

TECHNICAL REVIEW PANEL
Decision Document
Site Remediation and Waste Management
March 9, 2005

Panelists: Ed Putnam, Assistant Director, Remedial Response Element, DRMR
John Castner, Special Assistant to the Assistant Commissioner, SRWM
Tom Sherman, Assistant Director, Permitting and Technical Programs, DSHW

Date of request: September 9, 2004
Date Granting TRP: November 30, 2004
Date of TRP: December 9, 2004

Remediating Party Requesting Review: General Electric Company

Address: 640 Freedom Business Center
King of Prussia, PA 19406

Phone Number: (610) 992-7972

Email address: mark.piazza@corporate.ge.com

DEP Case Name: Buzby Brothers Landfill

DEP Case Number: G000000408

Disputed Technical Issue(s) Per Technical Review Request:

(List each issue separately)

- 1) GE has made the claim that the Solid Waste Regulations (N.J.A.C. 7:26-1 et seq.) do not apply to the remediation of Buzby landfill.
- 2) The requirements of the Solid Waste Regulations are inconsistent with the Department-Approved Remedial Action Selection Report. The disputed technical issue is whether or not the Solid Waste Regulations for sanitary landfills, specifically N.J.A.C. 7:26, Subchapter 2A (additional, specific disposal regulations for sanitary landfills), particularly 2A.7(i) 5I – which states that the top slope final grade, after allowing for settlement and subsidence, shall be, at a minimum, three percent – apply to the Buzby landfill given it ceased acceptance of waste in the 1970s.

Relevant Regulations: N.J.A.C. 7:26-1 et seq.

Pertinent Information considered:

Under N.J.A.C. 7:26-1.4, **Definitions**, an “existing solid waste facility” is defined thus: “means that portion of an active solid waste facility which, as of the effective date of these

TECHNICAL REVIEW PANEL
Decision Document
Site Remediation and Waste Management

regulations, possesses a valid approved registration from the Department”. Furthermore, the regulations define a “sanitary landfill” as a solid waste facility at which solid waste was deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months.

There are no current definitions for a “terminated” or “closed” facility in 1.4. Under N.J.A.C. 7:26-2A.1, **Scope and Applicability**, 2A.1(a) states “This subchapter shall constitute the rules of the Department governing the design, construction, operation, maintenance, closure and post-closure care of sanitary landfills”, and

2A-1(c) states “This subchapter shall apply to the following facilities:

- 1) All newly proposed sanitary landfills and all existing sanitary landfills proposing to expand their existing operations onto previously unfilled permitted areas; and
- 2) Any existing sanitary landfills operating as an open dump or in an environmentally unsound manner which the Department determines needs to be environmentally upgraded.”

N.J.A.C. 7:26-2A.2, **Construction**, states: “these rules shall be liberally construed to permit the Department to discharge its statutory functions.”

N.J.A.C. 7:26-2A.3, **Purpose**, states “(a) This subchapter is promulgated for the following purpose:

- 1) To establish additional engineering design submission requirements for sanitary landfills:
- 2) To establish requirements and standards for the design and construction of sanitary landfills to insure that adverse impacts are minimized and controlled and that pollution of the environment is prevented; and
- 3) To establish additional requirements for the operation, inspection and monitoring of sanitary landfills to ensure the proper operation of the sanitary landfill so as to minimize and control adverse impacts and prevent pollution of the environment.”

N.J.A.C. 7:26-2A.4, provides **General prohibitions and requirements**.

N.J.A.C. 7:26-2A.5 provides **additional engineering design submittal requirements for sanitary landfills**.

N.J.A.C. 7:26-2A.6 provides **Sanitary landfill environmental performance standards**.

N.J.A.C. 7:26-2A.7 provides **Sanitary landfill engineering design standards and construction requirements**.

TECHNICAL REVIEW PANEL
Decision Document
Site Remediation and Waste Management

N.J.A.C. 7:26-2A.8 provides **Sanitary landfill operational and maintenance requirements.**

N.J.A.C. 7:26-2A.9 provides **Closure and post-closure care of sanitary landfills.**

The original 1974 text of N.J.A.C. 7:26 provided, at -2.5.17, “The grade and thickness of cover material on all surfaces of the fill shall be maintained until stabilized.” There was no minimum slope requirement comparable to 2A.7(i)5i.

Decision of TRP:

It is the Department’s position that while the Buzby Landfill is not an “existing solid waste facility” as defined at N.J.A.C. 7:26-1.4, the site in question meets the intent of the definition of a “sanitary landfill” due to the fact that solid waste was deposited on or into the land as fill for the purpose of permanent disposal or storage for a period of time exceeding six months. Therefore, it is the position of the Department that the Solid Waste Regulations (N.J.A.C. 7:26-1 et seq.) can be applied to evaluating closure of the Buzby landfill. More specifically, it is appropriate to treat future activities on the landfill under N.J.A.C. 7:26-2A.8(j) as disruption to the landfill in order to protect the environment and community from potential issues that may result from these activities.

Although meeting the generic definition of a sanitary landfill, the Department does not dispute that the Buzby Landfill ceased operation in the 1970s, prior to the promulgation of N.J.A.C. 7:26, subchapter 2A. Additionally, the Department has not rendered a finding that the Buzby Landfill was operated as an “...open dump or in an environmentally unsound manner” thus requiring an environmental upgrade pursuant to N.J.A.C. 7:26-2A-1(c)2. As such, Buzby landfill does not fall under the scope and applicability of subchapter 2A as prescribed at 2A.1(c), as it was neither a proposed new or existing landfill (as defined in 1.4). The majority of subchapter 2A speaks specifically to existing and proposed new sanitary landfills, with a few exceptions. Notably, 2A.8(j), which addresses disruption of landfills, and 2A.8(k), which addresses control of smoking, smoldering or burning landfills, both state applicability to an “active, terminated or closed sanitary landfill”, and the latter even included “unpermitted” landfill.

The Department agrees with the petitioner that the requirements of N.J.A.C. 7:26, subchapter 2A, and in particular, the three percent minimum slope requirement at 2A.7(i) 5i, do not *per se* apply to the Buzby landfill and therefore the Department will not require the importation of material to achieve the three percent minimum slope requirement.

The Department finds further that the regulatory standard applicable to the Buzby landfill is that previously incorporated as N.J.A.C. 7:26-2.5.17, and that the petitioner has shown that the final cover on the Buzby landfill has reached the state of “stabilized” as intended under such regulation.

TECHNICAL REVIEW PANEL
Decision Document
Site Remediation and Waste Management

The Department has previously concurred with the petitioner's claim (letter of 8/17/04) that to require the implementation of a three percent minimum slope on the Buzby landfill could, *if drainage was improperly designed*, adversely impact the biosparging area that will exist outside of the landfill's footprint. This would necessitate careful design and review of run-off control features.

The Department further notes that the petitioner states (at the conclusion of the first paragraph on page 5 of the 9/9/04 request for the TRP): "Adding the additional volumes mandated by a 3% slope requirement could have an impact on the degree of settlement and potential subsidence".

It is noted that the Department has not, as a standard policy, requested or directed landfills such as the Buzby Landfill, which ceased operation prior to the effective date of N.J.A.C. 7:26-2A, to submit closure plans for Department review, or to create three percent (minimum) slopes. (Although such slopes may have been specified case-by-case in individual approved engineering designs, where such had been issued).

The Department should caution the petitioner (and Voorhees Township) that the final design for the public park envisioned for the site will require Department approval via a landfill disruption permit, and that the Department's evaluation of such application will include the concern about future landfill settlement and its potential consequences. The Department will recommend that appropriate grading and stormwater controls be implemented to ensure proper continuance of the existing biosparging program, and assurances of no impacts to the long-term engineering of the park and differential settlement within the landfill.

Consideration for future rulemaking:

- 1) Create a separate subchapter to clearly state requirements applicable to landfills other than those under the scope and applicability of subchapter 2A as prescribed at 2A.1(c).
- 2) Add definitions of "closed" "terminated" and "unpermitted" landfills.

Modifications to Department-imposed deadlines or schedules impacted by Technical Issue(s) Review, if applicable:

None