



April 23, 2012

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Douglas Knipple
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Mr. David Vitale
Director, Bureau of Permitting and Planning
Division of Materials Management
NYS Department of Environmental Conservation
625 Broadway, 9th Floor
Albany, New York
via email and First Class Mail

Re: Ontario County Local Solid Waste Management Plan

Dear Mr. Vitale,

Board of Directors

Sam Bonney
Douglas Knipple
Edward Lavin

Committees

Executive
Operations
Public Education
Political Action
Rapid Response

I am writing to follow up on the conversations we had in our March 28th meeting at DEC Headquarters in Albany. Since early 2009 Finger Lakes Zero Waste Coalition, Inc., (FLZWC) has worked to ensure that Ontario County (the County) develops a Local Solid Waste Management Plan (LSWMP or, simply, the Plan) that reflects the philosophies, principles and goals of New York State's *Beyond Waste: A Sustainable Materials Management Plan for New York*. Early in this process we learned from the Ontario County Board of Supervisors (BOS) that Casella Waste Systems, Inc., (Casella), the operator of the Ontario County landfill, had written the initial draft of the County's LSWMP. We pointed out in a letter to the County that we considered this to be a conflict of interests, since the County receives a substantial revenue stream from Casella. Specifically, we argued that it was inappropriate for the landfill operator to write a ten-year Plan that would be biased towards its priorities, especially when those priorities conflict with the public benefit, and that the County should be writing the Plan. We also informed the County that New York State Environmental Conservation Law requires participation of other parties of interest in the development of LSWMPs and petitioned the BOS to redress this defect in the planning process (attached June 24, 2009 letter from FLZWC).

In response, the County organized and conducted two public workshops early in 2010 enabling citizens to provide input on the goals and priorities of the Plan. This input was solicited before the public was permitted to view the Plan drafted by Casella. The County Planning Department subsequently took ownership of writing the Plan and began collecting and assembling data and integrating public input toward development of a new draft Plan. In 2011 the County's Environmental Quality Committee (EQC, formerly the Solid Waste Management Committee), at Casella's urging, decided to accelerate the process and recommended that the BOS award a no-bid contract to Barton and Loguidace, Inc., (B & L) to write the draft Plan. Concerns about conflict of interests again arose because B & L is also the firm that Casella uses for most of its environmental consulting services relating to the Ontario County landfill. The BOS voted overwhelmingly to award the contract to B & L. A draft Plan was released to the public for public comment on December 21, 2011 and this same draft was subsequently submitted to your office for review.

We are dismayed, to say the least, by this draft Plan's failure to incorporate any of the public comments submitted to the County, which, to a great extent, reflect the priorities of the State's *Beyond Waste* plan. We believe this is a direct violation of the State's Part 360-15.9(p) regulations that require "an accounting, to the maximum extent practicable, for the comments and views expressed by concerned governmental, environmental, commercial, and industrial interests, the public, and neighboring jurisdictions." We also note that the draft Plan requires no waste reduction, devotes no funding for waste reduction, mandates no recycling, creates no programs, and lacks a detailed implementation schedule. Not to put too fine a point on it, but FLZWC regards this draft Plan as an insult to the many citizens who contributed their time and insights to the County's so-called planning process. I have attached files containing comments on the County's draft Plan from FLZWC, as well as selected substantive comments from among 294 other comments submitted by organizations and individuals, which we obtained from the County through a FOIL request (attached pdf files: FLZWC; M. Torelli; E. Lavin; C. Hsu; League of Women Voters; Katie Bennett-Roll; S. Bonney; W. Boyer). We understand that these comments have not previously been conveyed to you and we hope that you will find them useful in your review of the County's draft Plan.

Among the numerous deficiencies of the County's draft Plan, the "comprehensive recycling analysis"¹ (CRA) is of particular concern to us. To comply with this requirement, the County's CRA must include "actions to be taken to maximize, to the extent practicable, the development and enhancement of economic markets for recyclables recovered within the service area under local laws or ordinances adopted or to be adopted under section 120-aa of the General Municipal Law."² An economic market for recyclables exists when the costs of collection, transportation and sale of recyclable materials (less the amount received from the sale of materials) is equal to or less than the "full avoided costs" of alternative means of proper waste collection, transportation and disposal.³ The term "full avoided costs" should include all costs associated with siting, permitting, construction, operation, maintenance, closure and post-closure monitoring of a landfill⁴ --generally, millions of dollars. The County should be required to plan for recycling each waste stream for which the cost of doing so, minus the avoided cost of disposal is not cost prohibitive.

We are aware of local laws that are available to enhance recycling efforts, which include a county flow control law under which all waste generated in the County must be managed at County-owned facilities.⁵ DEC has embraced this tool in the CRA context in light of current case law holding that, in contrast to state flow control, municipal flow control does not violate the Commerce Clause of the U.S. Constitution which prohibits discrimination against commerce from another state, specifically against out-of-state waste haulers. Municipal flow control is not discriminatory under the Commerce Clause because it discriminates equally against in-state and out-of-state haulers. This imposes a burden on the County to show why

1 Part 360-15.9(f), which incorporates the requirements of 360-1.9(f)(1) through (7).

2 Part 360-1.9(f)(5)(iii) (emphases added); DEC, TAGM SW-92-06, *Avoided Costs in Solid Waste* (August 24, 1992), p. 2 (citing and quoting same) available at <<http://www.dec.ny.gov/regulations/8747.html>>. Municipalities were obligated to adopt local laws or ordinances by September 1, 1992, requiring mandatory source separation for materials "for which economic markets for alternate uses exist." N.Y. Gen. Mun. L. § 120-aa(2)(a).

3 N.Y. Gen. Mun. L. § 120-aa(2)(c).

4 Commissioner's Final Decision, *In re Town of Smithtown*, No. 10-88-0829, 1989 N.Y. ENV LEXIS 58, *60-61.n.4 (September 21, 1989).

5 Note that at present, Casella transports most of Chemung County's waste to out-of-county landfills it operates, in order to maximize profits. The same practice may be followed at the Ontario County Landfill, but the County's planning obligations may also require that it take action to stop this.

they cannot implement local flow control to enhance the County's participation in markets for recyclables.

We are aware that Ontario County has asked your office to expedite review of the County's LSWMP. This request occurs in the context of a pending permit application by the County for a major expansion of the Ontario County landfill that will more than double its current permitted capacity (see attached February 21, 2012 letter from FLZWC). The County, Casella and DEC Region 8 know that this proposed expansion cannot move forward without the approval of a LSWMP. A broader purpose of the State's LSWMP requirements is to plan for the needs of the planning unit, not for commercial opportunities for management of waste originating outside the planning unit.⁶ Indeed, exportation of waste for disposal outside the planning unit requires a certification that sufficient capacity outside the unit has been identified.⁷ FLZWC argues that the motivation for an expedited review does not arise from a desire to meet the needs of the local planning unit. In fact, the total permitted and developed landfill space at the Ontario County landfill is adequate to meet the needs of the County for nearly 40 years, even at the current paltry rate of materials diversion. Rather, the County's and Casella's sense of urgency derives strictly from a financial motivation that requires business as usual, *i.e.*, the continual importation of garbage from outside the planning unit. This excess capacity results in financial disincentives for other planning units to aggressively pursue their own waste reduction and recycling programs, and runs counter to a central tenet of *Beyond Waste*. In addition, the DEC Commissioner has ruled that a County CRA must demonstrate that its LSWMP will achieve at least a 40% recycling rate for County-generated non-hazardous solid waste;⁸ and an oversized facility violates the CRA requirement "if it would tend to create financial disincentives to pursuing aggressively a waste reduction and recycling program or [incentives] to seeking garbage from service areas not identified in the permit application." Therefore, to approve a larger landfill than needed for the planning unit "other reasons to support a decision to build a larger plant must be identified and justified" by the County.⁹

I should emphasize that FLZWC's opposition to business as usual, which necessitates the seemingly endless expansion of landfills in our region, is shared by tens of thousands of citizens in the Finger Lakes who are fed up with the current solid waste management policies and practices that prevail in New York State and, in particular, the use of DEC Regions 8 and 9 as *de facto* sacrifice zones. Region 8 alone "hosts" the three largest mega-landfills in the state. These landscape-altering monuments to waste, their associated public health concerns, air and water pollution issues, and the hundreds of trucks that travel through our communities every day are negatively impacting the sustainable tourism economy of the Finger Lakes region and its crown jewel, the wine industry. For these reasons, FLZWC is adamantly opposed to the expedited approval of the County's draft Plan. There is no urgency in terms of meeting the landfill disposal needs of the planning unit that would justify the approval of an inadequate LSWMP.

⁶ Cf., e.g., Part 360-15.9(g)(1).

⁷ Part 360-15.9(i).

⁸ Decision of the Commissioner, In the Matter of Application of Foster Wheeler-Broome County, Inc. and The Broome County Resource Recovery Agency for permits to construct and operate a waste-to-energy facility, DEC No. 7-0334-00023/00001-0, 1991 N.Y. ENV LEXIS 73, *17 (December 18, 1991).

⁹ Id. at *9.

In conclusion, another broad purpose of LSWMPs is to implement the state local solid waste management plan, which among other things states that disposal is the least preferred option for waste management and reuse, reduction and recycling options should be maximized. A zero waste goal is arguably a direct implication of the state's solid waste management plan, including the state's strong policy favoring a recycling rate of 40% or more. In our view, the State's plan reflects a commitment to reduce waste to the point that its export, and accompanying costs are avoided within the next twenty years. The policy of allowing indefinite expansions of existing landfills would seem to run counter to this goal. Twenty years may seem like a long time, but in implementing changes to waste management strategies it is but a short period. We encourage you to apply the strictest standards in approving Ontario County's LSWMP, as well as the Plans of other counties, most importantly those that export most of their waste to Regions 8 and 9. If the State cannot ensure that these LSWMPs are effective in implementing actual, substantial waste reduction within the next ten years, the state plan will fall far short of its goals, and the years of hard work that went into the *Beyond Waste* policy document will have been for naught.

We thank you for your consideration of our concerns and look forward to future discussions with you on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Knipple". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

Douglas C. Knipple, Ph.D.
President, Finger Lakes Zero Waste Coalition

cc: Andrew M. Cuomo, Governor
Paul D'Amato, Director, DEC Region 8
Alan Maisel, Chair, Legislative Committee on Solid Waste Management
Joe Martens, DEC Commissioner
Barbara Warren, Executive Director, Citizens Environmental Coalition