

**STATE OF KANSAS  
BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT**

**IN THE MATTER OF:**

The violations of K.S.A. 65-3401, *et seq.*  
and K.S.A. 65-3430, *et seq.*

by,  
City of Wichita, Kansas  
4100 North West Street  
Wichita, Kansas 67205  
Solid Waste Permit No. 0213

Case #10-E-27 BWM

Respondents

Pursuant to K.S.A. Chapters 65 and 77

**ORDER TO CEASE AND DESIST UNLAWFUL ACTIVITY  
AND ASSESSING AN ADMINISTRATIVE PENALTY**

Now on this 5th day of April, 2010, the Kansas Department of Health and Environment ("KDHE"), through its Secretary and Agency Head, Roderick L. Bremby ("Secretary"), hereby assesses an administrative penalty for violations of laws governing Solid Waste and Hazardous Waste in Kansas (K.S.A. 65-3401, *et seq.*) and regulations promulgated thereunder, and orders Respondent to cease and desist unlawful activity at the Brooks Landfill owned by the City of Wichita ("Respondent"), based on the Findings of Fact and Conclusions of Law set forth in this Order.

**Findings of Fact**

1. Respondent owns the Brooks Landfill, a construction and demolition landfill, located at 4100 N. West Street, Wichita, Sedgwick County, Kansas ("Facility"). KDHE issued Respondent Permit Number 0213 to operate a Construction and Demolition ("C&D") Landfill, an Asbestos Monofil, and a Yard Waste Composting Facility at the Facility ("Permit").

2. To date, the Permit has been timely renewed and is in effect. To date, KDHE has not issued any hazardous waste permits to Respondent or to the Facility. Herzog Environmental, Inc. contracts with Respondent to operate the Facility.

3. In August, 1994, KDHE approved an Operations Plan for the Facility ("Plan"). The Plan was revised in June 1996.

4. Under the conditions of the Permit, Respondent is required to:

- a. Comply at all times with the terms and conditions of the Permit, and all applicable State and Federal statutes and regulations. Paragraph 9(a) of the General Conditions of the Permit.
- b. Operate the Facility in conformity with plans approved by KDHE including the Plan, as amended.
- c. Inspect all incoming loads for hazardous waste, investigate any loads of suspected hazardous waste, keep the area free of personnel, detain the vehicle and driver, and notify City of Wichita inspectors and the fire department in the event hazardous waste is transported to the Facility. Paragraphs 17 and 18 of the Plan.

5. KDHE conducted inspections at the Facility on July 6, 2005 and December 22, 2006. KDHE inspectors cited violations of solid waste laws and/or regulations at each of these inspections.

6. On June 24, 2009, and July 2, 2009, KDHE inspectors conducted a routine compliance inspection ("2009 Inspection") at the Facility, pursuant to K.A.R. 28-29-16 and K.A.R. 28-31-12, and observed, noted and/or photographed the following violations of applicable statutes and regulations, and Permit conditions:

- a. Respondent unlawfully disposed of hazardous waste in violation of K.S.A. 65-3441(a). Two plastic truck bed liners contained multiple open upside down containers of wood chips. Three of the containers contained hazardous liquid waste, to wit: Gum Turpentine (waste code D001), U-300 System (waste code D001), and Gloss Helmsman Spar Urethane (waste code D001). Respondent's practice was to pour the contents of the containers onto the truck bed liners, then transport it to a solid waste transfer station after drying. The liquid waste had flowed outside the two plastic truck bed liners and onto the soil. There was no evidence or record that Respondent followed the procedures in Paragraph 17 of its Plan, after it determined that hazardous waste had been transported to the Facility.
- b. Respondent unlawfully disposed of solid waste in violation of K.S.A. 65-3409(a). Two plastic truck bed liners containing multiple open upside down containers were located at the Facility. Solid waste from the truck bed liners flowed onto the soil. Storm water had mixed with the waste causing it to flow down a slope for approximately 20 yards.
- c. Respondent had unauthorized waste present in the active face of the construction demolition landfill in violation of K.A.R. 28-29-308(f)(1), including caulking tubes and aerosol cans. KDHE also

cited this violation as a result of the July 5, 2005, and December 22, 2006, inspections of the Facility.

7. To date, Respondent has corrected the violations identified in paragraph 6, above.

8. Based on the foregoing facts, the Secretary concludes that Respondent has violated Kansas solid and hazardous waste laws and regulations at the Facility, all of which violations threaten to cause environmental pollution and/or are a hazard to property or to public health and safety, and Respondent is therefore subject to administrative penalties and actions.

#### **Conclusions of Law and Orders**

9. KDHE has general jurisdiction over matters involving the safe and legal management and disposal of solid waste pursuant to 65-3401, *et seq.*, and regulations promulgated thereunder at K.A.R. 28-29-2 through 28-29-2201. KDHE has general jurisdiction over matters involving the safe and legal management and disposal of hazardous waste pursuant to K.S.A. 65-3430, *et seq.*, and regulations promulgated thereunder at K.A.R. 28-31-1 through 28-31-16.

10. KDHE has promulgated regulations for the operation of construction and demolition landfills at K.A.R. 28-29-308.

11. KDHE has authority to impose a penalty on any person who violates any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, in a maximum amount of \$5,000 for every day such violation continues, which penalty shall constitute an actual and substantial economic deterrent for the violation for which it is assessed. K.S.A. 65-3419.

12. KDHE's Secretary and the Director of KDHE's Division of Environment have the authority to assess a penalty in an amount not to exceed \$10,000 for violations of laws prohibiting certain hazardous waste practices, which penalty shall constitute an actual and substantial economic deterrent for each day a violation of K.S.A. 65-3441 continues, and to take additional actions the Secretary deems necessary to prevent or remove pollution or hazards caused by the occurrence described in K.S.A. 65-3443. K.S.A. 65-3446.

13. If the Secretary finds that the generation, accumulation, management or discharge of solid or hazardous waste by any person is, or threatens to cause pollution of the land, air or waters of the state, or is a hazard to property in the area or to public health and safety, the Secretary may order the person to alter the generation, accumulation or management of the solid waste or to provide and implement such solid waste management system as will prevent or remove pollution or hazards. K.S.A. 65-3411 and K.S.A. 65-3443.

14. The Secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any solid or hazardous waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of K.S.A. 65-3401, *et seq.* or rules and regulations adopted pursuant thereto, may take such action as the Secretary determines to be necessary to protect the health of persons or the environment. The action the Secretary may take shall include, but not be limited to: issuing an order directing the owner, generator, transporter or the operator of the processing, treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard or threatened or actual violation,

to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation. K.S.A. 65-3419(e) and K.S.A. 65-3444(a).

15. "Solid waste" means garbage, refuse, waste tires as defined by K.S.A. 65-3424, and amendments thereto, and other discarded materials. K.S.A. 65-3402(a).

16. "Hazardous waste" means any waste or combination of wastes which because of its quantity, concentration or physical, chemical, biological or infectious characteristics or as otherwise determined by the secretary: (A) Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (B) poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. K.S.A. 65-3430(e)(1).

17. "Construction and demolition landfill" means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition wastes. This term shall not include a site that is used exclusively for the disposal of clean rubble. K.S.A. 65-3402(v).

18. It is unlawful for any person to:

- a. Dispose of any solid waste by "open dumping" [e.g. disposing of solid waste at a facility that is not permitted by the Secretary, K.S.A. 65-3401(j)], K.S.A. 65-3409(a)(1).
- b. Be in violation of the rules, regulations, standards and orders of the Secretary, K.S.A. 65-3409(a)(2).

- c. Violate any condition of any permit issued under K.S.A. 65-3407.  
K.S.A. 65-3409(a)(3).

19. It is unlawful for any person to:

- a. Dump or deposit, or permit the dumping or depositing of any hazardous waste regulated by this act into any facility which does not comply with the provisions of this act or rules or regulations, standards or orders of the secretary. K.S.A. 65-3441(a)(1).

20. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent has committed violations of Kansas solid and hazardous waste laws and regulations, which violations threaten to cause environmental pollution and/or hazards to the public health or environment as follows:

1. Respondent unlawfully disposed of hazardous waste in violation of K.S.A. 65-3441(a) and failed to follow the procedures in its Plan.  
**Penalty: \$1000.**
2. Respondent unlawfully disposed of solid waste at the Facility in violation of K.S.A. 65-3409(a). **Penalty: \$1000.**
3. Respondent had unauthorized waste present in the active face of the construction demolition landfill in violation of K.S.A. 65-3409(a)(2) and K.A.R. 28-29-308(f)(1). **Penalty: \$500.**

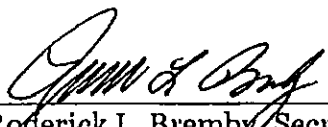
**IT IS THEREFORE ORDERED** that Respondent pay the above penalty for each of its two (2) violations of Kansas solid waste laws and regulations and one (1) violation of Kansas hazardous waste laws, for a total penalty amount of **\$2,500**, which amount shall be remitted to KDHE within 30 days of the date of this Order.

**IT IS FURTHER ORDERED** that Respondent immediately cease and desist all unlawful activities described in paragraph 6, above, to wit:

- a. Respondent shall cease any and all unlawful disposal of hazardous waste at the Facility and shall strictly follow all procedures set forth in its Operations Plan in the event hazardous waste is transported to the Facility.
- b. Respondent shall cease any and all unlawful disposal of solid waste at the Facility.
- c. Respondent shall cease allowing unauthorized waste to be disposed at the Facility.

**IT IS SO ORDERED.**

Dated this 5th day of April, 2010

  
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Roderick L. Bremby, Secretary  
Kansas Department of Health and Environment



**NOTICE OF RIGHTS**

You have the right to request a hearing on the foregoing ADMINISTRATIVE ORDER. Any request for a hearing must be made in writing and must be submitted within 15 days from the date of service of this Notice, as designated in the Certificate of Service, below. All written requests must be directed to:

Tracy Diel, Director  
Office of Administrative Hearings  
Kansas Dept. of Administration  
1020 South Kansas Avenue  
Topeka, Kansas 66612-1327

with a copy to Nancy L. Ulrich, KDHE Office of Legal Services, 1000 SW Jackson Street, Suite 560, Topeka, Kansas 66612.

If you fail to make a timely written request for a hearing, this ADMINISTRATIVE ORDER becomes effective and final upon expiration of the time for requesting a hearing.

**CERTIFICATE OF SERVICE**

I do hereby certify that a true copy of the foregoing ADMINISTRATIVE ORDER was served on the following persons by mailing same certified mail, return receipt requested, postage paid, on this 5th day of July, 2010.

City of Wichita  
Brooks Landfill  
4100 North West Street  
Wichita, Kansas 67205

7007 0710 0002 1143 8915  
Certified Mail No.

[Signature]  
KDHE Staff