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July 22, 2013

Mary E. Hohmann
NYSDEC Region 9 Allegany Sub-Office
182 East Union - Suite 3
Allegany, NY 14706

Re: Hyland Landfill, Applications 9-0232-00003/0002 and
9-0232-00003/00012 (Article 27 Title 7 Solid Waste Management and
Article 19 Air Title V Permit

Dear Ms. Hohmann:

I am writing this comment on the subject Draft DEC Part 360 permit on my own behalf as a concerned environmental attorney and resident of Allegany County. At such time as my firm takes on representation of others in this matter I shall let you know.

The current permit (issued in December 2006) specifies an approved design capacity of 1,200 tons per day, with a limit of 93,660 tons per quarter, and 312,000 tons per year. Hyland's proposed modification would increase each of those amounts by approximately 50%.

The draft permit fails to consider either the quantity or quality of the "leachate" that is likely to result from the increased design capacity, let alone how Hyland intends to dispose of it. Hyland's most recent "Leachate Management Plan" appears not to have been updated since January, 2003, and does not appear to have been made part of the current application package.

It further appears that since the 2006 permit was issued, Hyland's business plan has shifted toward making a specialty of accepting brine-saturated oil and gas field drilling waste. That brine and petroleum mixture is then re-circulated and later trucked off to wastewater treatment plants as leachate.

However, “leachate” is a misnomer, because the oil and gas field fluids thus being disposed of do not constitute “leachate” in the technical sense. According to DEC Regulation Section 360-1.2 para 98, “[l]eachate means any solid waste in the form of a liquid, including any suspended components in the liquid, that results from contact with or passage through solid waste.” The Wikipedia definition is similar: “In the narrow environmental context **leachate** is therefore any liquid material that drains from land or stockpiled material and contains significantly elevated concentrations of undesirable material derived from the material that it has passed through.”

It is clear that liquids entrained within refuse when it arrives at the facility are not “derived from the material it has passed through” when those liquids leave the facility. There is no doubt that some of what Hyland deems “leachate” results from “contact with or passage through solid waste,” but the larger portion of the nine million gallons trucked away to the Wellsville Wastewater Treatment Plant (WWTP) last year may well be oil and gas wastes just “passing through” on their way into the Genesee River.

A Completed WWTP SPDES permit Application notice in the ENB dated March 5, 2008, refers to discharge to the Genesee of “treated sanitary wastewater” and says nothing about drilling wastes or any other industrial waste. It appears that this notice refers to the most recent approved SPDES permit for the WWTP. The 3/5/2008 ENB notice is attached here as Exhibit 1.

Hyland had to be aware of this because when a Committee of the Allegany County Legislature in 2012 voiced its concern, WWTP stopped accepting the so-called “leachate” until Hyland agreed to “fully and promptly indemnify, save and hold harmless the Village of Wellsville ... from ... penalties, fines, assessments or judgments which may arise out of or occur in connection with the Village’s acceptance of Hyland’s Facility leachate at the Wellsville Wastewater Facility.” The indemnity letter agreement is attached here as Exhibit 2.

On April 10, 2013, another draft SPDES permit was noticed. This notice omitted the “sanitary wastewater” reference. It is attached as Exhibit 3. On April 30, 2013 however, the U.S. EPA commented on the permit, as required by 40 CFR 122.44. EPA was puzzled that the fact sheet accompanying the application omitted the necessary whole effluent toxicity (WET) data, and noted that until the WET data was provided the permit should not be approved. Presumably, the permit has not yet been approved, and the WWTP cannot lawfully accept Hyland’s industrial waste stream. The EPA comment is attached here as Exhibit 4.

Unknown to EPA, and perhaps even to DEC, Hyland, through it's parent Casella Waste systems, had taken over WWTP's toxics monitoring. This was revealed just last week when the lab that WWTP was using to establish toxicity levels pleaded guilty to a criminal charge of sending falsified test results through the mail. It appears from a U. S. Justice Department press release dated July 17, 2013 that Upstate Laboratories had falsified results and mailed the fraudulent results to "Casella Waste Systems via On-Site Technical Services, Wellsville, NY." Casella may have been acting on behalf of WWTP as its guarantor and indemnitor. The press release is attached as Exhibit 5.

It is clear that DEC's regulatory system cannot be effective when Casella is the hauler of waste to a Casella (a/k/a Hyland) facility, and then Casella controls the data and indemnifies the waste water treatment plant to which it hauls the liquids left after "de-watering" its drilling wastes. At the very least, an evidentiary hearing is needed to sort this matter out, if not an investigation by the Attorney General of the State of New York.

Yours very truly,

/s/

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cc: Hon. Eric Schneiderman, NYAG
Michelle Josilo, USEPA