



October 2, 2012

Ms. Karen DeMay, Clerk of the Board
Ontario County Board of Supervisors
Ontario County Municipal Building
20 Ontario Street
Canandaigua, NY 14424

**RE: Comments on FEIS for Proposed Expansion of Ontario County Landfill
CHA Project No.: 23909**

Dear Ms. DeMay:

Please accept these comments on the Final Environmental Impact Statement (FEIS) for the proposed Ontario County Landfill Expansion. CHA has been retained by the Town of Seneca to review and comment on the FEIS with respect to both its completeness and regarding whether it adequately addresses the comments and concerns of the Town of Seneca, which is the host community for the Ontario County Landfill.

Ontario County is proposing to expand its currently permitted Landfill Facility which is located in the Town of Seneca. The proposed expansion will primarily be located within the 389 acres currently owned by Ontario County, with the exception of soil borrow activities that are proposed to occur on an additional property that will be acquired to the south of the existing landfill property. The Ontario County Board of Supervisors, the lead agency under SEQRA, has accepted as complete a DEIS on December 22, 2011. CHA reviewed the DEIS on behalf of the Town of Seneca and presented comments in a letter to John Sheppard dated February 15, 2012. That letter was entered into the public record for the DEIS.

Comments on the FEIS

Presented below are CHA's comments on the completeness and adequacy of the FEIS in responding to concerns previously raised by the Town. For each of the FEIS comments presented here, the original comment on the DEIS is summarized and presented in ordinary type and the response presented in the FEIS is presented with *italic type*. Finally, CHA comments on the FEIS are presented in **bold face type**.

- 1) In its comment letter on the DEIS dated January 20, 2012 (Reference B.1.1 in the FEIS) the Town requested the following additional mitigation measures for visual impacts:
 - Remove and replace the existing dying or dead screening berm components along the north property line.
 - Conifer replacements will be of similar growth; planted with the intent to provide a year round visual barrier.

In the response presented in the FEIS it is noted that *“language will be added to the Operations and Maintenance Manual submitted with the 6 NYCRR Part 360 Permit application documents to indicate the size and condition requirements for current and future trees planted for the purpose of visual screening. Provisions for the maintenance of such vegetation will also be included.”*

This response is inadequate because it does not agree to remove and replace existing dead or dying trees. In addition the details of the proposed mitigation should be presented now, in advance of issuance of the Part 360 Application. SEQR requires that mitigation measures be identified where feasible and practicable. This response does not provide enough detail for the Town to be assured that the required mitigation will be provided.

- 2) In its comment letter on the DEIS dated January 20, 2012 (Reference B.1.4 in the FEIS) the Town expressed numerous concerns about the annexation of adjacent agricultural land in connection with the proposed Landfill Expansion, and requested several mitigation measures.

In the response presented in the FEIS it is noted that *“The property to be acquired is expected to be transferred to either the County or Town prior to operation. Under either scenario, Casella will retain operational control of the property during the term of the OML subject to the limitation that the property may not be used for waste disposal activities. Because the property will be acquired for use as a soil borrow area for the Ontario County Landfill, it will be immune from local regulation pursuant to the 10 factor balancing test established in Matter of County of Monroe (City of Rochester), 72 N.Y.2d 338 (1988).*

The DEIS and the FEIS erroneously note that “Because the project will have no significant adverse impacts on land use and zoning, agricultural resources and open space and recreation, there is no need to propose mitigation”. The project includes the acquisition and use of a 40 acre parcel that is currently in agricultural use and that is not part of the existing permitted landfill operations. The Town of Seneca believes that the project as presently proposed will have a significant adverse impact on the land use, zoning and agricultural resources of the community, and has conveyed these concerns to the applicant and lead agency on numerous occasions including in comments on the DEIS.

The Town suggested mitigations to address the potential adverse impacts and those mitigations were initially accepted in resolution # 311-2012 by the County before being rescinded in resolution # 463-2012 adopted on August 23, 2012.

The lead agency under SEQR has an obligation to implement feasible mitigation measures intended to minimize adverse impacts. This FEIS is deficient because it does not acknowledge the adverse impacts to land use, zoning and agricultural resources noted above and provides no mitigation, without any substantive basis for its conclusions, nor any discussion of why the mitigation proposed by the Town is not feasible.

- 3) In its comment letter on the DEIS dated February 16, 2012 (Reference B.2.1 in the FEIS) the Town asked what would be the consequences to the existing traffic pattern, and for what duration, if required soils were delivered from off-site locations in lieu of the proposed borrowing area?

The response presented in the FEIS noted that a *“major portion of the soils taken from the soil borrow area would be used for daily cover in landfill operations and for use in the final closure of the facility. This would require the removal and transfer of soils from the borrow area or an off-site location on a near daily basis during operations once the soils available within the proposed landfill footprint have been exhausted. Based on the maximum daily waste acceptance rate, estimated soil weight and hauling truck capacity, a peak hauling rate of 8 trucks per hour, or 64 trucks per day may be required. The number during periods of construction may exceed this level depending on the soil needed. Utilizing the average daily waste acceptance rate and the soil assumptions, the average hauling rate would be approximately 5 trucks per hour or 43 trucks per day. The exact duration of*

hauling from the soil borrow area is governed by the waste acceptance rate, fill progression and BUD acceptance rate, however it is expected to be necessary throughout most of the operational life of the proposed landfill expansion.”

This response lacks a comparative component to answer the Town’s questions about the consequences of the traffic resulting from the importation of soil from other offsite sources that require travel on public roads. The response also ignores the context of the Town’s question, which relates to balancing potential impacts associated with hauling needed soils from offsite sources against the potential adverse impacts on the land use, zoning and agricultural resources that would result from the use of now productive agricultural land as a soil mine for the landfill expansion.

Existing traffic volumes related to the facility were not presented in the DEIS, but section 3.2.7.2 did present a discussion about the potential traffic impacts associated with the addition of 3 trucks per hour for leachate hauling. That discussion concluded that the additional trucks would not adversely affect peak hour level of service at the NYS Route 5 & 20 and County Road 49 intersection.

In the absence of any contrary discussion presented in the FEIS response to this comment, we would conclude that it is highly unlikely that the addition of 5 to 8 trucks per hour associated with soil importation from an alternative off-site soil mine would result in a deterioration of LOS. This substantiates the Town’s position that an off-site soil mine is a reasonable alternative that should have been examined.

- 4) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3 in the FEIS) CHA noted that certain elements of the DEIS lack supporting documentation, do not provide an adequate analysis or factual demonstration to support a conclusion, or have other specific deficiencies that are noted in the comment letter. Moreover, because the Part 360 Permit application and Title V Permit application have not yet been prepared or submitted, certain details about the proposed project are not presented or discussed in the DEIS. CHA asked whether the details of the Part 360 permit Application and the Title V Permit Application will be subject to Supplemental SEQR review.

The response presented in the FEIS noted that “the Part 360 Permit application documents and the Title V Permit application documents will be submitted to NYSDEC after completion of the SEQR process for the project. This will ensure that the permit application documents conform to the County’s ultimate SEQR findings as well as all statements included in the DEIS and FEIS. Additional SEQR review is not expected to be necessary.”

We disagree with the conclusion that additional SEQR review is not expected to be necessary. In several of its responses to comments made on the DEIS, the applicant has noted that it will detail its mitigation measures as part of its Part 360 application. It remains to be seen whether the measures that are proposed will reasonably mitigate the impacts that have been identified. Other agencies, including the Town, also have or have asserted regulatory jurisdiction over the proposed action, and these agencies will be required to make SEQR Findings as part of their decision making.

- 5) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.1.1 in the FEIS) CHA noted that the conceptual soil balance presented in the DEIS does not justify the need for the new soil borrow area. Section 2.5.3 of the DEIS presents an estimated soil balance which shows a deficit of 339,600 CY required from the soil borrow area.

The response presented in the FEIS noted that *“Section 2.5.3 of the DEIS has been updated in the FEIS to reflect more accurate soil needs for the proposed facility. While it is a possibility that lesser quantities of soils will be needed from the borrow area, the DEIS was undertaken to explore the maximum potential impacts from development of the soil borrow area.”*

The FEIS provides no explanation about why the soil balance presented in the revised Section 2.5.3 is more accurate or why the soil balance presented in the DEIS needed to be revised. A comparison of the DEIS soil balance with the FEIS soil balance shows some significant discrepancies. Total soils available from net subgrade excavation decreased from an estimated 1,468,700 CY in the DEIS to 958,700 CY in the FEIS, a decrease of 510,000 CY of on-site soil that would be available to be used on site. What is the reason for this decrease?

The soil balance in the DEIS estimated soil utilization to include 1,150,500 CY for landfill operation cover soils (excluding alternative cover materials), which represented 10% of the estimated volume of the landfill expansion (11,504,800 CY as per section 1.3 of the DEIS). Section 2.5.3 of the FEIS reports revised soil utilization to include 3,195,900 CY for landfill operation cover soils (excluding alternative cover materials) at 20% of estimated volume. Given that 20% of the proposed landfill expansion volume is only 2,300,000 CY, an explanation is needed of how the estimate of 3,195,900 CY presented in the FEIS was calculated. What was the reasoning for increasing the volume of cover material required from 10% as shown in the DEIS, to the 20% noted in the FEIS? This does not make sense given that the FEIS has also assumed an increase in use of alternative cover materials from 10% to 20%. The use of alternative cover materials will decrease the need for cover soil from on-site or off-site soil mines.

Finally, the revised section 2.5.3 in the FEIS now shows an overall soil deficit of 876,000 CY compared to 339,000 CY in the DEIS. Explain how was this was calculated.

- 6) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.1.2 in the FEIS) CHA noted that the soil balance deficit would be reduced or even eliminated if it were not assumed that the BUD materials used for cover was only 10% instead of 25%. According to the 2010 annual report filed with the NYSDEC, when measured by weight, BUD materials represented between 16% and 42% of the waste material accepted for disposal at the facility from 2006 through 2010. As a weighted average over this five year period BUD materials represented 29% of the waste materials accepted. The soil balance presented in the DEIS should be revised to re-calculate the off-site soil deficit under the assumption of 25% BUD material by volume.

The response presented in the FEIS noted that *“The intent of the DEIS is to explore the maximum potential impacts of the proposed landfill expansion project. While it is possible that BUD material could be used in lieu of soil for all of the daily cover needs at the facility, it is not guaranteed that this alternate material will be available at those quantities for the life of the proposed expansion. Typically, landfill daily cover requirements are equal to approximately 20%, by volume, of the waste placed within the landfill. In order to balance the two extreme scenarios of the availability of BUD materials to completely meet these needs and the complete lack of BUD material availability, the average of these two scenarios was utilized for the purpose of the DEIS. In addition, it is anticipated that the revised NYCRR Part 360 regulations, which will likely be issued by the NYSDEC in 2013 will limit the allowable quantities of BUD material used at the site.”*

It is also the intent of SEQR that the DEIS/FEIS examine alternatives that can avoid or mitigate



potential adverse environmental impacts. Since the Town of Seneca has noted in its comments on the DEIS that the use of the proposed borrow area could have significant impact on the land use, zoning and agricultural use of this property, the FEIS should have contained a more detailed analysis of how the proposed use of the borrow area could be avoided or mitigated. No such analysis was provided and no additional mitigation was considered or proposed.

- 7) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.1.3 in the FEIS) CHA noted that Section 7.5 is titled Alternative Soil Borrow Area, but contains no substantive discussions of alternative soil borrow areas either on-site or off-site. Discussion in this section notes that “The design of the proposed soil borrow area is based on the quantity of soils required and the proximity of the area to the proposed landfill expansion” ... This section of the DEIS requires revision to provide a more detailed analysis of alternative soil borrow areas, both on-site and off-site.

The response presented in the FEIS noted that *“Section 7.5 of the DEIS addresses the alternative soil borrow options. In doing so, it serves the purpose of eliminating any and all off-site soil borrow areas as an alternative based on increased costs and increased impacts associated with road maintenance ,traffic impacts, air quality and noise. It is for this reason that analyses of specific alternative sites were not included.”*

This response did not address the comment of the DEIS, and the analysis of these alternatives does not meet the standards set forth in the SEQR regulations, The statement in Section 7.5 of the DEIS that *“all off-site soil borrow areas as an alternative based on increased costs and increased impacts associated with road maintenance, traffic impacts, air quality and noise”* is not supported by any factual presentation regarding the *“increased costs”* and *“increased impacts”* and as such is simply an opinion or speculation. Section 617.9 (b)(5)(v) of the SEQR regulations requires an EIS to include a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed.

- 8) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.3.1 in the FEIS) CHA noted that no estimates of dust emissions (PM-10 and PM 2.5) associated with new cell construction or the proposed soil borrow area have been included either in the DEIS document or the detailed air quality review presented in Attachment G. These emissions should be quantified pursuant to NYSDEC policy CP-33 “Assessing and Mitigating Impacts of Fine Particulate Matter Emissions”.

The response presented in the FEIS noted that *“Dust emissions are not expected to change as daily waste acceptance rates and annual construction is not anticipated to increase. The expansion only extends the amount of time that these activities will take place. Fugitive dust control measures are currently in place, and will continue to be in place during the proposed project construction and operation. Estimates of fugitive particulate dust (PM-10 and PM-2.5) generated from on-site vehicle and heavy equipment operations have been provided in a supplemental Air Quality Attachment in Appendix BB as Attachment G.”*

PM-10 Emissions presented in Appendix E of the Supplemental Air Quality Review are estimated to be 80.1 tons per year. By itself, this exceeds the potential to emit 15 tons per year threshold established by DEC policy CP-33, and therefore a more detailed modeling analyses of PM-2.5 air quality impacts for both stationary and mobile sources attributable to the project is required to demonstrate that the project emissions will not represent an unacceptable health risk.

Furthermore, potential emissions of both PM-10 and PM-2.5 presented in Appendix E are underestimated because they are only “based on the number of vehicles hauling waste, length of site roads, number of vehicles hauling soil, and equipment utilized in the soil borrow operations including soil cover spreading.” (See page 8 of the Supplemental Information to the Air Quality Review Prepared in Support of the State Environmental Quality Review which is appended to the FEIS) The estimates of particulate matter did not include non-vehicular emission resulting from soil excavation or particulate emissions from wind blowing across open mining excavations.

Additional potential to emit PM10 and PM 2.5 from new flare capacity associated with the proposed expansion is estimated at 12.3 tons per year in Table B-2 of the FEIS Supplemental Air Quality Review. Table I-1 presented in the Supplemental Air Quality Review incorrectly depicts total potential to emit for both PM2.5 as 12.3 tons per year, which only includes the potential to emit from the additional flares associated with the proposed action and does not include any estimates for the previously mentioned values associated with vehicle operation presented in Attachment E, or with soil excavation and windblown erosion within the new proposed soil borrow area. The applicant erroneously notes in Table I-1 that there will be “no increase in PM 2.5 emissions from facility expansion operations”, presumably because it will operate at the same level of daily tonnage as the existing facility. The reasoning ignores that the applicant has proposed to conduct soil mining outside the footprint of the existing facility, at a location that is currently in agricultural use.

- 9) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.3.2 in the FEIS) CHA noted that the landfill gas generation estimates developed for the DEIS assume that leachate recirculation may occur during operation of the landfill expansion. This is a conservative assumption that results in an estimate of more rapid waste degradation with more landfill gas generation occurring during the operational life of the facility. However, the DEIS does not identify any additional mitigation measures that would need to be employed with the leachate recirculation program to ensure that these increasing quantities of landfill gas are efficiently collected and do not increase fugitive landfill gas emissions.

The response presented in the FEIS acknowledged these statements and noted that “*The DEIS and associated air emission calculations assume worst case conditions, including gas generation while operating under leachate recirculation. The landfill expansion will operate under a landfill gas collection and control system design plan which will be designed to implement sufficient gas collection and control measures at the facility should leachate recirculation be introduced.*”

As noted previously in these FEIS comments, this is one of several responses to comments made on the DEIS in which the applicant has noted that it will detail its mitigation measures as part of its Part 360 application, or at some other time in the future. It remains to be seen whether the measures that are yet to be proposed will reasonably mitigate the impacts that have been identified.

- 10) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.3.3 in the FEIS) CHA noted that Attachment G of the DEIS estimates that up to 4,000 lb of fugitive VOC emissions could be emitted from the leachate storage lagoons that will be re-located to the northern boundary of the site. These fugitive emissions could cause odor problems off-site and should be mitigated. At a minimum, the mitigating measures to be considered should include covering of the lagoons with collection and treatment of the exhaust gases and the establishment of a nuisance complaint hot-line that has been

established to accept calls from citizens reporting odor problems or other nuisance conditions they believe are being caused by the landfill. The DEIS should also consider an alternative leachate management option which includes conveyance to the local wastewater treatment plant in Canandaigua through a sewer interceptor that could be constructed.

The response presented in the FEIS acknowledged these statements and noted that *“Fugitive VOC emissions presented in Attachment G present a worst case potential to emit from leachate storage, assuming 100 percent volatilization of VOCs in the leachate. Actual VOC emissions from leachate storage are expected to be closer to 20% of the total VOCs. Leachate will be pumped daily from storage lagoons and transferred offsite for treatment. In conjunction with the existing landfill activity website provided for the site, an Odor Management Plan will be prepared as part of the Part 360 Solid Waste permitting for the proposed landfill expansion project. The Odor Management Plan will include the specific procedures for documenting complaints, conducting follow up, and documentation resolution of the complaint.”*

The response did not consider the suggested mitigation of covering the leachate lagoons and collection of off-gasses for treatment, or discuss why this is not a feasible mitigation. In addition, the response did not address the request that the DEIS should consider an alternative leachate management option which includes conveyance to the local wastewater treatment plant in Canandaigua through a sewer interceptor that could be constructed. Finally, with respect to the response regarding the “Odor Management Plan”, as noted above, this is another one of several responses to comments made on the DEIS in which the applicant has noted that it will detail its mitigation measures as part of its Part 360 application, or at some other time in the future.

- 11) In its comment letter on the DEIS dated February 15, 2012 (Reference B.5.2 in the FEIS), CHA noted that visual impact simulations should be constructed from several additional residential vantage points immediately to the south of the proposed soil borrow area. These simulations should show the screening berms that are proposed for the soil borrow area.

The response presented in the FEIS noted that *“An additional rendering has been completed based on a photograph taken at the corner of Rilands Road and County Road 5. The additional rendering is provided in Appendix BB as Attachment F.”*

The FEIS only provided a simulation from one additional location. Additional simulations should be provided from other residences on Rilands Road west of County Route 5.

- 12) In its comment letter on the DEIS dated February 15, 2012 (Reference B.5.3 in the FEIS), CHA noted that if the soil borrow area is developed, the screening berms that will be built to mitigate noise impacts should be appropriately vegetated with trees and shrubs to mitigate visual impacts.

The response presented in the FEIS noted that *“The engineering drawings included in the Part 360 permit application documents will include a planting plan for the screening berm along the eastern edge of the proposed soil borrow area.”*

As noted previously, this is another one of several responses to comments made on the DEIS in which the applicant has noted that it will detail its mitigation measures as part of its Part 360 application.

- 13) In its comment letter on the DEIS dated February 15, 2012 (Reference B.3.6.1 in the FEIS), CHA

noted that Figure 19 does not show nearby residential receptors to the south who could be impacted by the proposed expansion project. The noise impact assessment in section 3.2.10.2 of the DEIS notes that “the proposed borrow area will include the implementation of a soil berm around the area that will extend approximately 20 feet above the starting elevation of the virgin borrow area, which will break the “line of sight” between the nearby receptor locations and the operating equipment.” Conclusions are then drawn that “For all locations assessed, the increase above the existing sound levels experienced from landfill operations was less than 6 dBA, with the majority of sensitive receptor locations experiencing an increase between 0 and 3 dBA. The sound levels from the proposed borrow area at nearby sensitive receptors are not anticipated to exceed those experienced due to current landfill operations when operating in the southern part of this landfill. It should be noted that in locations close to busy roads, traffic noise is the predominant noise source experienced by receptors and this will not change with the expansion.” Data and analytical results need to be presented to support such a conclusion. None were presented in the DEIS or any of the attachments.

The response presented in the FEIS acknowledged these statements and noted that “A supporting document titled “Operating Noise Impact Assessment” is included in Appendix BB as Attachment M.”

We have reviewed the Noise Impact Assessment (NIA) and have identified a number of questions and comments.

The points of compliance for this NIA should be any land permitted for residential use that is closest to the proposed action. The Noise Impact Assessment notes that the applicant owns or has obtained noise easements from “several properties” in the vicinity of the landfill. The location of these easements should be shown in the NIA so that the location on the receptors can be independently confirmed as the closest to the proposed activities.

Estimated noise from landfill construction and operation does not adequately consider the cumulative noise impact associated with landfill cell construction, landfill closure construction, as well as landfill operations all occurring simultaneously. The NIA should also explain how on-site traffic travelling on internal access roads is appropriately considered included in the analysis.

We appreciate the opportunity to make these comments on the FEIS of the proposed Ontario County Landfill Expansion on behalf of the Town of Seneca. Should you have any questions, please do not hesitate to contact me at kgallagher@chacompanies.com or at (973) 267-9029, extension 252.

Sincerely,



Kenneth G. Gallagher, AICP.
Project Manager

KGG/sd

Cc: John Sheppard, Supervisor, Town Of Seneca
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