



Environmental Affairs Department

132 Military Highway • Preston, Connecticut 06365

February 19, 2002

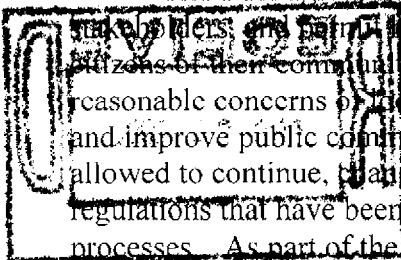
New York State Department of Environmental Conservation
Office of Environmental Justice
625 Broadway
Albany, NY 12233-1500

Re: Recommendations for the NYSDEC Environmental Justice Program
Comments of the American Ref-Fuel Company

On behalf of the American Ref-Fuel Company (Ref-Fuel), I offer the following comments concerning the final report "Recommendations for the New York State Department of Environmental Conservation Environmental Justice Program" (the Report), prepared by the Environmental Justice Advisory Group. Ref-Fuel owns and operates two municipal solid waste-to-energy facilities in New York; one in Hempstead and one in Niagara Falls. In addition, we operate four other waste-to-energy facilities in the Northeast along with solid waste transfer stations and a landfill. Ref-Fuel was a participant in the recent Pennsylvania Environmental Justice Task Force, and we are pleased to offer our brief comments on this report.

Ref-Fuel understands and generally supports the recommendations of this report. All environmental permitting should be held to uniform standards, and no specific area should be subject to disproportionate adverse environmental impacts. Our comments are centered on the goal of ensuring meaningful citizen input while accommodating the rights of businesses to operate in compliance with all applicable environmental regulations in locations that are appropriate for them.

Ref-Fuel agrees that the environmental permitting process should include all stakeholders, and permit holders should have the responsibility of being good corporate citizens of their communities and of making good-faith efforts to accommodate reasonable concerns of local citizens. The DEC should enhance public notice programs and improve public communication of permitting actions. In addition, businesses must be allowed to continue, change and/or grow as long as they are in compliance with environmental regulations that have been developed with the input of all stakeholders through full public processes. As part of the EJ evaluation process, consideration should be given to the potential economic improvement that could be provided by a facility, such as jobs, training, tax revenue, etc. Finally, care should be taken to ensure that EJ concerns do not



result in adverse economic development impacts, such as a reduction in beneficial brownfield redevelopment activities.

Ref-Fuel offers the following specific comments:

Permit Renewals: Ref-Fuel believes that permit renewals should be subject to any enhanced public participation procedures that developed for permit reviews. However, routine renewals that are not otherwise “new applications” or “major modifications” should be exempt from additional EJ analyses that may be part of a final environmental justice (EJ) permit policy. A business should not be held to a new EJ policy simply because of its location when it may have operated for years in compliance with environmental standards. For facilities that have been in substantial noncompliance with their requirements, the Report acknowledges that the NYSDEC already has the authority to suspend or revoke permits irrespective of EJ concerns. The DEC should treat such circumstances uniformly, without consideration of the facility location.

Major Modifications or Change in Ownership: In some circumstances a major modification or renewal that is considered a “new application” may be proposed for a facility that has a poor compliance history. The Report should consider scenarios when a new facility owner makes such a proposal. A record of poor compliance at a facility can be a valid portion of the EJ review of such a proposal, but it should not be assumed that a new owner would continue the noncompliant operations. In fact, if the new owner is proposing changes that include environmental and/or operational improvements, the EJ policy should consider the net benefit to the community and/or the State. At a minimum, the DEC should make correction of the noncompliant issue a condition of granting the permit, regardless of the location of the facility.

Technical Assistance Grants (TAG): The Report recommends the establishment of a TAG program in the DEC permitting process. A TAG would provide grants to assist community groups evaluate and comment upon specific permitting actions. The Report does not specify the source of money for such grants. Ref-Fuel believes that if such a fund is established, it should be funded by the State, not by the applicant. Ref-Fuel agrees that an applicant is obligated to provide information, answer questions, and involve local citizens in permitting as much as practicable, but we do not believe that this includes direct grants that would increase the cost of project development in New York. The Report offers little guidance regarding the criteria for issuing grants, and no indication at all of the expected magnitude of the cost of such a program. If the DEC ultimately decides to follow this recommendation, Ref-Fuel believes that establishing a TAG program must be done through formal rulemaking, with full public participation and economic impact assessments.

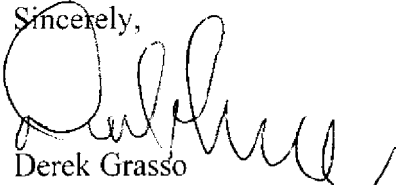
Evaluation of Mitigation Measures for Disparate Impacts: The Report recommends that regulatory agencies establish practical mitigation measures for permit actions that may result in disproportionate adverse environmental impacts (Section 3.(3) of SEQR recommendations). Ref-Fuel believes that the community should expressly be identified as a participant in developing such a mitigation plan. A mechanism should be

provided that would allow the applicant to work with the community and develop a mitigation plan to avoid disproportionate impacts. An EJ policy should require regulatory authorities to use such a plan as a basis for establishing specific criteria for a permit action.

In summary, Ref-Fuel agrees that processes for public participation in the development of regulations and issuance of environmental permits can and should be improved. Permitting actions should be evaluated in terms of disproportionate impacts on the surrounding communities. However, existing facilities should not be subject to new standards simply because of their location, and in fact improvements in existing facilities and some brownfield locations should be encouraged.

Thank you for this opportunity to comment. If you have any questions, please contact me at 860-889-4900 x 135.

Sincerely,



Derek Grasso
Manager of Regulatory Affairs

cc: J. Waffenschmidt
S. King
K. Armellino