

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.*

Case No. 11-E-21 BWM

by,

City of Wichita, Kansas

4100 North West Street

Wichita, Kansas 67205

Solid Waste Permit No. 0213

Respondent

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

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

Now on this 4th day of April, 2011, the Kansas Department of Health and Environment ("KDHE"), through its Secretary and Agency Head, Robert Moser, MD ("Secretary"), hereby assesses an administrative penalty for violations of laws governing solid 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 ("Landfill") located at 4100 North West Street, Wichita, Sedgwick County, Kansas ("Facility"). KDHE issued Permit Number 0213 to Respondent to operate a Construction and Demolition ("C&D") Landfill, an Asbestos Monofil, and a Yard Waste Composting Facility at the Facility ("Permit"). To date, the Permit has been timely renewed and is in

effect.

2. On July 6, 2005, December 22, 2006, June 24, 2009, and July 2, 2009, KDHE inspected the Facility and observed, noted and/or photographed that Respondent had accepted unauthorized waste at the Landfill, in violation of K.S.A. 65-3409(a)(2) and K.A.R. 28-20-308(f)(1).

3. On April 5, 2010, KDHE issued an Administrative Order to Respondent, citing the violations noted during the inspections identified in paragraph 2, above. In response to the Administrative Order, Respondent remitted a penalty check to KDHE for \$2,500.

4. On September 20, 2010, KDHE conducted an inspection at ICM, Inc., located in Colwich, Kansas. During this inspection, KDHE reviewed scale tickets that verified that approximately 140 tons of abrasive blast media waste ("Black Beauty") had been placed in roll-off containers and disposed of at Brooks Landfill. Abrasive blast media waste is not a C&D waste.

5. On October 26, 2010, KDHE issued a Notice of Non-Compliance ("NONC") to Respondent for its violation of Kansas Solid Waste statutes and regulations, to wit:

- a. Respondent had accepted for disposal at the Landfill approximately 140 tons of blast media waste ("Black Beauty"), a non-C&D waste, in violation of K.A.R. 28-29-308(f)(1).

6. Disposal of non-C&D waste in an unlined C&D landfill can cause contamination of soil or groundwater and thereby affect public health.

7. Based on the foregoing facts, the Secretary concludes that Respondent has violated Kansas Solid Waste laws and regulations for construction and demolition landfill facilities, 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

8. KDHE has general jurisdiction over matters involving the safe and legal management and disposal of solid waste pursuant to K.S.A. 65-3401, *et seq.*, and regulations promulgated thereunder at K.A.R. 28-29-2 through 28-29-2201. KDHE also has general authority and responsibility to protect the waters and soils of the state under authority of K.S.A. 65-161, *et seq.*

9. 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.

10. If the Secretary finds that the generation, accumulation, management or discharge of solid 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.

11. The Secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any 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).

12. KDHE has promulgated regulations for the operation of construction and demolition landfills at K.A.R. 28-29-300 through K.A.R. 28-29-225. K.A.R. 28-29-308(f)(1) requires that C&D landfills accept for disposal "only 'construction and demolition waste' as defined in K.S.A. 65-3402."

13. "Construction and Demolition waste" means solid waste resulting from the construction, remodeling, repair and demolition of structures, roads, sidewalks and utilities; untreated wood and untreated sawdust from any source; treated wood from construction or demolition projects; small amounts of municipal solid waste generated by the consumption of food and drinks at construction or demolition sites, including, but not limited to cups, bags and bottles; furniture and appliances from which ozone depleting chlorofluorocarbons have been removed in accordance with the provisions of the federal clean air act; solid waste consisting of motor vehicle window glass; and solid waste consisting of vegetation from land clearing and grubbing, utility maintenance, and seasonal or storm-related cleanup. K.S.A. 65-3401(u).

14. "Construction and demolition landfill" means a permitted solid waste disposal area used exclusively for the disposal on land of construction and demolition

wastes. K.S.A 65-3402(v).

15. It is unlawful for any person to:

- a. Be in violation of the rules, regulations, standards and orders of the Secretary. K.S.A. 65-3409(a)(2).

16. Based on the foregoing Findings of Facts and Conclusions of Law, Respondent has committed violations of Kansas Solid Waste laws and regulations which violations threaten to cause environmental pollution and/or hazards to the public health or environment, as follows:

- a. Respondent accepted for disposal unauthorized waste in its Construction and Demolition landfill in violation of K.S.A. 65-3409(a)(2) and K.A.R. 28-29-308(f)(1) (5th offense) **Penalty: \$1,000.00.**

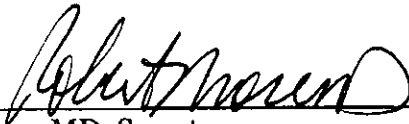
IT IS THEREFORE ORDERED that Respondent pay the above penalty for its violation of Kansas Solid Waste laws and regulations, in the total amount of **\$1,000.00**, which amount shall be remitted to KDHE within 30 days of the date of this Order. The penalty payment shall be made payable to the Kansas Department of Health and Environment and submitted to:

Kansas Department of Health and Environment
Office of Legal Services
1000 SW Jackson, Suite 560
Topeka, Kansas 66612-1371

IT IS FURTHER ORDERED that Respondent cease and desist accepting for disposal at the Landfill any unauthorized or non-C&D waste.

IT IS SO ORDERED.

Dated this 4 day of April, 2011



Robert Moser, MD, 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 S. Kansas Ave.,
Topeka, Kansas 66612

with a copy to Nancy L. Ulrich, KDHE Office of Legal Services, 1000 SW Jackson, Suite 560, Topeka, Kansas 66612-1371.

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 on this 12th day of April, 2011, a true and correct copy of the foregoing **ADMINISTRATIVE ORDER** was served by mailing same certified mail, return receipt requested, postage paid, and addressed to:

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

7008 1830 0003 6602 7797
Certified Mail No.

and

Aaron Henning
City of Wichita
1801 S. McLean Blvd.
Wichita, KS 67213

7008 1830 0003 6602 7780
Certified Mail No.

Paula Gunnor
KDHE Staff Member