

Statutes and Regulations

*ECL Article 27; title 11;
6 NYCRR Section 360.1(c)(28).*

*NOTE: Waste facility siting regulations were promulgated by the
Department in February, 1982 at 6 NYCRR Part 361.*

Issues

Whether Frontenac's waste processing operation at its Niagara Falls site is a solid waste management facility and therefore, subject to 6 NYCRR Part 360. Also, whether Frontenac's operation is a new industrial hazardous waste facility requiring certification pursuant to ECL Article 27, title 11 (Siting Industrial Hazardous Waste Facilities).

Summary of Facts

At the time this petition for a declaratory ruling was submitted, Frontenac Environmental Services, a subsidiary of a Canadian corporation, operated a DEC-licensed waste haulage business in New York State and was interested in purchasing the site in question. The Niagara Falls site was owned by Newco Chemical Waste Systems, Inc., and prior to Newco ownership, the site had belonged to Solvent Chemical Corporation; both companies used the site for chemical storage, including waste storage, and reclamation. Some of Frontenac's proposed uses for the site could employ equipment already on the site.

Frontenac proposes that the Niagara Falls facility, in essence, conduct a 'resource recovery program'. The program would include waste oil recovery, solvent recovery, production of synthetic fuels from industrial wastes, chemical pre-treatment of cyanide, sulfide, and other reactive chemicals prior to shipment for final disposal, and cleaning of drums in which the wastes were received.

Summary of Ruling

The definition of a 'solid waste management facility' set forth at 6 NYCRR Section 360.1(c)(28) includes the processes planned for Frontenac's Niagara Falls site, which, therefore, is subject to Part 360. However, ECL Article 27, title 11 does not apply to the Frontenac site because certification only applies to 'new' sites which may be interpreted as, but not limited to, substantial modification to existing sites including new or modified wastes and/or processes. The Frontenac site at Niagara Falls has previously housed chemical manufacturing operations including similar industrial waste processing.

Judicial Disposition

No party has challenged the declaratory ruling.

Text of Ruling

February 19, 1980
Gingold & Gingold
Attorneys and Counselors at Law
824 University Building
Syracuse, New York 13202

Attention: Neil M. Gingold, Esq.

Dear Sir:

In your January 15, 1980 letter received here January 17, 1980, you requested a declaratory ruling concerning the applicability of 6 NYCRR Part 360 and ECL Article 27, Title 11 to certain proposals of your client Frontenac Environmental Services, Inc. ('Frontenac') for use of a facility at 3163 Buffalo Avenue, Niagara Falls, New York.

Our review of this matter included the petition sent with your letter, and relevant documents earlier received from Frontenac including a November 14, 1979 letter from George J. Bodick, Jr., to our Mr. Goddard, and two letters dated November 19, 1979 from M. E. Abraham (Frontenac's consultant) to Mr. Bodick.

Our ruling is based on the assumption that the averments in the noted documents are accurate.

It appears that the Frontenac proposal entails the use of an existing facility which, at present, is used for storage of hazardous wastes and, formerly, was used for chemical manufacture including reprocessing of industrial waste materials. While the proposed Frontenac operations appear to be more singularly devoted to industrial waste processing, reclamation, and pre-treatment than have been the present and prior operations, the facility is one in which operations involving essentially comparable materials have been continuously underway for an appreciable period of time.

The activities which Frontenac proposes to conduct at the site are contemplated by the 6 NYCRR Section 360.1(c)(28) definition of a solid waste management facility (i.e., the conduct of industrial waste processing and storage). An operation permit, and, to the extent facility alterations are involved, a construction permit, pursuant to 6 NYCRR Part 360 will therefore be required. It is also reasonable to assume that the environmental impact statement procedures of 6 NYCRR Part 617 (State Environmental Quality Review) will be applicable to such permits.

While the Part 360 permit requirements apply to all solid waste management facilities, ECL Article 27, Title 11 (Siting Industrial Hazardous Waste Facilities) requires a certificate of environmental safety and public necessity only for a 'new industrial hazardous waste facility'. Under the circumstances of this case, as described above, initiation of the proposed activities do [sic] not constitute the siting of a new facility contemplated by ECL Article 27, Title 11.

It must be noted that each specific proposal involving treatment, processing, storage, or disposal of industrial hazardous wastes will be evaluated in its specific context, and thus this ruling applies, as already noted, only to the stated facts.

It should also be emphasized that this Department is obligated to pay particularly close attention to such proposals in order to assure that all reasonable environmental safeguards are present

before activities are permitted. In that regard your attention is drawn to the recent Commissioner's Decision (and Hearing Reports) in the matter of Newco Waste Systems, Inc. and Newco Chemical Waste Systems, Inc., and in the matter of SCA Chemical Waste Services, Inc., with which, it is understood, you are familiar.

Sincerely,

Richard A. Persico
General Counsel