

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF THE DIRECTOR

DECLARATORY RULING

In Re: RHODE ISLAND RESOURCE RECOVERY CORPORATION

This Declaratory Ruling is issued in response to a Petition for Declaratory Ruling submitted by the Rhode Island Resource Recovery Corporation (RRC) on April 13, 2000. In addition to the Petition, the following documents were considered in preparing this Ruling: a May 2, 2000 letter opposing the Petition from the Regional Administrator of the United States Environmental Protection Agency (EPA); a memorandum from EPA to the Office of Air Resources in this Department (OAR), dated May 16, 2000; the initial response by OAR to the Petition, dated May 18, 2000; and the June 2, 2000 response by OAR to a request of May 26, 2000 for additional clarification of issues. Copies of each of these documents were provided to all parties.

The Petition was submitted on behalf of the RRC and reviewed in accordance with the provisions of Section 6 of the Department's Administrative Rules of Practice and Procedure. The Petition seeks a declaration that the already licensed Phases II, III and IV of the Central Landfill are not now, and were not at the time they were licensed by the Department, subject to a "Minor Source Permit" under the Department's Air Pollution Control Regulation No. 9. For reasons explained below, the Petition is hereby denied.

This denial should not be construed as a determination that a Minor Source Permit is in fact required for each of the phases II, III and IV. Rather, the denial is based on a finding that Regulation No. 9 is applicable to the Central Landfill, contrary to what the Petition asserts, and that, therefore, OAR must now decide, retroactively, whether a Minor Source Permit is required. As OAR has explained in its responses, it currently does not have sufficient information to determine whether permit thresholds are met at one or more of the landfill phases in question. As soon as such information becomes available, OAR will expedite its review of same and render a decision as quickly as possible. In addition the Department will make an effort to ensure that no delay occurs in the schedule for closure of phases II and III and the start of operations in phase IV.

The Petition relies heavily on an argument that Regulation No. 9 applies to various air pollution devices operated at the Central Landfill, but not to the landfill itself. In response, OAR states that the landfill is a "facility" (or "structure") which consists of one or more emission units that emit or have the potential to emit air pollutants, including fugitive emissions, and that, therefore, it is a "stationary source" as defined in Regulation No. 9. The plain language of the regulation allows no other conclusion. Regulation No. 9 does not, on its face, distinguish between landfills or other sources of fugitive emissions and "traditional facilities, equipment and devices" as the Petition suggests.

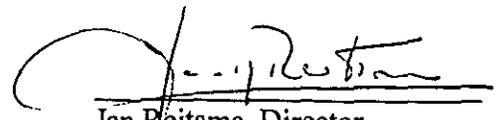
Of course, this begs the question why the Department did not apply the regulation in the manner when reviewing the solid waste license applications. The explanation provided by OAR is that it was the Department's practice at the time to apply air permit requirements to control devices, not to the landfill itself (and that OAR was never asked to determine whether a Minor Source Permit was required). While the explanation may be accurate in a narrow sense, it does not explain why the Department's practice and interpretation of the regulation should change.

The crux of the matter appears to be the issue of fugitive emissions. These emissions are now known to be more significant than was previously assumed, and as such to contribute more to air quality problems associated with the Central Landfill. Until recently, the assumption was that landfill gas was being captured by a collection and control system and that it was sufficient to regulate emissions from that system. Current indications are, however, that the landfill generates more landfill gas, and that more of the gas has been escaping, than was originally projected. Accordingly, the focus has shifted from regulating the controlled emissions to the question of how fugitive emissions can be controlled better. In light of this development, it is all the more appropriate to apply Regulation No. 9 to the emissions at Central Landfill.

It is important to note that the Department and RRC have been cooperating on strategies to deal with the fugitive emissions problem. At the Department's urging, RRC has made an effort to improve the landfill gas collection and control system through short and long term measures. A key objective, in the Department's view, is to complete operation of currently active phases and install a final cover as soon as possible, which will improve collection efficiency and reduce fugitive emissions. One of the consequences is that phase IV needs to be available for operation within the near future. Phase IV also offers the additional benefits of better environmental controls and a greater distance from residential neighborhoods. Accordingly, it is the Department's position that any delay in the current schedule must be avoided if at all possible. These circumstances need to be taken into account as OAR reviews new information for purposes of making threshold determinations, and especially as OAR determines whether new permit requirements should be imposed retroactively, in particular on phases that are scheduled for final closure in the near future.

In the event OAR determines that a Minor Source Permit is required, for example for phase IV, it is also important to acknowledge that developing permit conditions to address fugitive emissions might prove to be a challenging task and that it should not be rushed just to meet an operational deadline, for example for the start of phase IV. With respect to that particular phase, RRC is expected to have appropriate controls and management procedures in place before the start of operations. If RRC's efforts are successful, and the Department is able to verify this, the Department may consider, in light of the specific history and circumstances of this case, allowing operations to commence even if more time is needed to finalize permit conditions (which remains in all respects a hypothetical scenario at this point).

This Declaratory Ruling is issued on this 15th day of June, 2000.


Jan Reitsma, Director
Department of Environmental Management