



NATURAL RESOURCES BOARD
District 5 Environmental Commission
5 Perry Street, Suite 60
Barre, Vermont 05641-4267

September 27, 2013

Daryl R. O'Dell, P.E., Sr. Project Manager and
Mark A. Swyka, P.E., Client Manager
Cornerstone Environmental Group, LLC
90 Crystal Run Road, Suite 201
Middletown, NY 10941

Re: Land Use Permit 5W0164-30, Moretown Landfill, Cell 3

Dear Messrs. O'Dell and Swyka:

I write in response to your July 25th letter requesting that the District Commission confirm that the closure of the north slope of Cell 3 can proceed under a draft Consent Order to be executed between the Moretown Landfill, Inc. and the State of Vermont Department of Environmental Conservation. Your July 25th letter was circulated to the parties on August 14, 2013. No comments were received from any of the parties by the August 29th deadline. The Consent Order was executed on September 16, 2013.

The July 25th letter, accompanying site plans, and the Consent Order describe the project as both a "partial closure" and a "phased closure". Plan Sheet 4 specifically depicts a final cap covering only the north slope of Cell 3. The Consent Order indicates that the south slope of Cell 3 will be covered by a temporary cap only "on portions of the south slope of Cell 3 that are not within the Cell 4 overlay area because "new landfill Cell 4 would partially overlie Cell 3."

A review of the closure plan for Cell 3 that was reviewed and approved by the District Commission under Land Use Permit 5W0164-30 includes Findings of Fact #33, which states:

The closure plan for Cell 3 is detailed in section 6.3 of Exhibit 6. Exhibit 2 provides drawings and specifications for final landfill slopes and cap design.

The Exhibit List on file indicates that Exhibit 2 contains the site plans; specifically Sheet 34, which depicts a permanent cover to be placed over the entirety of Cell 3. Furthermore, under Section 6.3, the narrative for the final closure includes no language proposing a temporary cover/cap on any portion of Cell 3.

A permit amendment is required for any material change to a permitted development pursuant to Act 250 Rule 34(A). "Material change is defined in Act 250 Rule 2(C)(6), which states:

Material change means any change to a permitted development or subdivision which has a significant impact on any finding, conclusion, term or condition of the project's permit or



which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. Section 6086(a)(1) through (a)(10).

As Cell 3 is closed, but is not proposed to be permanently capped in its entirety, the project has been altered from the original proposal reviewed and approved by the District Commission. This change has the potential for significant impacts under criterion 1(Air Pollution) as there are still odor management issues at the facility; under criterion 1(B) (Waste Disposal) due to the presence of contaminants of concern in the groundwater at the facility; and under criterion 8 (Aesthetics) as no visual mitigation is proposed in conjunction with the installation of a temporary cap on the south slope. Therefore, the proposed project constitutes a material change pursuant to Rule 2(C)(6), and an amendment application is required.

Please don't hesitate to contact this office with any questions regarding the preparation of an application.

Sincerely,



Susan Baird, Assistant Coordinator

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Act 250 Rule 3(A). A request for reconsideration by the district coordinator, pursuant to Act 250 Rule 3(B), must be sent to the district coordinator at the above address within 30 days of the mailing of this opinion. Effective July 1, 2013, no appeal may be taken from a jurisdictional opinion or coordinator's decision on reconsideration without reconsideration by the Natural Resources Board. Requests for reconsideration by the Board must be submitted to the Board within 30 days of the mailing of this decision or a coordinator's decision on reconsideration. The mailing address is: Natural Resources Board, Dewey Building, National Life Drive, Montpelier, VT 05620-3201. For additional information, see the Board's Interim Procedure on Jurisdictional Opinions and Reconsideration [<http://www.nrb.state.vt.us/policies/recon.pdf>].

