

**New York State Department of Environmental Conservation**  
**Deputy Commissioner & General Counsel**  
Office of General Counsel, 14<sup>th</sup> Floor  
625 Broadway, Albany, New York 12233-1010  
Phone: (518) 402-9401 • Fax: (518) 402-9016  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



November 26, 2012

John Scrivani, Special Assistant  
Deputy Mayor for Operations  
City of New York  
City Hall  
New York, NY 10007  
[jscrivani@oem.nyc.gov](mailto:jscrivani@oem.nyc.gov)

Michael Klosky  
Lead Remediation Engineer  
ECC  
110 Fieldcrest Avenue  
Suite 31, 2<sup>nd</sup> Floor  
Edison, NJ 08837  
[mklosky@ecc.net](mailto:mklosky@ecc.net)

Sent Via Regular Mail and Email

Dear Messrs. Scrivani and Klosky:

This is to advise you that, subject to the terms set forth in this letter and pursuant to your request of November 26, 2012, the New York State Department of Environmental Conservation (DEC) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR 215 (Part 215) concerning the regulation of open fires. Part 215 currently prohibits open burning with certain specified exceptions.

Due to Hurricane Sandy, DEC will exercise its discretion not to enforce the prohibitions against open burning for the City of New York and ECC (emergency contractor for the U.S. Army Corp of Engineers) for the burning of vegetation debris directly caused by Hurricane Sandy, in accordance with the specific procedures set forth herein. Please note that this is a limited exercise of discretion for the purpose of conducting an Air Curtain Burner Pilot Test, and will only remain in effect for a period of seven (7) days, November 27, 2012 through December 3, 2012. After the 7-day period, the City of New York and ECC will be subject to all of the prohibitions of Part 215.

Please also note that this exercise of enforcement discretion applies only to the burning of vegetation debris caused by Hurricane Sandy. Such burning may only occur at the location and in the manner specified in attached "Petition for Variance, Floyd Bennett Field Air Curtain Burner Pilot Test" (Pilot Test), dated November 20, 2012, and "Air Curtain Burner Management Plan, Revision 2" (ACBMP), dated November 16, 2012, annexed hereto. All other provisions of

Part 215 will be enforced, including the prohibition against the burning of household wastes, hazardous materials, construction and demolition material and other prohibitions not specifically exempted. All other provisions of relevant statutes and regulations remain in effect.

Thank you for your cooperation in this matter. If you have any questions, please call Robert Stanton, P.E., of the Division of Air Resources at (518) 402-8403.

Sincerely,



Steven C. Russo  
Deputy Commissioner  
and General Counsel

*Cc via email:*

R. Stanton, P.E. (NYSDEC)  
V. Lannon (NYSDEC)

Michael Gilsean (NYCDEP)  
[michaelgi@dep.nyc.gov](mailto:michaelgi@dep.nyc.gov)

Angela Licata (NYCDEP)  
[alicata@dep.nyc.gov](mailto:alicata@dep.nyc.gov)

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14-34 110th Street  
Queens, NY 11356  
[James.T.Robb@usace.army.mil](mailto:James.T.Robb@usace.army.mil)

Rosemarie Bradley  
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OFFICE OF THE MAYOR  
THE CITY OF NEW YORK

CASWELL F. HOLLOWAY  
DEPUTY MAYOR FOR OPERATIONS

**Request for Open Burning Enforcement Discretion Under 6 NYCRR Part 215  
Municipal Cleanup of Vegetative Debris Generated by Hurricane Sandy**

**Attachment A**

<b>Name of Requesting Municipality</b>	City of New York ("NYC") and ECC (emergency contractor for U.S. Army Corps of Engineers)
<b>Address &amp; Phone</b>	NYC: City Hall, New York, NY 10007 (212) 422-8969 ECC: 110 Fieldcrest Avenue, Suite 31, 2 <sup>nd</sup> Fl., Edison, NJ 08837 (908) 595-1777
<b>Email Address</b>	NYC: jscrivani@oem.nyc.gov ECC: mklosky@ecc.net
<b>Contact Person, Title &amp; Phone</b>	NYC: John Scrivani, Special Assistant, Deputy Mayor for Operations (212) 422-8969 ECC: Michael Klosky, Lead Remediation Engineer, (908) 595-1777
<b>Exact Location of Fire</b>	See attached Petition for Variance and Air Curtain Burner Management Plan ("Attachments")
<b>Method of Conducting Burn (i.e., air curtain, pit, single pile, etc.)</b>	See Attachments
<b>Method of Starting Fire</b>	See Attachments
<b>Burning Date(s) Requested</b>	November 27 through December 3, 2012

**Emergency Extinguishing Method**

See Attachments

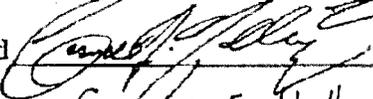
**Waste Separation Method (i.e., how will vegetative debris to be burned be separated from other waste collected at the site?)**

See Attachments

**Provide map showing location of open fire(s), nearest structure(s) and use(s)**

See Attachments

*I hereby certify that only vegetative storm debris resulting from Hurricane Sandy will be burned. All other mixed waste has been separated from the vegetative debris and will be disposed of in accordance with 6 NYCRR Part 360 solid waste regulations. No fire shall be left unattended at any time. The local fire district shall be notified prior to burning.*

Signed   
Print Name Caswell F. Holloway

Title Deputy Mayor for Operations  
Date 11/21/12

Signed   
Print Name MICHAEL KLOSKY

Title LEAD REMEDIATION ENGINEER  
Date 22 NOV 2012

**Request for Open Burning Enforcement Discretion Under 6 NYCRR Part 215  
Municipal Cleanup of Vegetative Debris Generated by Hurricane Sandy**

**Attachment A (cont'd)**

**Standard Conditions**

1. Only limbs and branches (including branches with attached leaves or needles) less than six inches in diameter and eight feet in length may be burned.
2. Burning is not allowed from March 16 through May 14.
3. The Regional DEC Office and local fire department shall be notified not less than 24 hours prior to the commencement of any burn.
4. No fire shall be left unattended at any time until entirely extinguished.
5. Burning area is to be located where attendant will have complete control of materials deposited and of burning operations.
6. Attendant will remove or cause to be removed any unauthorized material(s) deposited in the burning area.
7. Burning is only allowed during the specified periods and only when prevailing winds are away from populated areas. Fires shall not be started during heavy winds.
8. Burning shall not be conducted during any stage of an air pollution episode or when a period of high fire danger is announced by the Department.
9. The Municipality shall be liable for damage to trees or other property resulting from fires ignited by it.
10. Should it be necessary to extinguish any fire resulting from this burning, the Town shall pay the entire cost of suppression.
11. The Municipality shall have adequate and readily available fire control and suppression equipment on site when performing a burn.
12. Burning shall not cause contravention of any applicable air quality standard or cause air pollution.
13. Failure of the Municipality to meet the terms of this enforcement discretion nullifies the enforcement discretion and subjects the Municipality to full enforcement pursuant to the Environmental Conservation Law.



20 November 2012

**To:** Commissioner Carter Strickland *via email* [cstrickland@dep.nyc.gov](mailto:cstrickland@dep.nyc.gov)  
New York City, Department of Environmental Protection  
59 -17 Junction Blvd, 19<sup>th</sup> Floor  
Flushing, NY 111373

**To:** Commissioner Joe Martens *via email* [joemartens@gw.dec.state.ny.us](mailto:joemartens@gw.dec.state.ny.us)  
New York State Department of Environmental Conservation  
625 Broadway  
Albany NY, 12233

**Re:** **PETITION FOR VARIANCE**  
Floyd Bennett Field Air Curtain Burner *Pilot Test*  
20 Aviation Road, Brooklyn, NY 11234-7018

**Regional Office**

110 Fieldcrest Ave.  
Suite 31, 2<sup>nd</sup> Fl.  
Edison, NJ 08837

Phone: (908) 595-1777  
Fax: (908) 595-1776

On October 26, 2012, Governor Cuomo declared a State of Emergency in New York and on October 30, 2012, NYSDEC Commissioner Martens authorized the issuance of Emergency Authorizations for certain situations in which action is necessary to protect the public health and safety and to re-establish normal, safe living conditions.

ECC is the primary contractor for the US Army Corps of Engineers (USACE) as part of its Hurricane Sandy Recovery Mission. The USACE has received a mission assignment from the Federal Emergency Management Agency (FEMA) to remove and dispose of storm related debris. In this capacity, ECC submits this petition for variance to *conduct a 7 day pilot test* of one air curtain burner (ACB).

Therefore, pursuant to ECL §70-0116, 6 NYCRR §621.12, NYC Administrative Code Sections 24-110, 118, and 149, ECC is submitting this petition for variance for the temporary storage and pilot test combustion of storm-related green waste debris due to the effects of Superstorm Sandy. This request excludes any construction and demolition debris, electronics, municipal solid waste, household hazardous waste and similar wastes, and only includes trees, limbs, braches, and related green wood waste that may be sized reduced (e.g. mulch).

Due to the large volume of green waste debris from Superstorm Sandy, ECC plans to evaluate ACBs as a means to safely and quickly eliminate excess green waste debris at Floyd Bennett Field (FBF). The pilot test at FBF will not exceed 7 days. At the end of the pilot test, ECC will submit a written report detailing the results of the pilot test including, but not limited to: amount of wood burned; emissions data; complaints and responses thereto; and recommendations on any future proposal to operate the ACB.

ECC will notify the Department prior to the commencement of the ACB pilot test.

**Corporate Office**

1240 Bayshore Highway  
Burlingame, CA 94010

Phone: (650) 347-1555  
Fax: (650) 347-8789

[www.ecc.net](http://www.ecc.net)

### DESCRIPTION OF THE PROPOSED ACTION

The ACB is a self-contained refractory walled system that is manufactured as an over-the road transportable combustion system that will reduce green waste debris to ash without excessive particulate emissions. Using a diesel engine fan, the ACB generates a curtain of air that prevents embers and ash from escaping the ceramic lined firebox. The green waste debris is periodically dumped into the operating firebox to sustain the fire. The air curtain traps the smoke particles and causes them to re-burn under the air curtain. The ACB does not inject any fuels into the fire and the only fuel used in the continuous operation is that of the diesel engine driven fan. Ash will be removed daily from the unit. Once removed, the ash will be placed on the ground adjacent to the ACB, quenched with a water spray and loaded into roll-offs for off-site disposal in compliance with appropriate laws.

The FBF green waste debris pile is located on the southwest corner of the airfield at the junction of Runways #6, #12 & #15 (see attached figures). The nearest residential area is approximately 0.8 miles to the northwest (see attached figure). The green waste debris pile currently consists of approximately 20,000 cubic yards of unshredded green waste debris and 100,000 cubic yards of shredded green waste debris. The debris pile is located on the concrete runways and is surrounded by various storm water controls. Additional green waste debris is anticipated to be transported to FBF from other temporary storage sites throughout the area.

Per 40 CFR §60.2969, the ACB is excluded from Federal permitting requirements if used for less than 16 weeks to combust debris from a designated disaster area. Part 215 of NYSDEC and Section 307.1 of NYC Fire Code prohibit burning in an open fire. With this petition, ECC requests that NYSDEC and NYCDEP provide a written exemption for the ACB through their authority for deferred enforcement.

Only one ACB will be operated during the pilot test. The ACB will be operated up to 9 hours per day during daylight hours. It is anticipated the ACB will consume approximately 250 CY of unshredded debris per day.

The pilot test plan will include the following one day pilot test burns:

- 1) Consumption rate of the unshredded green waste debris to remain below the opacity limits
- 2) Operational speed of the air curtain fan to remain below the opacity limits once green waste debris is added
- 3) Determining optimal methods for adding shredded green waste debris
- 4) Different ratios of shredded to unshredded green waste debris (3 separate test points/days) to remain below the opacity limits once green waste debris is added

If a proper mix of shredded and unshredded green waste debris cannot be maintained so as to minimize the emission of air pollution from the ACB, then operation of the ACB will be ceased until the correct mix of materials can be established.

### VARIANCE FOR HARDSHIP

Superstorm Sandy has devastated multiple communities throughout the various boroughs of New York City (NYC). In addition to the personal property and commercial damages and losses, the storm damage continues to impact NYC business through disruptions to normal business and community routines.

In order for NYC to recover, large volumes of storm debris need to be removed from the communities to allow for repairs and the resumption of normal business routines. The debris includes a wide variety of putrescible wastes that are comingled with household hazardous wastes and storm debris, along with segregable green waste debris. Removal of the putrescible waste is the highest priority due to the resulting noxious odors and potential spread of disease and rodent vectors. However, removal of the putrescible waste is limited by the availability of trucking and disposal resources. Diversion of these limited trucking and disposal resources to management of the green waste debris will hinder removal efforts of the higher priority putrescible wastes. The ACB is a safe and efficient alternative to quickly manage the green waste debris and reduce demand on the limited trucking and disposal resources.

The green waste debris is flammable, and the large volumes of stockpiled green waste debris represent a significant fire hazard. Several of these green waste debris piles are located in close proximity to residential communities, like Cunningham Park. Due to limited trucking and disposal resources, the green waste debris piles may remain in close proximity to residential communities for extended periods without safe disposal alternatives like ACB. In conjunction with Federal, State and City regulators, ECC is currently transporting a significant portion of the shredded green waste debris to beneficial reuse alternatives.

The green waste debris was generated from USDA quarantine zones that contain the Asian Longhorned Beetle (ALB). Without destruction of the green waste debris, the ALB could be propagated outside the NYC quarantine zones, which would impact New York's forest products industry, the biological diversity of its hardwood forests and park lands, and the quality of the urban environment. In addition to shredding, the ACB is a safe and effective means for the destruction of any infected ALB green waste debris.

The New York Sanitation Department distributed less than 2,000 cubic yards of compost material from green wastes annually. The current estimates of Superstorm Sandy green waste debris are in excess of 200,000 cubic yards (100,000 cubic yards of existing shredded debris, 20,000 cubic yards of existing unshredded debris, and an additional 80,000 cubic yards of green waste debris to be collected still), and is significantly more than the local market can absorb. ACB ensures volume reduction of the excess green waste debris that ultimately may be landfilled without volume reduction through the ACB.

### ACTIONS TO MINIMIZE ENVIRONMENTAL IMPACTS

Only green waste debris related to Hurricane Sandy will be combusted. Any other materials found to be in the debris pile will be promptly segregated. The FBF site will not receive any other debris wastes other than green waste debris.

The ACB will be operated with less than 10% opacity (6-minute average), except during the first 30 minutes of operation during restart each day, when they will be operated at an opacity level of less than or equal to 35 percent (six-minute average). In practical terms, only certified and trained opacity inspectors would be able to identify 10% opacity; otherwise, the typical layperson would barely be able to identify some heat distortion from the unit. Opacity measurements will be made for the ACB every 20 minutes during daylight hours, or as required by NYSDEC or NYCDEP written permission. Any excursion from opacity and other operating limits will be reported immediately to NYCDEP.

The FBF site will have an attendant on duty whenever the ACB is in operation or green waste debris is being received or stored. The FBF site will remain secured during non-operational hours. The attendants at the site will control dust, noise, vectors and other potential on-site and off-site nuisances. An operator will be present at all times when the ACB is operating, and the operator will be qualified and trained in the proper operation of ACB.

The ACB will not be operated when the wind speed at the container measures 20 miles per hour or greater. Upon notice from NYCDEP or the NYSDEC that there is an inversion or other weather condition which could cause operation of the ACBs to violate air quality standards or cause significant air pollution, operation of the ACBs will cease until resumption is authorized. Operations will be prohibited in wind speed of greater than 20 mph that are sustained for more than 1 hour, as established by the weather stations at JFK or LaGuardia airports.

If any air monitoring conducted in the vicinity of the ACB shows unacceptable levels of air pollution as determined by NYCDEP, NYSDEC or USEPA, operation of the ACB will be adjusted or terminated in accordance with NYCDEP instructions.

Storm water and leachate control measures will be implemented and maintained completely around all green waste debris piles and ACB operational areas.

All green waste debris storage and ACB operations will be conducted on asphalt or concrete surfaces.

Ash will be removed from the ACB during burning as necessary to maintain efficient combustion. Ash will be removed from the ACBs in such a manner as to minimize the ash becoming airborne. All material removed from the ACB will be completely extinguished before being disposed of and will be stored in a manner which does not constitute a fire hazard or allow material to smolder or burn outside of the ACB. Ash will be disposed of in accordance with applicable laws and regulations, and best efforts will be made to utilize the ash in a beneficial way based on laboratory testing.

Records of all opacity measurements and hours of operation will be maintained, and will be provided to NYCDEP and by electronic mail on a daily basis, and upon request. Records will be sent to DEP at [gerryk@dep.nyc.gov](mailto:gerryk@dep.nyc.gov).

Records of the amount of material handled, the ratio of chipped to unchipped woody debris, the amount of ash generated will be maintained on a daily basis, and records of burn temperature if

available will be maintained on an hourly basis.

Records of any complaints received and any responsive action will be maintained for each occurrence, and notification of any such complaints will be provided to NYCDEP on a daily basis via electronic mail.

At the end of the 7 day pilot test, ECC will submit a written report detailing the results of the pilot operations including, but not limited to: amount of wood burned; emissions data; complaints and responses thereto; and recommendations on any future proposal to operate multiple ACBs to limit, to the maximum extent practicable, the emissions and any nuisance odors from ACB operations.

Your immediate attention to this issue is greatly appreciated. Should you have any questions, please do not hesitate to contact me directly at (770) 846-2864 or [mklosky@ecc.net](mailto:mklosky@ecc.net).

Sincerely,



Michael Klosky, P.E.  
Lead Remediation Engineer  
New York P.E. License No. 084737-1 (Expires 12/12/2012)

***CC via email:***

Ms. Venetian Lannon  
New York State Department of Environmental Conservation  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101  
[valannon@gw.dec.state.ny.us](mailto:valannon@gw.dec.state.ny.us)

Mr. James T. Robb  
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