UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

July 8, 2004

Commissioner Erin M. Crotty
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1011

Re: EPA's Review of Proposed Permit for Al Turi Landfill
Permit ID : 3-3330-00002/00039, Mod 1

Dear Commissioner Crotty:

The purpose of this letter is to notify the New York State Department of Environmental Conservation (DEC) that the United States Environmental Protection Agency (EPA) formally objects to the issuance of the above referenced proposed title V operating permit for Al Turi Landfill, located in Goshen, New York, operated by Al Turi Landfill, Inc.

Section 505(b)(1) of the Clean Air Act (the Act) and 40 C.F.R. § 70.8(c) require EPA to object to the issuance of a proposed permit in writing within 45 days of receipt of the proposed permit (and all necessary supporting information) if EPA determines that it is not in compliance with applicable requirements under the Act or 40 C.F.R. Part 70. Pursuant to 70.8(c), a detailed explanation of the objection issues and the changes necessary to make the permit consistent with the requirements of 40 C.F.R. Part 70 is provided in the attachment to this letter. In summary, the basis of EPA's objection is that the proposed permit (1) incorrectly treats Al Turi Landfill as a source separate from the landfill gas control facility; (2) misrepresents the landfill gas control devices in use; (3) does not reflect the responsibility of Al Turi Landfill for compliance with all requirements for control of the landfill gas; (4) does not satisfy the annual certification requirements of § 114(a)(3) of the Act and 40 C.F.R. § 70.6(c)(5); and (5) does not include all of the requirements of the National Emission Standard for Hazardous Air Pollutants: Municipal Solid Waste Landfills.

In addition, on January 30, 2004, the Administrator signed an Order granting the Petition filed by the New York State Public Interest Research Group in part and denying the Petition in part. *See In the Matter of Al Turi Landfill, Inc.*, Petition No. II - 2002-13-A (January 30, 2004). The Administrator's Order required DEC to make changes to or explain certain specific conditions in Al Turi's proposed permit, which this permit modification (Mod 1) fails to include. The outstanding issues granted in the Order are that the proposed permit: (1) does not explain in its Permit Review Report the options available in the regulation for nitrogen and oxygen concentrations and monitoring at the gas collection system wellheads; (2) does not explain the applicability of Condition 3 (Condition C in the Mod 1) and Condition 7 (Condition G in Mod 1)

to the Al Turi Landfill; and (3) does not include the "excuse" provision that is in New York's SIP approved by EPA at 6 N.Y.C.R.R. § 201.5. DEC is on notice that these issues were not corrected in Mod 1 and are currently outstanding. If DEC fails to implement these requirements, EPA will act to issue a part 71 permit as explained below. Enclosed is an attachment that details all the issues referenced in this letter.

The DEC is expected to submit a second permit modification (Mod 2) to EPA by July 19, 2004. The DEC is encouraged to correct both the outstanding issues from the Administrator's January 30, 2004 Order, as well as the issues addressed in this objection letter within this second permit modification. Should the DEC fail to make the necessary corrections to the Al Turi permit by Mod 2, EPA will use its authority under Section 505(c) of the Act to issue or deny the permit under 40 C.F.R. Part 71.

We are committed to working with you to resolve these issues. Please let us know if we may provide assistance to you and your staff. If you have questions or wish to discuss this further, please contact Mr. Steven C. Riva, Chief, Air Permitting Section at (212) 637-4074.

Sincerely,

/ Walter E. Mugdan / *for*

Jane M. Kenny
Regional Administrator

Attachment

cc: David Shaw, Director, Division of Air Resources, NYSDEC, Albany
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File

Attachment

Objection Issues and Outstanding Issues
Proposed Part 70 Permit
Al Turi Landfill, Inc.
Al Turi Landfill
Permit ID: 3-3330-00002/00039, Mod 1

(1) The proposed permit does not treat Al Turi Landfill and Al Turi LFGTE-1 (also referred to as "Ameresco LFG-1") as a single source with the result that all applicable Federal requirements have not been addressed.

The Description section of the proposed Mod 1 permit states that DEC has determined that Al Turi Landfill and Al Turi LFGTE-1 are not under common control, and, ostensibly, therefore not a single source. The Permit Review Report states that Al Turi LFGTE-1 is a separately owned/operated and permitted gas-to-energy facility that is owned/operated by Ameresco, Inc.

Based on information provided in the proposed Mod 1 permit and in a letter from the attorneys for Al Turi Landfill, Beveridge & Diamond, P.C., the determination and statement by DEC that Al Turi Landfill and Al Turi LFGTE-1 are not under common control is incorrect. That these two facilities are a single source for Clean Air Act Title V and New Source Review (NSR) purposes is delineated below. Consequently, the permit must be modified to reflect this single-source status. The Al Turi Landfill permit must be revised to include the emission units, processes, and emissions for the landfill gas controls, and all Federal applicable requirements for those units, processes, and emissions. With this redefinition of the permitted facility, DEC must recalculate the potential to emit for Al Turi Landfill.

The formal single source determination prepared by EPA follows.

> On January 21, 2004 the EPA reopened the Al Turi permit for cause pursuant to 40 C.F.R. § 70.7(g). In the Response to Comments within permit Mod 1, the DEC relied upon a letter submitted to it on April 22, 2004 by Mr. Christopher J. McKenzie of Beveridge & Diamond, P.C., the attorney for Al Turi landfill, to hold that Al Turi Landfill, Inc. (“Al Turi”) and Al Turi LFGTE (“Ameresco”) were not a single source for both Title V and NSR applicability purposes. A single source determination consists of a three factor test set out under the definition of "major source" in 40 C.F.R. § 70.2, as well as under the definition of "building, structure or facility" in 40 C.F.R. § 51.166. Under the definition of “major source” in 40 C.F.R. § 70.2 two facilities are considered a single source if they are (1) under common control, (2) contiguous or adjacently located and (3) have the same two-digit SIC code. The DEC did not present its own analysis of the factors of the test, nor did it determine whether or not each of the factors was present when making its single source determination within permit Mod 1. Rather, the DEC

attached excerpts of the letter submitted by Al Turi's attorney, Mr. McKenzie, and concurred with his determination, that Al Turi and Ameresco were separate sources for Title V and NSR applicability purposes.

On March 11, 2004 the DEC requested a ninety day extension from Jane M. Kenny, Regional Administrator, EPA, Region 2, in order to respond to the January 21, 2004 reopening for cause. The request was made, in order to obtain more information from Al Turi for the single source determination. This determination was to be made by DEC within the permit Mod 2. However, the DEC stated that Al Turi and Ameresco were not a single source within its response to comments within permit Mod 1, including excerpts of the analysis submitted by Mr. McKenzie within its Permit Review Report. In addition, a draft of the Permit Review Report of permit Mod 2, submitted by DEC, includes excerpts of Mr. McKenzie's letter. Again, the DEC relies upon the information provided in Mr. McKenzie's April 22nd letter to find that Al Turi and Ameresco are two separate sources for Title V and NSR applicability purposes.

Although Mr. McKenzie's letter to the DEC asserts that Al Turi and Ameresco should not be treated as a single source, an analysis of the information provided within the letter leads to the conclusion that the three factors required to treat Al Turi and Ameresco as a single source are present in this case. In the April 22nd letter, Mr McKenzie states that Al Turi and Ameresco are located on adjacent property and share the same two-digit SIC code (Major Group 49: Electric, Gas, and Sanitary Services - 4953: Refuse Systems, 4911: Electric power generation, transmission or distribution). As a result, the adjacency and SIC code factors of the test have been met.

The only remaining factor is common control. Mr. McKenzie's letter focuses primarily on this factor. A letter, written by William Spratlin, then Division Director of the Air, RCRA, and Toxics Division, EPA, Region 7, and dated September 18, 1995, outlined seven factors that can be examined when making a common control determination. Mr. McKenzie provided the DEC with answers to the seven factors. As stated in Director Spratlin's letter, a positive answer to only one or more of the seven factors is enough to establish common control between two facilities. Thus, even though two facilities may not have common officers, plant managers or workforces, they may still be under common control.

The major factor to examine in Director Spratlin's letter regarding Al Turi and Ameresco is whether or not the two facilities are inter-dependent. Ameresco purchases all of Al Turi's landfill gas and all of its energy needs from Al Turi. Based upon its proposed permit and permit Mod 1 Al Turi sells its landfill gas to Ameresco, which converts the landfill gas to electricity. This is the means by which Al Turi has chosen to meet the requirements of the New York State Landfill Plan, 6 N.YC.R.R. Part 208, rather than install a collection and control system. Thus, Ameresco controls the landfill gas emitted from Al Turi. In the April 22nd letter, Mr. McKenzie states that the control equipment is

owned and operated by Ameresco (the engines and back-up flares), and therefore is not owned or operated by Al Turi. Rather, Mr. McKenzie states that, within its purchase agreement Al Turi has a first option to buy back the flares should Ameresco no longer wish to purchase its landfill gas from Al Turi. A first option to buy does not constitute physical possession of the flares, and therefore an independent relationship from Ameresco. Without independent ownership of the flares Al Turi is fully dependent upon Ameresco for the treatment and control of its landfill gas.

Ameresco is equally dependent upon Al Turi as its main fuel supplier. Mr McKenzie's letter further states that Ameresco is not contractually obligated to purchase 100% of its gas supply from Al Turi, since it is allegedly allowed to supplement and/or blend the landfill gas with alternative fuel at Ameresco's discretion. However, the letter provides that the purchase agreement contractually obligates Ameresco to purchase whatever landfill gas Al Turi sends to Ameresco. Presently, it is receiving 100% of its gas supply from Al Turi and is not supplementing through other sources. Although it may supplement its gas supply through another fuel, Ameresco's main source of fuel is Al Turi's landfill gas, which it is contractually obligated to purchase. As a result, Ameresco is dependent upon Al Turi, since Ameresco can not operate without Al Turi's landfill gas, its main, and, in fact, only gas supplier. In turn, as previously established, Al Turi is dependent upon Ameresco, since Ameresco houses the control equipment for the landfill. All the control equipment, including the back-up flares are owned and operated by Ameresco. Should Ameresco choose to not treat and control its landfill gas, Al Turi will be in violation of the New York State Landfill Plan until it exercises its option to buy back the flares from Ameresco within its purchase agreement. Since Al Turi and Ameresco are inter-dependent upon one another common control is established under the criteria within Director Spratlin's letter. Again, only one factor need be present, in order to establish common control between two facilities. The inter-dependent relationship between Al Turi and Ameresco through the facts presented is enough to establish common control in and of itself and is the main focus of this determination. However, common control can be established through two of the other seven factors within the Spratlin letter as well.

A second factor within Director Spratlin's letter that may be used to establish common control is the support factor. Mr McKenzie's letter, dated April 22, 2004, references a support relationship between Al Turi and Ameresco. The April 22nd letter does not state that the purchase agreement between Al Turi and Ameresco provides for a set price to be paid by Ameresco to Al Turi for its landfill gas. Rather, Al Turi receives a percentage of Ameresco's revenues realized by the sale of electricity or other products of the landfill gas generated at Ameresco. Thus, Al Turi's revenues are directly connected to Ameresco's revenues. An increase in Ameresco's revenues means an increase in Al Turi's revenues. Alternatively, a decrease in Ameresco's revenues means a decrease in Al Turi's revenues. Although all of Al Turi's revenues may not be connected to Ameresco, some support relationship has been demonstrated by the facts presented.

A third factor is whether or not the two facilities share control equipment and whether or not the management decisions of one facility can affect pollution control at the other facility. Al Turi's landfill gas is sent to Ameresco where it is treated and controlled at Ameresco. Ameresco converts the Al Turi landfill gas that it has treated and controlled to electricity. The control equipment although located at Ameresco meets the needs of both facilities. Without the control equipment at Ameresco, Al Turi could not meet the requirements of the New York State Landfill Plan without putting in its own collection and control system. Thus, these two facilities also share control equipment. In addition, any decisions made at Ameresco regarding the control equipment affect Al Turi. Should Ameresco shutdown the control equipment, Al Turi will not be able to comply with the New York Landfill Plan. Thus, the management decisions at Ameresco affect pollution control at Al Turi, since Al Turi's pollution equipment is owned and operated by Ameresco.

Lastly, Mr. McKenzie compares the Al Turi matter to a single source determination in a letter dated May 1, 2002 by EPA, Region III, regarding Maplewood Landfill (hereafter referred to as "Maplewood"). The distinguishing factor between the Al Turi situation and Maplewood is that the back-up flares were located at Maplewood. As stated above, an option to buy does not constitute physical possession of the flares. Unlike Al Turi, the landfill in Maplewood owned and operated the back-up flares. Thus, should INGENCO choose to suddenly stop treating and controlling Maplewood's landfill gas, INGENCO had a backup system in place. Unlike Maplewood, Al Turi does not have physical possession of the back-up flares. Al Turi must purchase the flares from Ameresco should Ameresco decide to stop purchasing its landfill gas. Should anything go wrong at Ameresco, Al Turi does not have a back-up system in place at its own facility to make it truly independent of Ameresco.

A second factor that differs between Maplewood and Al Turi was Maplewood's use of other fuel sources. In Maplewood 70% of INGENCO's fuel supply came from Maplewood. Mr. McKenzie's letter states that it is not contractually obligated to obtain its gas supply solely from Al Turi. Although Ameresco can supplement its fuel supply from other fuel sources, it is contractually obligated to purchase all the landfill gas Al Turi provides, whatever that may be. At present it purchases 100% of its gas supply from Al Turi. Ameresco's fuel supply appears to be dependent upon what Al Turi sends it. Thus, at present Ameresco purchases all of its fuel from Al Turi and is contractually obligated to do so. This demonstrates a dependent relationship between Ameresco and Al Turi that did not exist between Maplewood and INGENCO. The differences in these two factors distinguish the Maplewood determination from the Al Turi determination.

As discussed previously, a single source determination for Title V and NSR applicability purposes consists of a three factor test. Two sources must be under common control, contiguous or adjacent and have the same two-digit SIC code, in order to be deemed a single source. Based upon this determination Al Turi and Ameresco are under common

control, are adjacent and have the same two-digit SIC Code. As a result, Al Turi and Ameresco are a single source for Title V and NSR applicability purposes.

(2) <u>The landfill gas control scenario presented in the proposed permit does not reflect the existing controls with the result that the proposed permit does not include all applicable Federal requirements.</u>

Based on information provided by Al Turi Landfill in its May 2004 Application for a Title V Permit Modification and by DEC in its draft Mod 2 permit, the public comment period for which began June 7, 2004, the control scenario used in the original and the proposed Mod 1 permits for Al Turi Landfill is believed to be inaccurate. The most recent information reflects the following: (1) a treatment system receiving untreated gas; (2) 2 back-up flares using untreated gas; and (3) 8 or 9 engines that use treated gas--2 of the engines serve as compressors in the treatment system and 6 or 7 of the engines generate electricity. The proposed Mod 1 permit does not mention the treatment system or the use of treated gas in the engines. Since, according to the Application, the system is in use already, it is appropriate to object at this time to this feature of the proposed permit. Consequently, in addition to all requirements for enclosed flares, the permit must include all requirements for a treatment system, which may comply with the NMOC emissions standard by use of open flares, enclosed combustors, and/or other control systems designed to reduce NMOC by 98%. While this may appear to be a reversal relative to the instructions of the Order and the Notice to Reopen, it is, rather, a response to the information now gleaned from the May 2004 Application and the draft Mod 2 permit.

Among the conditions affected by this altered scenario are Conditions 1-3, 1-5, and 52.

a. Condition 1-3, which replaces original permit Condition 50, cites 208.8(f)--the reporting requirements for an active collection system--but omits language of 208.8(f) that is relevant to open flares and to enclosed combustors that are not enclosed flares, and it omits the requirement to submit an initial performance test report within 180 days of start-up of the collection and control system. The following language must be returned to the permit: "The initial annual report shall be submitted within 180 days of installation and start-up of the collection and control system, and shall include the initial performance test report required under 40 C.F.R. Part 60.8. For enclosed combustion devices and flares, reportable exceedances are defined under 6 N.Y.C.R.R. Part 208.9(c)." The controls for a treatment system may be open flares, enclosed combustors, or another type of control system designed to reduce NMOC by 98 weight percent. The Landfill must submit information to DEC per 208.7(d) for monitoring operation of the treatment system, including performance testing protocol, parameters to be monitored, and the ranges of those parameters that will reflect operation in compliance with the requirements. This addition is equivalent to returning the original permit Condition 49, "Monitoring of Operations- Other Control Devices," to the permit.

A condition to address the 208.9(c) recordkeeping requirement should be added, as well.

b. Condition 1-5, which replaces original permit Condition 48, cites 208.7(b)--the monitoring of operations requirement for control using an enclosed combustor–and states the following: (i) there are 8 internal combustion engines and 2 enclosed flares owned and operated by Ameresco; (ii) the parameters to be monitored are temperature using a continuous-recording device and flow to or by-pass of the control device; and (iii) Ameresco LFG-1 Inc. will calibrate, maintain, and operate the monitoring devices while Al Turi Landfill is responsible for maintaining and submitting records of all data pertinent to these devices. Our objection to this condition is as follows:

   (I) Al Turi Landfill is responsible for all aspects of compliance with the Part 208 regulation. This includes calibrating, maintaining, and operating the monitoring equipment, not only maintaining and submitting records of all pertinent data.

   (ii) The parameters to be monitored in this condition are suitable for monitoring of the enclosed flares, but not for the other control devices that are or may be used for NMOC control. The Al Turi Landfill permit must address emissions from atmospheric vents in the landfill gas treatment system and restrict the treated gas to subsequent sale or use, disallowing release to the environment. The options for controlling treatment system emissions are provided at 208.3(b)(2)(iii)(C)--use of open flares or a control system designed to reduce NMOC by 98 weight percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen.

   (iii) Condition 52 was not revised as directed in the Notice to Reopen. It omits the part of the 208.9(b) recordkeeping requirement that applies to enclosed combustors such as the enclosed flares used for control by Al Turi Landfill. This condition no longer needs to accommodate modified requirements for the engines since they have been reclassified as using treated landfill gas and thus are not subject to the NMOC control requirements for landfill gas control devices.

(3) <u>The proposed permit does not reflect the responsibility of Al Turi Landfill for compliance with all requirements for control of the landfill gas with the result that all applicable Federal requirements have not been addressed.</u>

The proposed Mod 1 permit either has not addressed issues raised in Issue I of the Notice to Reopen, or has done so incompletely. The Issue I instruction was to add language to existing permit conditions or create new conditions to address requirements from all of the (1) standards for air emissions from MSW landfills, (2) operational standards, (3) test methods and procedures, (4) compliance provisions, (5) monitoring requirements, (6) reporting requirements, and (7) recordkeeping requirements that apply to landfill gas controls; and to supplement the changes listed as necessary to address all requirements implied by the changes Specifically, the conditions listed in Issue I that have not been corrected are Conditions 30, 31, 32, 39, 40, 43, 44, 48 (replaced by Condition 1-5), and 52; and the requirements that were to be added per Issue I that have not been added are 6 N.Y.C.R.R. 208.8(d), 208.8(e), 208.8(g), and 208.9(c). Correct these for a single source and the existing control system per the single source determination made by EPA and the control scenario revision delineated in Issues 1 and 2 above.

(4) <u>The proposed permit does not include all MACT requirements.</u>

According to the Description section at the front of the permit, Condition 1-6 was added to address requirements in 40 C.F.R. 63 Subpart AAAA, the National Emission Standard for Hazardous Air Pollutants: Municipal Solid Waste Landfills (the NESHAP for MSW Landfills, also known as the Maximum Achievable Control Technology standard, or MACT standard). Condition 1-6 cites 40 C.F.R. 63.1955(b) and incorporates some, but not all of the requirements of the MACT standard. The other Federal Applicable requirement that must be included for the MACT standard is found at 40 C.F.R. 63.1980(a). In Condition 1-3, the permit incorrectly mixes the requirements of 6 N.Y.C.R.R. 208.8(f) and 40 C.F.R. 63.1980(a), and cites 208.8(f) as the Federal Applicable requirement. The two requirements are the same but for the 6-month reporting interval in 63.1980(a) versus the 1-year reporting interval in 208.8(f). Since title V permits must include all applicable Federal requirements, both requirements must be included in the permit. The Applicable Federal Requirement for Condition 1-3 as written is to 40 C.F.R. 63.1980(a) and the requirement for 208.8(f) must be added.

(5) <u>The Permit Review Report does not include sufficient information about options regarding oxygen concentrations and monitoring at the collection system wellheads.</u>

References to an option to operate a gas collection system well at a higher oxygen concentration (original permit Condition 36 replaced by Condition 1-4) and to monitoring for nitrogen at the wellheads (original permit Condition 35 expired) were removed from the permit, but not explained to the extent delineated in the composite list of Order and Reopening Notice issues

sent to David Shaw, DEC, on February 25, 2004. The following are the outstanding elements of that instruction to be included in the Permit Review Report:

a. Explain the option and process for approval and use of an owner's or operator's "higher operating value demonstration" for a particular well instead of the current "Upper Permit Limit" for compliance purposes.

b. Explain the process for revising the permit to reflect the change in the "Upper Permit Limit."

c. Furthermore, add to the Permit Review Report the following language that was present in original permit Condition 36, but absent from the proposed Mod 1 permit and Permit Review Report: "A higher operating value demonstration shall show supporting data that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens." Remove from the Permit Review Report the following statement, found in the Applicability Discussion, Facility Specific Requirements section under 6 N.Y.C.R.R. § 208.4(c), but not a part of that requirement: "By measuring oxygen content, an operator can ascertain the effectiveness of collecting gas from the landfill mass."

(6) The proposed permit does not fully meet the annual certification requirements of § 114(a)(3) of the Act and 40 C.F.R. § 70.6(c)(5) as items in the "Notification of General Permittee Obligations" section which appear under the heading "Federally Enforceable Conditions" are not subject to annual certification.

In a letter from Carl Johnson, Deputy Commissioner, DEC to George Pavlou, Director, EPA, Region 2, dated November 16, 2001, DEC writes:

> The Department understands that with respect to the requirement that all terms and conditions have to be certified annually, such a requirement does not mandate that a permittee certify to terms and conditions that do not create an obligation on the permittee (e.g., terms providing for the duration of a permit). On a case-by-case basis the Department may exclude from the certification terms that do not create an obligation on the permittee. . . . The Department can deal with these general permit provisions differently from provisions that relate to emissions and monitoring, *but will still obtain certification of compliance with these general provisions*. (emphasis added)

Conditions A through CC of the Al Turi Landfill permit contain items which are not subject to annual certification. While EPA does not object to a permitting authority's inclusion of a list of general advisory items that do not require certification, DEC was required to work with EPA to identify which items in Conditions A through CC are purely advisory in nature and are not obligations of the permittee.

EPA has engaged DEC in communications regarding this issue without resolution. It is EPA's belief that the following six conditions listed under the heading "Notification of General Permittee Obligations" either require annual certification or can be removed from the permit on a case-by-case basis if they are not applicable to the subject facility. EPA does not believe that certification of these terms would create an excessive burden on facilities.

Condition C. Maintenance of Equipment
Condition F. Recycling and Salvage
Condition G. Prohibition of Reintroduction of Collected Contaminants to the Air
Condition I. Proof of Eligibility for Sources Defined as Exempt Activities
Condition Z. Visible Emissions Limited
Condition AA. Open Fires

EPA does, however, agree that the following ten conditions are not obligations of the permittee and do not require certification:

Condition E. Emergency Defense
Condition H. Public Access to Recordkeeping for Title V Facilities
Condition N. Permit Revocation, Modification, Reopening, Reissuance or Termination, and Associated Information Submission Requirements
Condition P. Cessation or Reduction of Permitted Activity Not a Defense
Condition Q. Property Rights
Condition T. Severability
Condition W. Permit Shield
Condition X. Reopening for Cause
Condition BB. Permit Exclusion
Condition CC. Federally Enforceable Requirements

The remaining items included under the "Notification of General Permittee Obligations" require additional discussions between EPA and DEC to determine whether these items (a) are purely advisory in nature and do not need to be certified, (b) require annual certification, or (c) can be certified based upon readily available information (e.g., no evidence indicating non-compliance).

In the Order responding to *In the Matter of Al Turi Landfill, Inc.*, Petition No. II -2002-13-A (January 30, 2004), the Administrator granted the petition filed by the New York Public Interest Research Group as to Conditions C and G. The following two items further address Conditions C and G, Conditions 3 and 7, respectively, in the original permit.

a. Condition C- Maintenance of Equipment

Condition C states that the facility must maintain its control equipment. The Order stated that Al Turi must explain how Condition C applies to Al Turi Landfill, since the control

equipment is located at Ameresco. Although required to do so, Mod 1 did not explain applicability. This will no longer be an issue when the permit is modified so that the collection and control system is in one permit.

b. Condition G - Prohibition of Reintroduction of Collected Contaminants to the Outside Air:

Condition G states that air contaminants should not be allowed to be released to the outside air. The Order stated that DEC needed to clarify in the Al Turi Landfill permit or the Permit Review Report how this requirement applied to Al Turi Landfill. Although required to do so, Mod 1 did not explain applicability. This will no longer be an issue when the permit is modified so that the collection and control system is in one permit.

(7) <u>The proposed permit does not include the "excuse" provision that is in New York's SIP approved by EPA at 6 N.Y.C.R.R. § 201.5(e).</u>

An excuse provision (somewhat different from that which the DEC has included in the State side of the permit) is applicable to approved SIP requirements. 40 C.F.R. § 52.1679. This SIP-approved excuse provision differs from the provision in the current New York regulations because it does not cover violations due to shutdowns or during upsets. DEC should add the SIP version of the excuse provision to the Federal/State side of the permit and either (a) footnote the condition or (b) provide an explanation in the Permit Review Report that this requirement has been replaced by 6 N.Y.C.R.R. § 201-1.4 and is no longer State-enforceable. The explanation can refer the reader to the final permit condition which is located on the State-only side of the permit and contains the State-adopted version of the excuse provision.

(8) <u>In conjunction with the permit revisions indicated by the Issues above, the permit and Permit Review Report are to be revised as follows:</u>

a. Add Items A through CC, Notification of General Permittee Obligations, to the "Page Location of Conditions, Federally Enforceable Conditions" at the front of the permit.

b. Provide consistent descriptions throughout the permit and the Permit Review Report of the number of engines associated with the facility. The proposed Mod 1 permit Condition 30 indicates 9 engines; Condition 1-5, 8 engines; the Permit Review Report, 8 engines. The May 2004 Application for a permit modification indicates 9 engines.

c. As directed in the Notice to Reopen, explain the emissions listed for Condition 59. The condition has been modified but not renumbered. It now includes a Process End Date: 3/24/2004. The emissions were "fugitive landfill gas emissions beyond the collection efficiency of the gas collection system" in the amounts of 1235 and 1903 million cubic feet per year. Explain this change in the Permit Review Report.

d. Clarify and reconcile statements in the Permit Review Report and in proposed Mod 1 permit Condition 55 regarding landfill capacity, cover, waste acceptance, and collection and control system completion status. This information was requested in the Notice to Reopen with the footnote that gas must be collected and controlled from waste in place 2 years or more in an inactive landfill and 5 years or more in an active landfill The Permit Review Report states that the landfill is at capacity with an expired solid waste permit, a Part 360 or equivalent cap installed over the entire "landfill proper," and a Landfill Gas Recovery System design and layout approved September 23, 1997, with updates approved annually by DEC. Condition 55 refers to "progression of final waste deposition," 10% of the landfill as "remaining operational," approximately 90% of the "operational landfill" as having a Part 360 final cover system in place, and 90% of the "landfill area" as being equipped with a collection and control system based on a November 1991 Master Plan.

In conjunction with addressing these Issues, DEC is herein directed to request the startup, shutdown, and malfunction plan (SSM plan) from Al Turi Landfill per 40 C.F.R. 63.6(e)(3); assure that the plan is revised, if necessary, to fulfill the requirements for Al Turi Landfill operating as a source that includes the landfill gas controls required by Part 208; and provide a copy of the plan to EPA.