

**IN THE MATTER OF** : **APPLICATION NOS. 200002164,  
AND 200002242**

**CONNECTICUT RESOURCES  
RECOVERY AUTHORITY** : **JUNE 4, 2001**

### **FINAL DECISION**

On March 23, 2001, pursuant to Conn. Gen. Stat. Sec. 22a-174, the Hearing Officer issued a *Proposed Final Decision* in the above-referenced matter, recommending that the Commissioner issue to Connecticut Resources Recovery Authority (“the applicant”) modifications to a solid waste permit and groundwater discharge permit it holds in connection with its operation of the Hartford Landfill in accordance with the terms and conditions of the permit modifications outlined in the *Proposed Final Decision*.

On April 9, 2001 the applicant and the intervenor, Survivors On Sunset (“SOS”), filed exceptions to the *Proposed Final Decision* and SOS also filed a request for oral argument. Reply briefs were timely filed on April 16, 2001 by both parties and an oral argument was held on April 25, 2001.

SOS’s objection to the *Proposed Final Decision* focuses upon five categories of issues: dust control; birds and other vectors; determination of need; ash disposal options; and environmental equity. Having considered the arguments raised by SOS and the applicant in the reply briefs and at oral argument, there was nothing presented that

dissuades me from upholding the Hearing Officer's analysis of the issues and conclusions regarding the above-stated categories of issues. The findings of fact and statutory evaluation in the *Proposed Final Decision* are, on balance, both comprehensive and thorough. There are several issues, however, related to the determination of need, environmental equity and the ash disposal options that merit further comment based on the points raised at oral argument.

Understanding the context of this decision is critical. As was expressed in the *Proposed Final Decision*, it is important to keep in mind that these are not new permit applications being submitted for a new facility. The proposed applications are for modifications of a previously permitted activity at an existing facility whose impact was already assessed and found acceptable by the Commissioner when issuing the decision to grant the permits to construct and operate the Phase I and II ash residue facility in 1996. At that time, no adverse environmental or public health impacts were found associated with the disposal of ash residue at the site. The question at issue today is whether the proposed modification – the reconfiguration of Phase I - has impacts of concern.

As to the determination of need requirement, having considered the opinions offered at oral argument, I agree with the Hearing Officer's conclusion in the *Proposed Final Decision* that “[n]o new or revised determination of need is necessary as the proposed modifications will not increase the capacity authorized for ash residue at the Hartford Landfill.”<sup>1</sup> With that said, the applicant accurately filed an exception to correct a typographical error in the *Proposed Final Decision* in Section III (Conclusions of Law), Subsection C (Determination of Need), in the last sentence of the third paragraph where the word “not” is clearly omitted. Given that the intended meaning of the sentence is

clear from the context of the paragraph, this sentence should be corrected to read: “The expanded height of the Phase I facility will **not** create such an excess.”

The proposed permit modification will not increase the 1.2 million cubic foot capacity authorized in the 1996 *Final Decision for Permits for a Lined Ash Landfill* for the Phase I and Phase II lined ash disposal area. The modification is for a reconfiguration that merely revises the footprint of the facility within the permitted confines of the 1996 permits.

The proposed permit modification will expand the height of the Phase I disposal area and eliminate the Phase II facility. The draft solid waste permit modification to permit no. 064-4(L) includes a condition that, upon issuance, rescinds the applicant’s authority to construct the Phase II area and, as a result, precludes any increase of ash residue disposal capacity at the site without new authorization. The applicant would be required to go through a new application process for a determination of need and for the solid waste permits associated with Phase II. For such reasons, I uphold the Hearing Officer’s conclusion that a new or revised determination of need is not required for the proposed reconfiguration of the Phase I facility under the requested modification.

With respect to environmental equity, the question at issue is whether the reconfiguration of the Phase I ash residue facility has impacts of concern that would cause a segment of the population to bear a disproportionate burden of the risks and consequences of environmental pollution or be denied equal access to environmental benefits because of its racial or economic makeup. Through a thorough technical review and evaluation in accordance with the applicable statutory environmental quality and health-based ambient air and water standards, DEP Staff determined that there are no

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<sup>1</sup> Proposed Final Decision at 51.

adverse impacts caused by the proposed reconfiguration. The Intervenor, Survivors On Sunset, did not present sufficient evidence either at hearing or oral argument to establish that the Landfill – and any vertical expansion of the Phase I facility – is the cause of their claimed health problems; the evidence does not support the Intervenor’s contention that the City of Hartford’s low income or minority population are or have been exposed to disproportionately high levels of pollution.

The decision to site a landfill in its current location was made by the City of Hartford decades ago. That decision is not being revisited at this time. Nor is a change in the capacity of the landfill being proposed. Again, the proposed modification is for the reconfiguration of the Phase I ash residue facility . The proposed applications modify two permits whose impact was already assessed and found acceptable by the Commissioner when issuing the initial decision to grant the permits to construct and operate the Phase I and II ash residue facilities.

While no one is suggesting intentional discrimination, with regard to discriminatory effects, the intervenors’ concerns regarding health problems linked to the facility do not pose an adverse effect or impact on the community and, therefore, can not rise to the level of a discriminatory effect within the meaning of the Department of Environmental Protection’s *Environmental Equity Policy*. An evaluation of whether or not the effects would be disparate or cause an adverse disparate impact is not triggered since the effects do not rise to the level of an “adverse” impact.

As applied to the facts of this case, through the participation of the regulatory units of DEP as part of its permitting review process identifying whether there would be any adverse impacts from the proposed reconfiguration and assuring that the nearby

communities were well and frequently advised of the actions under consideration and the potential impacts of the proposed reconfiguration, the DEP *Environmental Equity Policy* has been appropriately implemented.

Finally, with regard to the consideration of alternatives in planning for solid waste management, as explained in the *Proposed Final Decision*, the applicant presented extensive evidence of its efforts to explore recycling as an option for ash residue management. The record demonstrates that there is no clear evidence that ash reuse is a viable or even permissible option in Connecticut at this time. Despite this recognition, the applicant is still bound by a condition in the draft solid waste permit modification to permit no. 064-4(L) requiring the permittee to report annually on the progress of efforts relating to the use of ash residue including the pursuit of residue re-use as a management option to reduce the amount of ash coming to the facility.

In conclusion, having reviewed the *Proposed Final Decision*, I hereby affirm the recommendation to GRANT the applications for modifications to the solid water permit and a groundwater discharge permit it holds in connection with its operation of the Hartford Landfill in Hartford, Connecticut subject to the terms and conditions of the revised draft permit modifications outlined in the *Proposed Final Decision* and the typographical correction noted herein.

June 4, 2001 \_\_\_\_\_  
Date

/s/ Arthur J. Rocque, Jr. \_\_\_\_\_  
Arthur J. Rocque, Jr.  
Commissioner