



## State of New Jersey

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

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BOB MARTIN  
*Commissioner*

### EMERGENCY ORDER

WHEREAS, the Legislature has authorized the Commissioner of the Department of Environmental Protection ("Commissioner") to issue an emergency order to abate an imminent threat to the environment arising from any activity at a legacy landfill pursuant to the provisions of L. 2013, c.69, § 9 and N.J.S.A. 13:1E-9.5; and

WHEREAS, in October 2011 the Department of Environmental Protection ("DEP") issued to the owner of the Fenimore Landfill on Mountain Road in Roxbury Township, Morris County (comprising the entirety of Block 7404 Lot 1, all driveways, and all access roads) (the "Landfill") a landfill closure authorization memorialized in an administrative consent order and a closure plan which allowed for Phase I redevelopment of approximately 18 acres of the Landfill (the "Site") by importation of regulated materials; and

WHEREAS, the owners and operators of the Landfill, including but not limited to Strategic Environmental Partners, LLC, Marilyn Bernardi, and Richard Bernardi, have accepted for disposal at the Site regulated construction and demolition debris, including significant amounts of ground gypsum board; and

WHEREAS, the anaerobic decomposition of ground gypsum board at the Landfill has generated large volumes of hydrogen sulfide which is being emitted from the Landfill as an air pollutant; and

WHEREAS, pursuant to L. 2013, c.69, § 4 and for the purpose of protecting the environment, the Legislature established a maximum permissible emission of hydrogen sulfide at 30 parts per billion (ppb) averaged over a 30-minute period at the property line of any legacy landfill, including the Landfill; and

WHEREAS, pursuant to L. 2013, c. 69, § 9, the Commissioner is empowered to take action to abate violations of this hydrogen sulfide standard through the issuance of an emergency order; and

WHEREAS, Department inspectors have documented instantaneous levels of hydrogen sulfide on areas of the Landfill in excess of 100,000 ppb; and

WHEREAS, off-Site monitoring equipment in the backyards of neighboring homeowners beyond the property line have registered increasing hydrogen sulfide levels in the last several weeks, including levels that exceeded the 30 ppb standard set by the Legislature at least twenty-six (26) times so far this month; and

WHEREAS, off-Site monitoring equipment has recorded 30-minute average readings that significantly exceed the 30 ppb standard established by the Legislature, including average measurements of 141 ppb over 30 minutes on June 9, and 419 ppb over 30 minutes on June 15 beyond the Landfill property line, among other violations of the 30 ppb environmental standard; and

WHEREAS, as the rate of anaerobic decomposition of ground gypsum board increases due to rising daytime temperatures and continued rainfall there is a substantial likelihood that levels of hydrogen sulfide emanating from the Landfill will increase, prompting more violations of the hydrogen sulfide standard established by the Legislature and posing an even greater risk of environmental harm; and

WHEREAS, the regular and continued elevated emissions of hydrogen sulfide significantly in excess of the statutorily mandated maximum have and continue to disrupt and adversely affect the Landfill's surrounding areas; and

WHEREAS, the closure plan for the Landfill requires that "malodorous emissions shall be controlled by the use of daily cover"; and

WHEREAS, on December 10, 2012, the Superior Court ordered SEP to cover the Site with fill by December 12, 2012 and to import and store enough extra soil so any exposed areas can be covered at the end of every workday; and

WHEREAS, the owners and operators have not complied with the Court's order and have left significant portions of the Landfill's side-slopes exposed and uncovered to this day; and

WHEREAS, the Department has issued ten (10) administrative orders to the owners and operators of the Landfill for repeated violations of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq. for failure to adequately control hydrogen sulfide levels emanating from the Landfill; and

WHEREAS, on June 6, 2013 an inspection by the Department revealed that the highest hydrogen sulfide readings taken on the Landfill occur along the side-slopes which remain uncovered to this day; and

WHEREAS, the administrative consent order and closure plan require the owners and operators of the Landfill to make regular payments into an escrow account to pay for the costs of closure of the Landfill and post-closure maintenance; and

WHEREAS, the owners and operators of the Landfill have refused to make any payments into escrow to guarantee the proper closure and the post-closure maintenance of the Landfill, nor have they submitted a financial plan demonstrating their ability to complete their obligations under the administrative consent order and closure plan, which material failures render the administrative consent order voidable under L. 2013, c. 69, § 2; and

WHEREAS, the owners and operators of the Landfill have repeatedly failed to take sufficient measures to contain and/or treat the hydrogen sulfide produced at the Landfill despite the conditions of their operating authorizations, repeated directives by the Department, and Court

order, and, therefore, cannot be entrusted to abate the on-going and continued imminent threat to the environment from hydrogen sulfide emissions in a timely and comprehensive manner without direct intervention by the Department; and

THEREFORE, I hereby declare that the Landfill's continued and repeated emissions of hydrogen sulfide in violation of the environmental standard established by L. 2013, c. 69, § 4, combined with the owners' and operators' of the Landfill repeated failure to abate and mitigate the environmental harm in face of operating authorizations, Department directives, and Court orders, collectively pose an imminent threat to the environment; and it is hereby

ORDERED that the Department shall immediately assume full control of the Landfill. No further deliveries of any material may be made or accepted at the Landfill by the owners and operators without express permission granted by the Department. Department personnel and designated contractors shall enter the Landfill and take immediate action to abate the escape of hydrogen sulfide from the Site, which shall include, but not be limited to, the following measures:

- A. Application of the topical material "Posi-Shell®" or similar material on all areas of the Site;
- B. Installation of temporary "stick flares" to treat hydrogen sulfide emissions;
- C. Installation of a geomembrane cap with vegetative surface cover;
- D. Installation of a landfill gas management system which may include but is not limited to one or more of the following measures: i) gas well collection system; ii) portable skid-mounted blower and flare systems; iii) power/fuel system for the portable skid-mounted blower and flare system; iv) hydrogen sulfide treatment; v) gas migration trench; vi) soil gas probes;
- E. Stormwater management and run-off controls.

Posi-Shell® shall be applied as necessary to mitigate and alleviate hydrogen sulfide emissions from the Site until such time as more permanent and long-term hydrogen sulfide controls are put into place at the Landfill. Until such time, the Department shall maintain continuous and exclusive control over, and unimpeded access to, the Landfill.

Neither the owners and operators of the Landfill nor their employees, contractors, consultants, or agents shall interfere with the actions of Department personnel and the Department's contractors on or off the Landfill, nor impede the Department's full access to the Landfill in any manner.

The Township of Roxbury and its contractors shall have full access to the Landfill to monitor all hydrogen sulfide control measures and to obtain test samples for the purpose of environmental monitoring.

Except as expressly permitted by the Department, no person may trespass upon the Landfill or disturb or disrupt any protective measure or control established or installed pursuant to this Emergency Order.

THIS ORDER shall take effect immediately and shall remain in effect until such time as determined by me that an emergency no longer exists.

By: 

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Bob Martin, Commissioner  
Department of Environmental Protection

Dated: 6/26/2013