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June 9, 2010

Via Hand Delivery and Electronic Mail

ALJ Edward Buhrmaster
NYS Department of Environmental Conservation
Office of Hearings & Mediation Services
625 Broadway, 1st Floor
Albany, NY 12233-1550

Re: Chemung County Landfill Permit Modification
DEC Project No. 8-0728-00004/00013

Dear ALJ Buhrmaster,

This letter serves as New England Waste Services of N.Y., Inc.'s ("NEWSNY") reply to the submissions made by the Residents for the Preservation of Loman and Chemung ("RFPLC") that were the subject matter of your Memorandum Ruling dated June 3, 2010 (hereinafter the "Memorandum Ruling"). The Memorandum Ruling authorized this reply to those portions of the submissions by RFPLC that were not stricken by the Memorandum Ruling as well as the May 18, 2010 letter report prepared for RFPLC by The Noise Consultancy.

Radiological Submissions

As confirmed by your Memorandum Ruling, RFPLC has attempted to raise a factual issue concerning the source of the drill cuttings samples that were analyzed by CoPhysics Corporation report dated April 26, 2010, which is Issues Conference Exhibit 10. That report indicates on page 4 that the source of the samples was the Marcellus Shale formation (through multiple references to the lateral distance) and there was confirmation of that fact at the Issues Conference (Issues Conference Tr., p. 234, l. 11-19). Yet various submissions by RFPLC speculate that the samples may not have been from the Marcellus Shale formation and, more particularly, that they were not taken from the horizontal wellbore.

Beyond the fact that RFPLC has raised nothing but sheer speculation concerning the source of the samples, as part of NEWSNY's diligent review of drill cutting wastes, NEWSNY contracted with a geologic consultant proximate in time to the sampling to confirm the source of the drill cuttings samples. Specifically, NEWSNY contracted with Billman Geologic

Consultants, Inc. ("Billman") to review the sampling and the geologic logs associated with the sampling to confirm the source of the samples analyzed by CoPhysics Corporation. This report was not offered at the Issues Conference, because there was no real dispute concerning the source of the Marcellus Shale samples at that time. Attachment 1 is a copy of the Billman report. That report confirms that each of the samples analyzed by CoPhysics Corporation was from Marcellus Shale formation and taken from the horizontal portion of the wellbore, which was confirmed by both microscopic evaluation of the samples and review of the drilling logs.

In addition to the issue concerning the source of the Marcellus Shale samples, the Memorandum Ruling authorizes a response to those submissions to the extent that they respond to either the proposed radiological monitoring or the CoPhysics report. Specifically, the Memorandum Ruling authorizes responses to Sections 5.3 and 6.0 of Dr. Resnikoff's report and related submissions.

In Section 5.3 of Dr. Resnikoff's submission, he indicates that the proposed radiation detectors are flawed in that the lowest radium concentration that the system could detect is in error by about a factor of one thousand. We can only speculate that Dr. Resnikoff's team made a decimal place error or did not include all of the radium progeny in the calculation, but the conclusion is totally at odds with the purpose and track record of the detectors installed by NEWSNY. These detectors are commonly used in the waste industry to screen incoming waste for radioactivity and have an excellent track record at detecting radium concentrations as low as 1 pCi per gram. As such, Dr. Resnikoff's criticism is both flawed and without factual basis.

In section 6.0 of his submission, Dr. Resnikoff further claims that the measurement protocol "EPA701.1" is specified only for radioactive materials dissolved in water and cannot be used for radium in rock. The true EPA procedure number is EPA 901.1. There is no EPA 701 or 701.1. That aside, it is true that EPA 901.1 is written for gamma emitting radioactivity in water. However, it is common scientific practice to modify an analysis procedure for use on different sample types; hence the reference to "Method: gamma spectroscopy EPA 901.1 modified" in Appendix A of the CoPhysics report accurately discloses that this is a modified methodology. Moreover, CoPhysics did not just make up the modified methodology out of thin air. The "EPA 901.1 modified" method is used by the USEPA and US Army Corp of Engineers at its on-site Superfund laboratories to measure radium in rock and soil. At the largest of these Superfund sites, Dr. Rahon of CoPhysics has been a consultant for over 10 years as an independent reviewer of plans, procedures, measurement data and laboratory analysis.

Dr. Resnikoff further claims that the use of bismuth-214 as a surrogate for radium-226 in gamma spectroscopic analysis is not permissible. As with the preceding issue, the USEPA and US Army Corp of Engineers laboratories do indeed use bismuth-214 as a gamma emitting surrogate for radium. Once again, Dr. Resnikoff's claim is false.

Of course, all of these issues are irrelevant to the fundamental issue before Your Honor, which is whether any issue concerning the waste materials being received at the Chemung County landfill are properly part of this proceeding, which is limited to increasing the tonnage authorized at, an establishing an approved design capacity for, the facility. For the reasons

debated at the Issues Conference, NEWSNY respectfully requests summary dismissal of this issue.

Compliance with Part 360 Noise Standards

In addition to radiological issues, the Memorandum Ruling also authorizes a reply to a submission made by RFPLC relative to the issue concerning the ability of the Chemung County Landfill to operate in compliance with the noise standards set forth in 6 NYCRR §360-1.14. The submission by RFPLC includes a letter report from The Noise Consultancy, LLC, authored by Stephen Szulecki ("TNC").

As part of RFPLC's Petition for Party Status, TNC originally called into question the ability of the landfill to operate in compliance with Part 360 based upon hypothesized noise levels at the working face and projected attenuation of those noise levels over distance. Rather than engage in a modeling debate, NEWSNY retained consultants to document that, under artificially high operating scenarios, noise levels consistent with those proposed by TNC could be created at the working face. NEWSNY's consultants then reproduced the noise level measured at the working face under artificially high operating scenarios at the Western tip of Cell 4B, which is the area of the permitted landfill that is closest to sensitive receptors. Various measurements taken in the vicinity of the sensitive receptors demonstrate that the facility can be operated well in compliance with the noise standards of Part 360. All of this was documented in the Barton & Loguidice Sound Level Monitoring Summary Report, dated April 2010. (Issues Conference Ex. 9).

Now, TNC offers supplemental modeling in an attempt to support RFPLC's position that the landfill will not be operated in compliance with the noise standards of Part 360 at all times. Attachment 2 is a report from Barton & Loguidice responding to the TNC analysis. This report demonstrates that the TNC report is fundamentally flawed in that they failed to take into account certain attenuation factors, including topography and vegetation. In stark contrast, the NEWSNY measurements take into account these attenuation factors and Attachment 2 points out all of the flaws in the analysis put forth by TNC.

Once again, in an attempt to avoid a modeling debate, which is both theoretical and a boon for consultants and environmental attorneys through the extended adjudicatory hearing process that often results from that kind of debate, NEWSNY is willing to offer an alternative solution. Specifically, NEWSNY is prepared to install and operate real-time monitoring to demonstrate that the facility will be, at all times, in compliance with the noise standards of Part 360. Attachment 3 is NEWSNY's proposed protocol for that system. Notably, given the real-time nature of that system, the system will notify the landfill operators visually and through computer data recorders when the facility is approaching a violation of the one-hour noise standard. Such a system will allow the operator to modify facility operations, if need be, in order to avoid a non-compliance event.

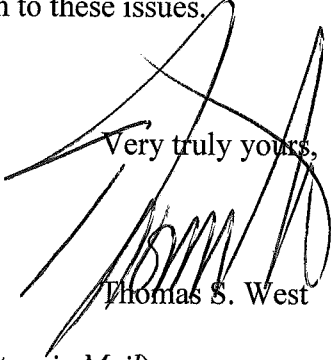
In sum, as demonstrated through Attachment 2, the modeling put forth by TNC is fundamentally flawed. Therefore, it does not demonstrate the potential for the facility to be out

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of compliance with the part 360 noise standard. Moreover, Attachment 3 offers a real-time system to prevent noncompliance. As such, there is no substantive and significant issue that warrants adjudication relative to noise.

Thank you for your ongoing attention to these issues.

Very truly yours,



Thomas S. West

TSW/rsb

cc: Service List (*by First Class and Electronic Mail*)