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VIA EMAIL: SolidWasteRegulations@dec.ny.gov

Ms. Melissa Treers
Division of Materials Management
NYS Department of Environmental Conservation
625 Broadway, NY 12233-7250

Re: Comments on Revised Part 360 Series

Dear Ms. Treers:

This Letter is submitted on behalf of the Town of Halfmoon (the "Town" or "Halfmoon") with respect to the proposed revisions to DEC's solid waste regulations. We are also including the "Revised Part 360 Comments Form" with respect to specific provisions of the proposed regulations and the "DSGEIS". We request that the Department give full consideration to the content of this letter.

A. Introduction.

As we discussed at the Public Statement Hearing held at DEC's offices on Thursday, July 13th, the Town is concerned that the changes proposed by Department Staff will weaken the environmental protections provided by the current Part 360 Regulations. Further, based upon the Town's involvement in the pending Town of Colonie Landfill expansion matter, we are concerned that current Department practice allows applications to move forward without proper identification of the actual "Applicant" who will ultimately have responsibility for a proposed facility. With changes now being contemplated to the regulations, the Department should take this opportunity to strengthen its regulations so that the actual "applicant" behind a proposed project is fully identified and held accountable with respect to demonstrating that: (1) the proposed facility is needed; (2) the facility will meet all appropriate siting criteria; (3) a full site selection process has taken place; and (4) the proposed project is the best alternative available.

In addition, as we pointed out at the July 13th hearing, the "Draft Supplemental Generic Environmental Impact Statement" ("DSGEIS") issued in support of the proposed revisions to the regulations provides no useful analysis and cannot be regarded as a basis for decision-making particularly with respect to the proposed change in Subpart 363.5.

B. Soil Type Restrictions Should Apply To Expansion Of Existing Landfills.

DEC Staff has proposed that the Siting Requirements to be set forth in Section 363.5-1 with respect to soil types not apply to expansion of existing landfill sites. This approach makes no sense and flies in the face of the purpose of establishing meaningful siting criteria in the first instance.

Proposed Section 363.5-1 sets forth specific criteria for siting new landfill facilities; the proposed section states as follows:

(a) Bedrock and Unconsolidated Deposits

(1) Bedrock underlying the site must not be subject to rapid or unpredictable groundwater flow, unless it can be demonstrated to the department that a containment failure of the landfill would not result in contamination entering the bedrock system.

(2) Unconsolidated Deposits: A minimum of ten feet of unconsolidated deposits must exist beneath the proposed landfill site to minimize the migration of contaminants from the facility.

(i) At new landfill sites, these deposits must consist of silt and clay rich, low permeability soils with the ability to attenuate and absorb contaminants. Large-scale, permeable deposits, which could result in migration of contaminants off-site prior to detection and/or remediation, must not be present.

These provisions are all appropriate; however, the proposed regulations go off the track by providing as follows:

(ii) At existing landfill sites active on or after November 4, 1992 operating under and in compliance with a current permit or order on consent, there are no soil type restrictions provided the applicant demonstrates that the expansion site will have no significant adverse impact on groundwater.

It should be noted that a primary purpose in adopting meaningful "Part 360" Regulations in the late 1980s was to assure that landfills would be constructed and operated to strict standards that would assure protection of groundwater, surface water and the environment in general. Consistent with that goal, the Department's policy was to compel the closure of old landfills that had not been constructed and operated with proper regard for the protection of water resources and the environment.

On this issue, the guidance can be taken from the experience at the Colonie Landfill. According to DEC's "Environmental Site Remediation Database," the Colonie Landfill has operated at least since 1968. Approximately 50 acres of the Colonie Landfill makes up an inactive hazardous waste disposal site with a classification of "3". DEC reports that "the landfill is impacting local groundwater with levels of hydrocarbons and heavy metals." The Colonie Landfill is the type of facility that could not have been permitted as a new landfill under the present Part 360 Regulations. The Colonie Landfill has remained in operation even though it fails to meet substantive siting criteria for such a facility; it is virtually on the shoreline of the Mohawk River; it is not underlain with impermeable soil; and the alluvial deposits on which it rests are prone to failure due to liquefaction. Nonetheless, DEC is now considering an application to nearly triple the size of the Colonie Landfill even though it cannot possibly meet the current Part 360 Regulations. To compound the problem associated with the re-permitting of the Colonie Landfill and other anomalous facilities, the Department now proposes that an expansion of a non-compliant landfill will not have to meet the Siting Requirements with respect to soil type restrictions.

The limitation set forth in proposed Section 363-5.1(a)(2)(ii), that an existing landfill must have been active on or after November 4, 1992 provides no assurance that the conditions at the existing landfill site are suitable for an expansion in the absence of the underlying impermeable soil type that would otherwise apply to a new facility. Moreover, the condition that the exemption from the impermeable soil type depends upon "the applicant demonstrating that the expansion will have no significant adverse impact on groundwater" is not credible in light of the actual experience at the Colonie Landfill. As noted, DEC has been aware of the impact of the Colonie Landfill on local groundwater but, nonetheless has allowed expansions in the past, while the groundwater contamination remains unaddressed and unresolved.

The Department should not adopt the proposed Section 363.-5.1 so long as it includes the exemption from soil types criteria for the expansion of existing facilities. To take this approach will encourage the continued operation of landfill facilities that were sited without regard to the need to protect groundwater and surface water resources.

C. Any Revision To The Solid Waste Regulation Should Require That Applications Be Made In The Name Of The Actual Parties In Interest.

In the pending Colonie Landfill matter, issues have been raised as to the identity of the "Applicant." In that matter, the Application was purportedly submitted on behalf of the Town of Colonie. In truth, the primary party in interest is not the Town, but an entity identified as "Capital Region Landfills, Inc." which is a subsidiary of Waste Connections, Inc. ("WC"). WC is a business entity that conducts waste management operations nationwide. It is a matter of public record that WC has acquired subsidiary businesses in the waste industry throughout New York and now controls a significant portion of the waste industry through large portions of the State. Through its subsidiary, WC entered into an operating agreement with the Town of Colonie. That operating agreement provides WC with virtually unfettered control of the Colonie Landfill. WC utilizes the Colonie Landfill to dispose of waste from areas as far away as Worcester, Massachusetts, the lower Hudson Valley of New York and portions of New Jersey.

The Town of Colonie “wasteshed” contributes only 18% of the waste disposal at the Colonie Landfill. Nonetheless, DEC has accepted and proceeded to process the expansion application for the Colonie Landfill in the name of the Town. The Department should not allow this hidden Applicant approach with respect to any application for a solid waste management facility. The Regulations should be revised to explicitly require that the actual operator of the landfill be identified as the Applicant and that the need for the facility and the adequacy of the Application be reviewed and considered in light of the facts that pertain to the actual owner/operator Applicant and not on the basis of information that applies only to a “front” posing as the owner/operator.

D. The DSGEIS Is Inadequate And Cannot Serve As The Basis For Decision-Making On The Proposed Changes To The Regulations.

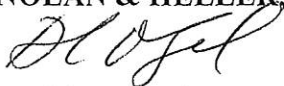
The DSGEIS on the proposed amendments or revisions to the solid waste management regulations provides no real analysis of the environmental impacts which may arise from the proposed changes. The discussion pertaining to proposed Subpart 363-5 provides no analysis of the impacts which may arise by exempting expansions of existing landfills from soil type requirements. There can be no doubt that the siting criteria based upon “soil type” set forth in proposed Section 363-5.1 have been included because this is the best way to assure that new facilities will not have an adverse impact on groundwater and surface water resources. The DSGEIS should include a detailed analysis of this issue and include an inventory and assessment of the facilities that do not meet siting criteria and may remain in operation, as a result of the proposed regulatory change. The assertion in the DSGEIS that possible impacts will be addressed as individual applications are reviewed overlooks the actual experience at the Colonie Landfill, where groundwater contamination and potential impacts to the Mohawk River have been acknowledged for decades and, yet remain unaddressed and unresolved.

Conclusion.

The proposed exception from siting criteria for expansions to existing landfills should not be adopted. The Department should also address the “hidden” Applicant problem as demonstrated in the Colonie Landfill matter. The DSGEIS should be revised to include substantive analysis of the potential effects of DEC’s adoption of a policy that will encourage the expansion of landfills that fail to meet siting criteria.

Respectfully submitted,

NOLAN & HELLER, LLP



David A. Engel

REVISED PART 360 SERIES EXPRESS TERMS and REVISED DGEIS COMMENTS

Name: David Engel, Attorney, Nolan & Heller, LLP for

Affiliation: Town of Halfmoon

Specific Citation (360.2(a)(3), DGEIS Section III A)	Comment
363.5-1	The soil type restrictions should apply to expansion of existing landfills. The proposal to exempt such facilities from the requirement regarding the presence of impermeable soils will encourage the continued use of non-compliant facilities. This approach endangers ground and surface water resources and the overall environment. (See our letter for further discussion).
DGEIS Section II	The portion of the DGEIS pertaining to Subpart 363-5 (Siting Requirements) is inadequate. It contains no analysis whatsoever as to the impacts associated with the proposed change to Section 363.5-1, which will promote the expansion of landfills that fail to meet soil type criteria. (See our letter for further discussion).