope this answer your question .
Thank you.
Mike Hashem

Sent from my iPhone

On Jun 26, 2014, at 4:27 PM, SPENCER Tim <SPENCER.Tim@deq.state.or.us> wrote:

> Hello Mike,
> We received your response and information. Thank you for the update. Jason's report doesn't mention MW-31 (plugged with soil and rocks) or MW-32 which also seems to plugged with something. Thanks again.
> Tim Spencer
> Tim Spencer, Project Manager
> DEQ NWR Solid Waste Program
> (503) 229-5826
> spencer.tim@deq.state.or.us
>
> **From:** Mike7 [mailto:mikehashem7@gmail.com]
> **Sent:** Thursday, June 26, 2014 9:57 AM
> **To:** SPENCER Tim
> **Subject:** Fwd: 82nd Overview
> Tim ,
> I received this from Jason Bennett on his report of the monitoring wells .
> If you may recall the one well sitting in the backyard of the 4 plex was always flooded when we did the work few years ago . I don't recall any of us being able to test it . All the wells around it indicate the methane level has stabilized and only monitoring well 29 still has any activities , as *you see jason measured 29 at 4.2% . The blower is working well and the system seems to be* doing what we wanted from it . We will keep actively monitoring it and report back to you .
> Thank you
> Mike Hashem
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** Jason Bennett <novembeast@gmail.com>
> > **Date:** June 26, 2014 at 9:38:07 AM PDT

**To:** M Hashem <Milcehashem7@gmail.com>
**Subject: 82nd Overview**

I have gone to the driving range as requested to inspect the valves that were added to a few of the monitoring wells. Upon inspection, the valves were not actually weathered or rusty but they have a different functionality than the original valves that were used on the wells. I went ahead and replaced the valves with new ones that share the same functionality as the originals for ease of use.
As for the water in MW-31. The water that is inside the manhole itself can be evacuated, the well on the other hand isn't as simple. If I open the well cap and manage to pump the water out I will not be able to get an accurate reading on the well, so I am not really sure what to do about it.
I tested a methane level of 4.2% in MW-29 and even lower in all of the other wells.

## CERTIFICATE OF SERVICE

On June 24, 2016, mailed the foregoing DECLARATION OF MIKE HASHEM IN SUPPORT OF RESPONDENTS' MOTION FOR SUMMARY DETERMINATION in OAH Case No. 1604492.

***Sent By Email and by First Class Mail to:***

*Alison.G.Webster@oregon.gov*

Alison Greene Webster
Administrative Law Judge
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*OED_OAH_Refferal@oregon.gov*

Hearings Coordinator
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062

*Kieran.ODONNELL@state.or.us*

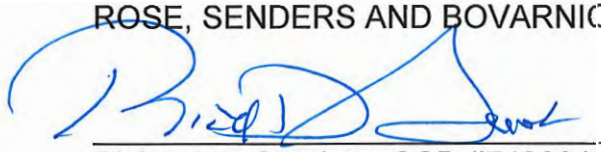
Kieran O'Donnell
Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

*johnny.kondilis@gmail.com*

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Drive, Suite 1
West Linn, OR 97068

DATED this 24 day of June, 2016.

ROSE, SENDERS AND BOVARNICK, LLC



Richard D. Senders, OSB #742931
Attorney for Plaintiff
1205 NW 25th Avenue
Portland, OR 97210
Telephone: (503) 227-2486
Fax: (503) 227-4172
Email: rsenders@rsblaw.net

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | **NOTICE OF IN-PERSON HEARING** |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM** | ) | OAH Case No.: 1604492 |
| | ) | Agency Case No.: LQ/SW-NWR-15-048 |

**PLEASE TAKE NOTICE** that a contested case hearing has been scheduled in the above matter before the Office of Administrative Hearings.

**Hearing Date:** **September 19, 2016 through September 20, 2016** **Hearing Time:** **9:00 am**

**Location:** **DEQ-Portland Office**
**TBD**

Your case has been assigned to **Administrative Law Judge Alison Greene Webster** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

Alison Greene Webster
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1581 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1581 immediately if you change your address or telephone number prior to a decision in this matter.

## CERTIFICATE OF MAILING

On April 27, 2016, I mailed the foregoing NOTICE OF IN-PERSON HEARING in OAH Case No. 1604492.

By: First Class and Certified Mail

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Dr. Suite 1
West Linn OR 97068
Certified Mail Receipt # 7015 1520 0001 8037 8019

Skidmore Limited Partnership
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068
Certified Mail Receipt # 7015 1520 0001 8037 8033

Mike Hashem
PO Box 707
Beavercreek, OR 97004
Certified Mail Receipt # 7015 1520 0001 8037 8002

Richard Senders
Rose, Senders & Bovarnick, Llc
1205 NW 25th Avenue
Portland, OR 97210
Certified Mail Receipt #7015 1520 0001 8037 8026

Jeffrey Abbot
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068
Certified Mail Receipt # 7015 1520 0001 8037 7999

By: First Class Mail

Kieran O' Donnell
Dept. of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Alesia Vella
Administrative Specialist
Hearing Coordinator

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.

2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.

3. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.

4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.

5. Address change or change of representative. It is your responsibility to notify DEQ and the administrative law judge of any change in your address or a withdrawal or change of your representative.

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There are four kinds of evidence:

a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.

b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.

c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.

d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

a. The evidence is unreliable;

b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;

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12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the administrative law judge. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*

## Notice of Hearing- Notice to Members of the Armed Forces

A member of the Armed Forces (Army, Navy, Air Force, Marines, Coast Guard and National Guard) may be subject to the protection of the Servicemembers' Civil Relief Act (SCRA) 50 USC § 501 et seq. as amended. The SCRA provides certain protections to service members and their dependents, if specific conditions are met. If you qualify under the SCRA, you may be entitled to have the matter pending before the Office of Administrative Hearings (OAH) delayed (stayed) due to your military service. The SCRA also provides other protections. Service members may contact the Oregon State Bar toll-free inside Oregon at (800)452-8260 or (503) 620-0222 or the Oregon Military Department toll-free at (800)452-7500 for more information. The United States Armed Forces Legal Assistance Legal Services Locator website may be accessed at legalassistance.law.af.mil.

In order to qualify for the protections of the SCRA, a service member must show that he/she is: (1) an active duty service member; or (2) a member of the reserve component activated to serve in active federal service; or (3) a National Guard service member under Title 10 of the US Code; or (4) a National Guard service member under Title 32 of the US Code called to active duty for 30 days or more pursuant to a contingency mission specified by the President or Secretary of Defense or serving on Annual Training orders. Some provisions of the SCRA also cover dependents of qualifying service members who rely on the service member for at least half of their income. The SCRA continues to provide some protections for a short period of time after service is concluded. Additional protections may be available under ORS 399.238 if you are a member of the Oregon National Guard. It is important that you be aware of your dates of service at the time you contact the OAH and at hearing.

If you think you may qualify under one of the above criteria it is important that you notify the OAH, and the agency that initiated the action, prior to your hearing date so that steps can be taken to ensure that your rights under the SCRA are followed. You may also contact your Judge Advocate General at the installation where or near where you serve or your chain of command for more information regarding your rights under the SCRA.

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You can obtain other information regarding your benefits at:
http://www.oregon.gov/ODVA/pages/index.aspx

**Comunicado de Audiencia – Comunicación a Miembros de las Fuerzas Armadas**

Los miembros de las Fuerzas Armadas (Ejército, Marina, Aeronáutica, Infantería de Marina, Guardia Costera y Guardia Nacional) podrán aspirar a la protección acordada por "Servicemembers' Civil Relief Act" (SCRA) (Ley de Asistencia Civil a miembros del Servicio) 501 50 USC § y normas relacionadas, conforme a enmienda. El SCRA otorga protecciones a miembros del servicio y a las personas a su cargo que reúnan requisitos específicos. Quienes reúnan los requisitos del SCRA podrán someter su pedido ante el "Office of Administrative Hearings" (OAH) (Oficina de Audiencias Administrativas) solicitando su diferimiento por causa de servicio militar. El SCRA suministra, además, otras protecciones. Para más informaciones, los miembros del servicio podrán contactar el "Oregon State Bar" desde el territorio del Estado a través de su línea gratuita, llamando al (800) 452-8260 / (503) 620-0222 ó al Oregon Militay Department, llamando al (800) 452-7500. Podrá accederse al "Legal Assistance Legal Services Locator" de las Fuerzas Armadas de los EEUU a través de: legalassistance.law.af.mil

Para aspirar a las protecciones del SCRA, el miembro del servicio deberá presentar evidencias de ser: miembro activo del servicio, o (2) miembro del módulo de reserva activado para prestar servicios en el servicio federal activo; o (3) miembro del servicio de la Guardia Nacional, de conformidad al Title (Título) 10 del US Code (Código de los EEUU) o (4) miembro del servicio de la Guardia Nacional de acuerdo al Title (Título) 32 del US Code (Código de los EEUU) llamado para cumplir servicios activos durante 30 días o más en cumplimiento de misiones eventuales especificadas por el Presidente o la Secretaría de Defensa o en servicio de disposiciones de Entrenamiento Anual. Algunas de las provisiones del SCRA cubren también a las personas a cargo de los miembros del servicio que tengan derecho y que representen por lo menos la mitad de su ingreso. El SCRA continuará proporcionando algunas protecciones por un breve periodo de tiempo una vez que el servicio haya sido completado. Los miembros del "Oregon National Guard" podrán contar con protecciones adicionales, de conformidad con ORS 399.238. Es importante que conozca las fechas de servicios, tanto en el momento en que contacte el OAH, como en el momento de la audiencia.

De considerarse encuadrado dentro de los requisitos mencionados, es importante que, con anterioridad a la fecha de audiencia, notifique al OAH y a la agencia en la que inició la acción, de manera de poder tomarse los recaudos necesarios para asegurar que los derechos otorgados por SCRA sean tenidos en consideración. En relación a los derechos mencionados en SCRA y, para mayor información, podrá también contactar al "Judge Advocate General" de la sede en la que presta servicios, a una cercana a ésta, o a su cadena de comandos

**Aviso a los veteranos de las fuerzas armadas**

En 2011, el Cuerpo Legislativo de Oregon promulgó el Proyecto de Ley del Senado número 241 (SB 241). El propósito del SB 241 es que las agencias estatales ayuden a informar a los veteranos sobre el acceso a beneficios. El Departamento de Asuntos para Veteranos de Oregon ha publicado una completa revista de 40 páginas sobre los beneficios, la cual contiene información sobre beneficios estatales y federales para veteranos incluyendo: el proceso de reclamación por discapacidad; información de contacto de las oficinas de servicios para veteranos; cómo obtener acceso a atención médica; transporte para veteranos; educación sobre trauma para veteranos; opciones de atención médica a largo plazo; beneficios para dependientes y sobrevivientes; beneficios funerarios; opciones educativas; información de préstamos para vivienda; aplazamiento de impuestos y exenciones; recursos y preferencias laborales; adaptaciones para vehículos y asignaciones para ropa; identificaciones, placas DMV; medallas y registros; recursos de vivienda, información legal para veteranos y beneficios recreativos y de monumentos. Puede leer la revista completa en línea en: http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf
Usted puede obtener más información sobre sus beneficios en: http://www.oregon.gov/ODVA/pages/index.aspx

Attachment E

# Oregon

Kate Brown, Governor

**Office of Administrative Hearings**
PO Box 14020
Salem OR 97309-4020
(503) 947-1515
FAX (503) 947-1923
TYY: 1-800-735-1232

This concerns your hearing. If you do not understand the enclosed important document, please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394.

**Spanish:**
Esto concierne a su audiencia. Si no entiende el importante documento adjunto, por favor comuníquese INMEDIATAMENTE con la Oficina de Audiencias Administrativas (Office of Administrative Hearings) llamando al 1-800-311-3394.

**Vietnamese:**
Tài liệu này liên quan đến phiên điều giải của quý vị. Nếu quý vị không hiểu rõ hồ sơ quan trọng đính kèm, xin vui lòng liên lạc NGAY với Văn Phòng Điều Giải Hành Chánh (Office of Administrative Hearings) số 1-800-311-3394.

**Russian:**
Этот документ имеет отношение к Вашему слушанию и является важным. Если Вы не понимаете приложенный документ, пожалуйста, НЕМЕДЛЕННО свяжитесь с Управлением административных слушаний (Office of Administrative Hearings) по телефону 1-800-311-3394.

**Chinese:**
隨附重要文件，相關您的聽證一事。如果您不理解這些文件的內容，請立即與行政聽證處（Office of Administrative Hearings）聯絡，電話號碼是1-800-311-3394.

**Korean:**
이것은 귀하의 심의회에 관계되는 서류입니다. 동봉한 주요 서류를 이해하지 못하시면 즉시 심의회 행정실(Office of Administrative Hearings, 1-800-311-3394)로 연락하시기 바랍니다.

**Romanian**
Aceasta se referă la audienţa dumneavoastră. Dacă nu înţelegeţi documentul important inclus, vă rugăm să contactaţi IMEDIAT Biroul de Audienţe Administrative (Office of Administrative Hearings) la 1-800-311-3394.

**Laotian:**
ນີ້ ເຜ ່ ນກ ່ ວກ ັ ບ ຮ , ທ ຮ ນ ຂ ຮ ງ ທ ່ ານ. ຖ ້ າ ທ ່ ານ ບ ່ ເ ຂ ົ ້ າ ໃ ຈ ເ ອ ກ ະ ສ ານ ສ ຳ ຄ ັ ນ ທ ີ ່ ຜ ນ ບ ມ າ ພ ້ ອ ມ ນ ີ ້ , ກ ະ ວ , ນ າ ຕ ິ ດ ຕ ່ ່ ກ ັ ບ ຫ ້ ອ ງ ກ ານ ບ ່ ລ ິ ຫ ານ ກ ານ ຮ , ທ ຮ ນ ທ ັ ນ ທ ີ (Office of Administrative Hearing) ຕ ານ ເ ລ ກ ໃ ທ 1-800-311-3394

**Arabic:**
يتعلق هذا الإشعار بالجلسة الإدارية التي حددت لك. إذا تعذر عليك فهم الوثيقة المرفقة, نرجوك الاتصال في الحال بمكتب الجلسات الإدارية (office of Administrative Hearings) بالرقم التالي1-800-311-3394.

**Cambodian:**
**(Office of Administrative Hearings) 1-800-311-3394**

Item N 000485

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF OREGON**
**for the**
**DEPT. OF ENVIRONMENTAL QUALITY**

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | **NOTICE OF PREHEARING CONFERENCE** |
| | ) | |
| **PSFM LIMITED PARTNERSHIP, SKIDMORE LIMITED PARTNERSHIP, & MIKE HASHEM** | ) | OAH Case No.: 1604492 |
| | ) | Agency Case No.: LQ/SW-NWR-15-048 |
| | ) | |
| | ) | |

**PLEASE TAKE NOTICE** that a prehearing conference has been scheduled in the above matter before the Office of Administrative Hearings.

**Prehearing Date:** **April 25, 2016** **Prehearing Time:** **9:00 am**

**Location:** **By Telephone: Prehearing Phone Numbers and Access Code:**

- Toll Free – 1-877-622-4041
- ACCESS CODE – 7104492

**IMPORTANT PREHEARING PHONE INSTRUCTIONS**

At the date and time of your prehearing conference you **must:**

1. Call the toll free prehearing phone number listed above.
2. When asked for the Access Code, enter the code listed above followed by the "#" key.
3. If the administrative law judge is not already on the line, remain on the line for five (5) minutes past the prehearing time.
4. If you fail to call within **five (5) minutes** after the time set for the prehearing conference, the prehearing conference may proceed without you.
5. If you have any trouble connecting to the hearing or are on hold more than five (5) minutes past the hearing start time, call the Office of Administrative Hearings immediately at (503) 947-1581.
6. ONLY call the prehearing phone number to attend your prehearing.

The following may be addressed at the prehearing conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and other matters relating to the hearing. Failure to participate in the prehearing will not preclude the Administrative Law Judge from making decisions on issues raised during the prehearing. (OAR 137-003-0575)

Your case has been assigned to **Administrative Law Judge Jennifer Rackstraw** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

Jennifer Rackstraw
Office of Administrative Hearings
7995 SW Mohawk St.
Tualatin, OR 97062
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1581 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1581 immediately if you change your address or telephone number prior to a decision in this matter.

## CERTIFICATE OF MAILING

On March 15, 2016, I mailed the foregoing NOTICE OF PREHEARING CONFERENCE in OAH Case No. 1604492.

By: First Class Mail

PSFM Limited Partnership
Johnny Kondilis
4891 Willamette Falls Dr. Suite 1
West Linn OR 97068

Skidmore Limited Partnership
4891 Willamette Falls Dr. Sute 1
West Linn, OR 97068

Mike Hashem
PO Box 707
Beavercreek, OR 97004

Richard Senders
Rose, Senders & Bovarnick, Llc
1205 NW 25th Avenue
Portland, OR 97210

Jeffrey Abbot
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068

Kieran O' Donnell
Dept. of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Alesia Vella
Administrative Specialist
Hearing Coordinator

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.

2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.

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You can obtain other information regarding your benefits at:
http://www.oregon.gov/ODVA/pages/index.aspx

**Comunicado de Audiencia – Comunicación a Miembros de las Fuerzas Armadas**

Los miembros de las Fuerzas Armadas (Ejército, Marina, Aeronáutica, Infantería de Marina, Guardia Costera y Guardia Nacional) podrán aspirar a la protección acordada por "Servicemembers' Civil Relief Act" (SCRA) (Ley de Asistencia Civil a miembros del Servicio) 501 50 USC § y normas relacionadas, conforme a enmienda. El SCRA otorga protecciones a miembros del servicio y a las personas a su cargo que reúnan requisitos específicos. Quienes reúnan los requisitos del SCRA podrán someter su pedido ante el "Office of Administrative Hearings" (OAH) (Oficina de Audiencias Administrativas) solicitando su diferimiento por causa de servicio militar. El SCRA suministra, además, otras protecciones. Para más informaciones, los miembros del servicio podrán contactar el "Oregon State Bar" desde el territorio del Estado a través de su línea gratuita, llamando al (800) 452-8260 / (503) 620-0222 ó al Oregon Militay Department, llamando al (800) 452-7500. Podrá accederse al "Legal Assistance Legal Services Locator" de las Fuerzas Armadas de los EEUU a través de: legalassistance.law.af.mil

Para aspirar a las protecciones del SCRA, el miembro del servicio deberá presentar evidencias de ser: miembro activo del servicio, o (2) miembro del módulo de reserva activado para prestar servicios en el servicio federal activo; o (3) miembro del servicio de la Guardia Nacional, de conformidad al Title (Título) 10 del US Code (Código de los EEUU) o (4) miembro del servicio de la Guardia Nacional de acuerdo al Title (Título) 32 del US Code (Código de los EEUU) llamado para cumplir servicios activos durante 30 días o más en cumplimiento de misiones eventuales especificadas por el Presidente o la Secretaría de Defensa o en servicio de disposiciones de Entrenamiento Anual. Algunas de las provisiones del SCRA cubren también a las personas a cargo de los miembros del servicio que tengan derecho y que representen por lo menos la mitad de su ingreso. El SCRA continuará proporcionando algunas protecciones por un breve periodo de tiempo una vez que el servicio haya sido completado. Los miembros del "Oregon National Guard" podrán contar con protecciones adicionales, de conformidad con ORS 399.238. Es importante que conozca las fechas de servicios, tanto en el momento en que contacte el OAH, como en el momento de la audiencia.

De considerarse encuadrado dentro de los requisitos mencionados, es importante que, con anterioridad a la fecha de audiencia, notifique al OAH y a la agencia en la que inició la acción, de manera de poder tomarse los recaudos necesarios para asegurar que los derechos otorgados por SCRA sean tenidos en consideración. En relación a los derechos mencionados en SCRA y, para mayor información, podrá también contactar al "Judge Advocate General" de la sede en la que presta servicios, a una cercana a ésta, o a su cadena de comandos.

**Aviso a los veteranos de las fuerzas armadas**

En 2011, el Cuerpo Legislativo de Oregon promulgó el Proyecto de Ley del Senado número 241 (SB 241). El propósito del SB 241 es que las agencias estatales ayuden a informar a los veteranos sobre el acceso a beneficios. El Departamento de Asuntos para Veteranos de Oregon ha publicado una completa revista de 40 páginas sobre los beneficios, la cual contiene información sobre beneficios estatales y federales para veteranos incluyendo: el proceso de reclamación por discapacidad; información de contacto de las oficinas de servicios para veteranos; cómo obtener acceso a atención médica; transporte para veteranos; educación sobre trauma para veteranos; opciones de atención médica a largo plazo; beneficios para dependientes y sobrevivientes; beneficios funerarios; opciones educativas; información de préstamos para vivienda; aplazamiento de impuestos y exenciones; recursos y preferencias laborales; adaptaciones para vehículos y asignaciones para ropa; identificaciones, placas DMV; medallas y registros; recursos de vivienda, información legal para veteranos y beneficios recreativos y de monumentos. Puede leer la revista completa en línea en: http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf
Usted puede obtener más información sobre sus beneficios en: http://www.oregon.gov/ODVA/pages/index.aspx

Oregon
Kate Brown, Governor

**Office of Administrative Hearings**
PO Box 14020
Salem OR 97309-4020
(503) 947-1515
FAX (503) 947-1923
TYY: 1-800-735-1232

This concerns your hearing. If you do not understand the enclosed important document, please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394.

**Spanish:**
Esto concierne a su audiencia. Si no entiende el importante documento adjunto, por favor comuníquese INMEDIATAMENTE con la Oficina de Audiencias Administrativas (Office of Administrative Hearings) llamando al 1-800-311-3394.

**Vietnamese:**
Tài liệu này liên quan đến phiên điều giải của quý vị. Nếu quý vị không hiểu rõ hồ sơ quan trọng đính kèm, xin vui lòng liên lạc NGAY với Văn Phòng Điều Giải Hành Chánh (Office of Administrative Hearings) số 1-800-311-3394.

**Russian:**
Этот документ имеет отношение к Вашему слушанию и является важным. Если Вы не понимаете приложенный документ, пожалуйста, НЕМЕДЛЕННО свяжитесь с Управлением административных слушаний (Office of Administrative Hearings) по телефону 1-800-311-3394.

**Chinese:**
隨附重要文件，相關您的聽證一事。如果您不理解這些文件的內容，請立即與行政聽證處（Office of Administrative Hearings）聯絡，電話號碼是1-800-311-3394.

**Korean:**
이것은 귀하의 심의회에 관계되는 서류입니다. 동봉한 주요 서류를 이해하지 못하시면 즉시 심의회 행정실(Office of Administrative Hearings, 1-800-311-3394)로 연락하시기 바랍니다.

**Romanian**
Aceasta se referă la audienţa dumneavoastră. Dacă nu înţelegeţi documentul important inclus, vă rugăm să contactaţi IMEDIAT Biroul de Audienţe Administrative (Office of Administrative Hearings) la 1-800-311-3394.

**Laotian:**
ນ ີ້ ຂ ໍ ນ ກ ່ ຽ ວ ກ ັ ບ ຢ , ເ ອ ກ ະ ສ ານ ສ ຳ ຄ ັ ນ ທ ີ ່ ແ ນ ບ ມ າ ພ ້ ອ ມ ນ ີ ້ , ກ ະ ລ ຸ ນ າ ຕ ິ ດ ຕ ໍ ່ ກ ັ ບ ຫ ້ ອ ງ ການ ບ ໍ ລ ິ ຫ ານ ກ ານ ຍ , ເ ອ ກ ະ ສ ານ ທ ີ ່ ( Office of Administrative Hearing) ຕ ່ ວ ນ ຂ ວ ກ ໃ ຫ 1-800-311-3394

**Arabic:**
يتعلق هذا الإشعار بالجلسة الإدارية التي حددت لك. إذا تعذر عليك فهم الوثيقة المرفقة, نرجوك الاتصال في الحال بمكتب الجلسات الإدارية (office of Administrative Hearings) بالرقم التالي1-800-311-3394.

**Cambodian:**
**(Office of Administrative Hearings) 1-800-311-3394**

## ODONNELL Kieran

**From:** John P. Ashworth (jashworth@kelrun.com) [JAshworth@kelrun.com]
**Sent:** Wednesday, June 24, 2015 3:22 PM
**To:** ODONNELL Kieran
**Subject:** RE: DEQ Meeting

Correct – thanks for checking.

John

**John P. Ashworth | Kell, Alterman & Runstein, L.L.P.**
520 SW Yamhill Street, Suite 600 | Portland, Oregon 97204-1329
Direct: 503-248-1854 | Mobile: 503-943-0140 | Fax: 503-227-2980
e-mail: jashworth@kelrun.com | website: www.kelrun.com

**From:** ODONNELL Kieran [mailto:ODONNELL.Kieran@deq.state.or.us]
**Sent:** Wednesday, June 24, 2015 3:17 PM
**To:** John P. Ashworth (jashworth@kelrun.com)
**Subject:** FW: DEQ Meeting

Mr. Ashworth,

I received the following email with an attached letter from Mr. Kondilis. I am unfamiliar with Mr. Kondilis so I am writing to confirm that you no longer represent either Mr. Hashem, Skidmore Limited Partnership, or PSFM limited Partnership. Is this correct?

Thank you,
Kieran

**From:** Johnny Kondilis [mailto:johnny.kondilis@gmail.com]
**Sent:** Wednesday, June 24, 2015 3:05 PM
**To:** SPENCER Tim; ODONNELL Kieran; rsenders@rsblaw.net
**Cc:** M Hashem
**Subject:** DEQ Meeting

Tim and Kieran,
Attached is a letter. Please read and let me know when will work best for you. Thank you.

Johnny Kondilis
Manager

Kieran and Tim,

John Ashworth (attorney) is no longer representing PSFM LP. We would like to set up a settlement meeting with DEQ to resolve the civil penalty matter. Please check your schedules and let us know when we could meet. In anticipation of the meeting we would like to describe PSFM LP options as way to find a solution.

PSFM LP applied for the permit in 2003 when it was an owner of the property. The permit expired shortly after and DEQ never renewed it. DEQ claims that because PSFM LP applied for the permit in 2003 they were obligated to accept the permit issued in 2011, even if PSFM LP is no longer an owner or operator of the Landfill, and even though 5 separate owners own and control the 34 acre landfill. In August 2014 and as required in the permit PSFM LP again asked DEQ to modify the permit and release it from its obligations since PSFM LP is not an owner, or operator, and many of the requirement in the permit are beyond PSFM LP legal authority and control, and PSFM LP financial inabilities to administer the permit in place of the land owners. DEQ at the time agreed with PSFM LP that this permit when it was first issued in 1979 was intended to be for one owner and operator of the landfill, and is no longer valid as it is written, and the permit should be revised and reissued to the various land owners under a land owner association to administer the permit. In May 2015 DEQ instead of revising the permit as agreed issued a civil penalty naming PSFM LP, Mike Hashem Individually, and Skidmore limited partnership as the only land owner out of five as respondents in the case.

After evaluation of the situation PSFM LP is left to choose from these options.

1- Modify existing permit to limit PSFM LP responsibility to monitoring, maintaining, and reporting on the extraction system. Property owners as they develop their properties need to work directly with DEQ as the Zen center has done to provide civil engineering reports as requested by DEQ, and if needed, provide financial assurances for their own portion of maintenance of the landfill.(our concerns that PSFM LP may cure it default for some of the permit requirement but continue to be noncompliant under other provisions of the existing permit, because it is simply beyond their legal control )

2- If #1 is acceptable to DEQ, PSFM LP will hire, and pay PBS engineering to provide the report requested by DEQ and approved by Tim Spencer, in lieu of the civil penalty.
3- Or PSFM LP will withdraw it request for a permit, since it is not an owner or operator of the site, and step aside. PSFM LP does not have the ability to financially pay for all 3 things; administration of the permit, and legal fee, and civil penalty.

We need your help in figuring out a solution for this matter. We hope we can meet and work together for a reasonable solution.

(Richard Sender will continue to represent Mike Hashem individually, and Skidmore limited partnership in this case.)

Johnny kondilis.

Manager

Attachment I

# ROSE, SENDERS AND BOVARNICK, LLC

**Steven M. Rose**
*(Retired)*
**Richard D. Senders***
rsenders@rsblaw.net

**ATTORNEYS AT LAW**
**1205 NW 25th Avenue**
**Portland, OR 97210**

Telephone: (503) 227-2486
Fax: (503) 227-4172

**Paul S. Bovarnick****
*(Of Counsel to Rose, Senders & Bovarnick, LLC)*
pbovarnick@rsblaw.net

*Admitted in Oregon and Washington
**Admitted in Oregon, Washington and Montana

RECEIVED
JUN 18 2015
OFFICE OF COMPLIANCE AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

June 16, 2015

Sent by email and regular mail

Kieran O'Donnell
Oregon DEQ Enforcement
811 SW 6th Ave
Portland, OR 97204

Re: Case No. LQ/SW-NWR-15-048

Dear Mr. O'Donnell:

This law firm represents Mike Hashem and Skidmore Limited Partnership. Mr. Hashem and Skidmore have been named in a DEQ compliance action, case no. LQ/SW-NWR-15-048. The compliance action concerns the monitoring of a decommissioned landfill known as the H.G. Lavelle Landfill. A permit was issued in November of 2011 to PSFM Limited Partnership ("PSFM"). The permit places certain responsibilities on PSFM to monitor methane gases and to control surface water drainage. At the time the permit was issued, PSFM had no ownership interest in the property.

The landfill encompasses approximately 34 acres. It has been divided into several parcels, each of which has a separate owner. Skidmore Limited Partnership currently owns a 12 acre parcel.

Mr. Hashem is a partner in PSFM. He is not the permit holder or the permit operator. The permit holder and operator is the limited partnership, and not any named individual.

I have reviewed the relevant statutes and rules pertaining to the permit and DEQ's enforcement rights. The only person or entity who has responsibilities for the monitoring and preservation of the decommissioned landfill is the permit operator, PSFM. The only person or entity that DEQ could arguably have good cause to believe has violated any statute, rule, or permit is the permit holder and operator. There is no statutory or regulatory authority for naming Mr. Hashem or Skidmore Limited Partnership in the enforcement proceeding.

Demand is hereby made that you dismiss Mr. Hashem and Skidmore Limited Partnership from the case. Your failure to do so will constitute the wrongful use of civil proceedings and abuse of process. DEQ will be liable for any special or compensatory damages suffered by Mr. Hashem or Skidmore Limited Partnership. DEQ will also be liable for any damage to their reputations or credit worthiness because of this proceeding.

Please remove Mr. Hashem and Skidmore Limited Partnership from this proceeding within the next 15 days. Your failure to do so will result in a Tort Claims Notice being filed.

If you would like to discuss this matter further, please feel free to give me a call. PSFM is represented by its own, legal counsel, John P. Ashworth, of Kell, Alterman & Runstein, L.L.P.

Sincerely,

Richard D. Senders

RDS:dms
cc: Mike Hashem
John P. Ashworth
06-15-15 O'Donnell.wpd

Attachment J

# KELL, ALTERMAN & RUNSTEIN, L.L.P.

SCOTT J. ALDWORTH
SUSAN T. ALTERMAN **,****
JOHN P. ASHWORTH **
DOUGLAS S. CHIAPUZIO, CPA **,++
GARY P. COMPA ‡
WILLIAM DICKAS
ROBERT E. KABACY **
LEE DAVIS KELL *,**
MATHEW W. LAURITSEN **
ROBERT B. LOWRY ++
WAYNE D. PALMER
EMILY C. RAKE
PAUL A. RANEY ***
THOMAS R. RASK, III **
ROBIN M. RUNSTEIN
TED E. RUNSTEIN
DENNIS STEINMAN
RAGNA TENEYCK ****,‡
ZACHARY WALKER **

ATTORNEYS AT LAW
SUITE 600
520 S.W. YAMHILL STREET
PORTLAND, OREGON 97204-1329
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980
WWW.KELRUN.COM
E-MAIL: jashworth@kelrun.com

RAYMOND M. KELL
(1911-1991)
CLIFFORD B. ALTERMAN
(1925-1995)
ALSO ADMITTED IN
*CALIFORNIA
**WASHINGTON
***GEORGIA
****COLORADO
++OF COUNSEL
‡ LL.M. IN TAXATION

June 3, 2015

RECEIVED
JUN 03 2015
OFFICE OF COMPLIANCE
AND ENFORCEMENT
DEPARTMENT OF ENVIRONMENTAL QUALITY

*Via Fax (503-229-5100) and U.S. Mail*

Department of Environmental Quality
Office of Compliance and Enforcement - Appeals
811 SW Sixth Avenue
Portland, OR 97204

Re: Appeal of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-15-048

Dear Sirs:

This office represents respondents in the above-referenced matter and this letter constitutes respondents' written request for a contested case hearing in response to the Notice dated May 13, 2015, received by the registered agent for PSFM Limited Partnership and Skidmore Limited Partnership on May 15.

We understand Mr. Hashem had a meeting this afternoon with Environmental Law Specialist O'Donnell and Tim Spencer, and looks forward to continuing the dialogue.

Thank you.

Very truly yours,

John P. Ashworth

JPA:rlt
cc: Mike Hashem, Manager, PSFM Limited Partnership

Attachment J

# KELL, ALTERMAN & RUNSTEIN, L.L.P.

SCOTT J. ALDWORTH
SUSAN T. ALTERMAN **,***
JOHN P. ASHWORTH **
DOUGLAS S. CHIAPUZIO, CPA **,++
GARY P. COMPA ‡
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**WASHINGTON
***GEORGIA
****COLORADO
++OF COUNSEL
‡ LL.M. IN TAXATION

**Name/Firm:** Department of Environmental Quality
Office of Compliance and Enforcement - Appeals

**Fax No.:** (503) 229-5100

**Date:** June 3, 2015

**Total number of pages including cover sheet:** 2

**IF YOU DO NOT RECEIVE ALL PAGES**
**PLEASE CALL US AT:**
(503) 222-3531

**Sent By:** John Ashworth

**Re:** Appeal of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-15-048

Our Fax Number is: (503) 227-2980

The information contained in this facsimile transmission is confidential and is intended only for the use of the individual or entity to whom it is addressed. It may contain information protected by the attorney-client privilege or the attorney work-product doctrine. If the reader of this message is not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received this facsimile transmission in error, please immediately notify the sender by calling, and return the original facsimile to the REPLY TO address shown above via the U.S. Postal Service. Thank you very much.

Attachment K

Oregon
Kate Brown, Governor

Department of Environmental Quality
Office of the Director
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5343
FAX (503) 229-5100
TTY: 711

May 13, 2015

PSFM Limited Partnership
c/o Jeffrey Abbott, Registered Agent
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068

CERTIFIED MAIL: 7012 3460 0002 9273 4211

Skidmore Limited Partnership
c/o Jeffrey Abbott, Registered Agent
4891 Willamette Falls Dr. Suite 1
West Linn, OR 97068

CERTIFIED MAIL: 7012 3460 0002 9273 4204

Mike Hashem
PO Box 707
Beavercreek, OR 97004

CERTIFIED MAIL: 7011 2000 0000 5122 8490

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-15-048

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $58,593 for failing to maintain an effective landfill gas control system (LFGCS) and a financial assurance plan at your solid waste disposal site located at NE 82nd and NE Siskiyou in Portland, Oregon (the Facility). In addition, DEQ has cited you, without penalty, for failing to submit an updated post-closure operations and maintenance plan, failing to submit an updated landfill gas monitoring plan, failing to conduct quality assurance testing, and failing to submit an annual post-closure evaluation report.

DEQ issued this penalty because the failure to maintain an effective LFGCS and a financial assurance plan poses risks to human health and the environment. Without an effective LFGCS a landfill operator cannot properly collect and vent landfill gas, potentially allowing dangerous gas to migrate to neighboring properties. In addition, without an updated financial assurance plan, the landfill operator cannot ensure that funds will be available to carry out the post-closure care requirements.

Included in Section IV of the attached Notice is an order requiring you to take the following actions within 60 days after the attached Notice becomes a final order:

- Bring the LFGCS into effective working order and maintain it in effective working order,
- Submit to DEQ a financial assurance plan,
- Submit to DEQ an updated post-closure operations and maintenance plan,
- Submit to DEQ an updated landfill gas monitoring plan, and
- Conduct quality assurance testing.

$34,593 of the civil penalty represents the economic benefit you gained by failing to maintain an effective LFGCS and a financial assurance plan. If you complete these requirements, DEQ will

consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204
Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at http://www.deq.state.or.us/regulations/rules.htm, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tim Spencer, NWR, DEQ
Mike Hashem, PSFM Limited Partnership, PO Box 1587, Clackamas, OR 97015

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

| | |
|---|---|
| IN THE MATTER OF:<br>PSFM LIMITED PARTNERSHIP,<br>SKIDMORE LIMITED PARTHERSHIP, &<br>MIKE HASHEM<br><br>Respondents. | NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER<br><br>CASE NO. LQ/SW-NWR-15-048 |

## I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

## II. FINDINGS OF FACT

1. Respondents own and operate a construction and demolition waste landfill with the tax roll description of Section 28, T1N, R2E, WM, and located at or around 2800 NE 82nd Ave, Portland, Oregon 97220 (the Facility).

2. On November 14, 2011, DEQ issued PSFM Limited Partnership and Mike Hashem a Solid Waste Disposal Site Closure Permit, Permit Number 211 (the Permit).

3. The Facility is owned by Skidmore Limited Partnership.

4. The Permit allows Respondents to maintain and monitor a solid waste land disposal site at the Facility in conformance with the terms and conditions of the Permit.

5. Pursuant to Section 7.4 of the Permit, the Respondents must operate and maintain the landfill gas control system (LFGCS) in effective working order such that methane concentrations do not exceed regulatory compliance limits listed in Section 9.4 of the Permit.

6. Pursuant to the compliance limits listed in Section 9.4 of the Permit (Compliance Limits) the concentration of methane must not exceed the Lower Explosive Limit in soil gas at the Facility boundary. The Lower Explosive Limit for methane is 5 percent by volume.

////

6. On January 13, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring wells MW-29, MW-30, MW-3S, MW-4s, and MW-5d. In addition, on May 27, 2014, methane concentrations at the Facility exceeded the Compliance Limits at monitoring well MW-29.

7. On or before March 14, 2014, Respondents informed DEQ that its LFGCS gas blower system had malfunctioned.

8. In May and June of 2014, some of Respondents' landfill-gas monitoring probes were malfunctioning. Specifically, some probes' lids would not close, some probes had striped bolts, and some probes were plugged with gravel and soil.

9. Pursuant to Section 10.2 of the Permit, the Respondents must "prepare a financial assurance plan that reflects current post-closure and corrective action costs and submit the plan to DEQ for review and approval" by no later than May 31, 2013.

10. Pursuant to Section 10.4 of the Permit, the Respondents must "annually review and update financial assurance requirements" and "submit the annual update to DEQ prior to May 31 of each year, beginning in 2014."

11. As of the date of this Notice, Respondents have not submitted to DEQ a financial assurance plan or the annual financial assurance updates.

12. Pursuant to Section 7.2 of the Permit, the Respondents must submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012.

13. As of the date of this Notice, Respondents have not submitted to DEQ an updated post-closure operations and maintenance plan.

14. Pursuant to Section 8.2 of the Permit, the Respondents must submit to DEQ an updated landfill gas monitoring plan by March 31, 2012.

15. As of the date of this Notice, Respondents have not submitted an updated LFG monitoring plan.

////

////

16. Pursuant to Section 8.9 of the Permit, the Respondents must conduct quality assurance testing by retaining the services of an independent DEQ-approved consultant to conduct at least one of the required yearly landfill gas monitoring events.

17. As of the date of this Notice, the Respondents have not conducted quality assurance testing for 2012, 2013, and 2014.

18. Pursuant to Section 11.3 of the Permit, the Respondents must submit to DEQ a post-closure evaluation report summarizing "a discussion of implementation of the post-closure plans and a description of unanticipated occurrences and any changes to the post-closure plans," prior to February 15 of each year.

19. As of the date of this Notice, Respondents have not submitted a Section 11.3 report for the years of 2012, 2013, 2014, and 2015.

## III. CONCLUSIONS

1. Respondents have violated OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Section 7.4 of the Permit by failing to operate and maintain the LFGCS in effective working order such that methane concentrations do not exceed Compliance Limits. Specifically, methane concentrations exceeded compliance limits at monitoring wells MW-29, MW-30, MW-3S, MW-4s, and MW-5d on January 13, 2014. In addition, on March 14, 2014, Respondents reported to DEQ that its gas blower system had malfunctioned. In May and June of 2014, some of Respondents' landfill gas monitoring probes were malfunctioning. Specifically, some probes' lids would not close, some probes had striped bolts, and some probes were plugged with gravel and soil. Furthermore, on May 27, 2014, methane concentrations at the Facility exceeded compliance limits at monitoring well MW-29. Therefore, Respondents failed to maintain the LFGCS in effective working order such that methane concentrations would not exceed compliance limits. These are Class I violations, according to OAR 340-012-0065(1)(f). DEQ hereby assesses a $20,720 civil penalty for these violations.

2. Respondents have violated OAR 340-095-0090(1) and OAR 340-095-0050(3)(b) and Conditions 10.2 and 10.4 of the Permit by failing to submit to DEQ a financial assurance plan and annual updates to the plan. Specifically, Respondents have failed to submit the financial assurance plan

by May 31, 2013 and the financial assurance update by May 31, 2014. These are Class I violations pursuant to OAR 340-012-0065(1)(i). DEQ hereby assesses a $37,873 civil penalty for these violations.

3. Respondents have violated Section 7.2 of the Permit by failing to submit to DEQ an updated post-closure operations and maintenance plan by no later than October 15, 2012. As of the date of this Notice, Respondents have not submitted an updated post-closure operations and maintenance plan. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

4. Respondents have violated Section 8.2 of the Permit by failing to submit to DEQ an updated landfill gas monitoring plan by March 31, 2012. As of the date of this Notice, Respondents have not submitted an updated landfill gas monitoring plan. This is a Class II violation pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

5. Respondents have violated Section 8.9 of the Permit by failing to conduct quality assurance testing during each year of operation. Specifically, since 2012, Respondents have failed to retain an independent DEQ-approved consultant to conduct at least one of the required yearly landfill gas monitoring events. These are Class II violations pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

6. Respondents have violated Section 11.3 of the Permit by failing to submit to DEQ an annual post-closure evaluation report by February 15 of each year of permit coverage. Specifically, the Respondents have failed to submit a post-closure evaluation report for 2012, 2013, 2014, and 2015. These are Class II violations pursuant to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.

## IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are hereby ORDERED TO:

1. Pay a total civil penalty of $58,593. The determinations of the civil penalties are attached as Exhibits No. 1 and 2 and are incorporated as part of this Notice.

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If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. By no later than sixty (60) days after this Notice becomes a final order, Respondents must do the following:

a. Evaluate and assess the LFGCS at the Facility and make any necessary repairs to ensure that it remains in good working condition. Submit the results of the evaluation, assessment, and repairs to DEQ;

b. Submit to DEQ a financial assurance plan as required by Section 10.2 of the Permit;

c. Submit to DEQ an updated post-closure operations and maintenance plan as required by Section 7.2 of the Permit;

d. Submit to DEQ an updated landfill gas monitoring plan as required by Section 8.2 of the Permit;

e. Retain an independent DEQ approved consultant to conduct quality assurance monitoring at the Facility;

f. Submit to DEQ a post-closure evaluation report as required by Section 11.3 of the Permit.

g. Written documentation demonstrating Respondents' compliance must be sent to:

DEQ, Northwest Region Office
c/o Tim Spencer
2020 SW 4th Ave., Suite 400
Portland, OR 97201
spencer.tim@deq.state.or.us

## V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you

receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must include them in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

Active duty service-members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at 1(800) 452-8260 or the Oregon Military Department at 1(800) 452-7500. Additional information can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website, http://legalassistance.law.af.mil/content/locator.php.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

May 13, 2015
Date

Susan Mueller for
Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 1: Failing to operate and maintain the landfill gas control system (LFGCS) in effective working order, in violation of OAR 340-095-0020(9)(a) and OAR 340-095-0030(4)(a) and Section 7.4 of the Solid Waste Disposal Site Closure Permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(f).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondents have a Solid Waste Disposal Site Closure Permit.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondents' failure to maintain the landfill gas control system in an effective working order began on at least January 13, 2014, when the first methane concentration exceedances were reported. The violation continued until at least May 27, 2014, when the last methane concentration exceedance was reported. Therefore, the violation persisted for more than 28 days.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. On February 24, 2009, DEQ issued a Unilateral Order requiring evaluation of the LFGCS. In addition, the Unilateral Order required Respondents to submit progress reports on the administration of the LFGCS. Furthermore, on November 14, 2011, DEQ issued Respondent a Solid Waste Disposal Site

Closure Permit, No. 211, which expressly requires Respondents to maintain the LFGCS in effective working order. Despite these formal interactions between DEQ and Respondents directing Respondents to manage an effective LFGCS, the Respondents failed to do so. This demonstrates Respondents' failure to take reasonable care to avoid a foreseeable risk that its failure to maintain an effective LFGCS would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $8,720. This is the amount Respondents gained by avoiding spending $15,000 to repair and maintain the landfill gas control system in effective working order. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0 + 0 + 4 + 4 + 2)] + $8,720
= $6,000 + [$6,000 x 10] + $8,720
= $6,000 + $6,000 + $8,720
= $20,720

EXHIBIT NO. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 2: Failing to submit to DEQ a financial assurance plan and annual updates to the financial assurance plan, in violation of OAR 340-095-0090(1) and OAR 340-095-0050(3)(b) and Sections 10.2 and 10.4 of the Solid Waste Disposal Site Closure Permit, No. 211 (the Permit).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0065(1)(i).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondents have a Solid Waste Disposal Site Closure Permit.

"P" is whether Respondents have any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The Permit requires Respondents to submit a financial assurance plan by May 31, 2014. As of the date of this Notice, Respondents have not submitted the financial assurance plan. Therefore, there are more than 28 occurrences of the violation.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. On February 24, 2009, DEQ issued a Unilateral Order requiring evaluation of the LFGCS. On October 5, 2011, DEQ wrote to Respondents, specifically to highlighting that the new permit would require financial assurance. On November 14, 2011, DEQ issued Respondents the Permit, which expressly requires Respondents to prepare and maintain a financial assurance plan. Despite

these formal interactions between DEQ and Respondents directing Respondents to maintain and prepare a financial assurance plan. Furthermore, on August 14, 2014, DEQ provided Respondents with additional information on how to obtain financial assurance. This demonstrates Respondents' failure to take reasonable care to avoid a foreseeable risk that its failure to maintain and prepare a financial assurance plan would result in a violation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $25,873. This is the amount Respondents gained by avoiding spending $25,000 to develop and maintain a financial assurance plan. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0+ 0+ 4+ 4+ 2)] + $25,873
= $6,000 + [$6,000 x 10] + $25,873
= $6,000 + $6,000 + $25,873
= $37,873