

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
625 BROADWAY  
ALBANY, NEW YORK 12233-1010

In the Matter

- of -

the Application to Expand the Hyland Landfill Facility  
in the Town of Angelica, County of Allegany,  
pursuant to Articles 17, 19 and 27 of the  
Environmental Conservation Law,  
and Parts 200 et seq., 360 and 750 et seq. of  
Title 6 of the Official Compilation of Codes,  
Rules and Regulations of the State of New York,

- by -

**Hyland Facility Associates,**

Applicant.

DEC Application Nos. 9-0232-00003/02, 9-0232-00003/07,  
9-0232-00003/09, and 9-0232-00003/011.

DECISION OF THE COMMISSIONER

November 28, 2006

DECISION OF THE COMMISSIONER

Hyland Facility Associates owns and operates an existing solid waste management facility in the Town of Angelica, Allegany County, which it proposes to expand from about 90 acres (approximately 28 acres of landfill cell area and about 62 acres for support facilities) to about 174 acres (approximately 76 acres of landfill cell area plus 98 acres for support facilities). In addition, Hyland Facility Associates seeks approval to increase the overall height of the facility by 68 feet. The proposed expansion would increase the maximum annual amount of waste accepted at the facility from 232,440 tons per year to 312,000 tons per year, and extend the overall life of the facility by 20 to 25 years.

Region 9 Department staff referred the matter to the Office of Hearings and Mediation Services, and a Combined Notice of Complete Permit Applications, Availability for Review of a Draft Supplemental Environmental Impact Statement, and Notice of Public Hearing dated August 23, 2006 ("Combined Notice") was published in the Department's Environmental Notice Bulletin on the same date. Hyland Facility Associates duly published the Combined Notice in The Times Herald, The Wellsville Daily Reporter, and The Buffalo News.

The matter was assigned to Administrative Law Judge ("ALJ") Daniel P. O'Connell. ALJ O'Connell convened legislative hearing sessions at 4:00 p.m. and 7:00 p.m. on October 3, 2006 in Angelica, New York, to receive unsworn statements from the public with respect to the draft permits prepared by Department staff and the draft supplemental environmental impact statement on the proposed expansion. At the October 3, 2006 legislative hearing sessions, the written comment period was extended from September 27, 2006 until October 16, 2006.

The Combined Notice set September 27, 2006 as the filing date for petitions for either full party status or amicus status. Prior to the issues conference, ALJ O'Connell did not receive any petitions for either full party status or amicus status. As provided in the Combined Notice, ALJ O'Connell convened an issues conference on October 4, 2006 in Angelica, New York. No one at the issues conference requested party status.

Written comments on the proposed expansion were timely received from, among others, Jean E. Chamberlain, Robert T. Chamberlain, and Concerned Citizens of Allegany County ("CCAC"). ALJ O'Connell issued an issues ruling and order of disposition on

October 24, 2006 ("the issues ruling"). In the issues ruling, ALJ O'Connell summarized the oral statements made at the legislative hearing sessions and in the written comments. In their written comments, Jean Chamberlain and Robert Chamberlain requested "party status" and "interested party status," respectively. Although the Chamberlains requested party status, they did not include a petition for party status consistent with the requirements outlined in 6 NYCRR 624.5(b) and (c) with their respective comment letters. Accordingly, ALJ O'Connell denied Jean Chamberlain's request for party status and Robert Chamberlain's request for interested party status. The issues ruling provided a schedule for filing appeals by November 14, 2006 and responses by November 21, 2006.

On November 14, 2006, I received a letter dated November 10, 2006 which CCAC characterized as an "Appeal of ALJ O'Connell's Issues Ruling and Order of Disposition, October 24, 2006." With its November 10, 2006 letter, CCAC included a copy of a report prepared by Gary. A. Abraham, Esq., for the Angelica Town Board, dated August 31, 2006. With a cover letter dated November 16, 2006, CCAC provided a copy of page 20 of the report, which had inadvertently been omitted from the copy of the report that CCAC had filed with its November 10, 2006 letter.

With a cover letter dated November 16, 2006, Thomas S. West, Esq., counsel for Hyland Facility Associates, filed a response, which included affidavits of Larry Shilling and Robert Jones, sworn to November 15, 2006, and a memorandum of law dated November 16, 2006.

Department staff also filed a response. Although dated November 17, 2006, Department staff's response was not received until November 22, 2006, which is a day after the deadline that the issues ruling established for responses. In its response, Department staff stated that CCAC failed to serve its submittal on Department staff. Consequently, Department staff was unaware of CCAC's submittal until it received the response that Hyland Facility Associates filed which included a copy of CCAC's November 10, 2006 letter.

Service of papers in permit hearing proceedings is required to be made on all parties (see 6 NYCRR 624.6[a], incorporating by reference section 2103 of the Civil Practice Law and Rules). CCAC's failure to serve Department staff, and the consequent delay in Department staff's knowledge of the filing, excuses Department staff's later response which shall be included as part of the record.

A review of the record indicates that at no time during these proceedings did CCAC request party status and file a petition consistent with the requirements of 6 NYCRR part 624, which establish the procedures for permit hearings (see 6 NYCRR 624.5[b] and [c]). Nor does CCAC's November 10, 2006 letter satisfy the requirements for a late-filed petition for party status. Accordingly, CCAC lacks standing to appeal from the October 24, 2006 issues ruling.

Besides Department staff and Hyland Facility Associates, the only participants in this case with standing to file an appeal from the issues ruling were Jean Chamberlain and Robert Chamberlain. However, neither Jean Chamberlain nor Robert Chamberlain filed any appeal from the issues ruling, nor does CCAC state in its November 10, 2006 letter that it is acting on behalf of the Chamberlains with respect to the Chamberlains' individual requests for party status. Therefore, CCAC's appeal from the issues ruling is dismissed.

Consistent with ALJ O'Connell's order of disposition, the matter is remanded to Department staff to finalize the draft supplemental environmental impact statement, and to address any other remaining requirements pursuant to the State Environmental Quality Review Act, as well as any additional requirements needed to complete the processing of the permit applications and to issue such permits to Hyland Facility Associates (see 6 NYCRR 624.4[c][5]). With respect to CCAC's November 10, 2006 letter, I direct Department staff to consider it as a supplement to any prior written comments of CCAC on the draft supplemental environmental impact statement and the permit applications for the proposed expansion.

FOR THE NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: \_\_\_\_\_/s/\_\_\_\_\_  
Denise M. Sheehan  
Commissioner

Dated: November 28, 2006  
Albany, New York

To: Service List