

NEW YORK STATE: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Application
to expand the Hyland Landfill
Facility pursuant to Environmental
Conservation Law (ECL) articles 17,
19 and 27, as well as Title 6 of the
Official Compilation of Codes Rules
and Regulations of the State of
New York (6 NYCRR) parts 200 et seq.,
360, and 750 et seq. and 6 NYCRR 608.9
by

Issues Ruling and
Order of Disposition

Hyland Facility Associates,
Applicant.

DEC Application Nos.: 9-0232-00003/02
 9-0232-00003/07
 9-0232-00003/09
 9-0232-00003/11

October 24, 2006

Background

In early 1991, staff from the Department's Region 9 Office (Department staff), determined that an application filed pursuant to 6 NYCRR part 360 by Hyland Facility Associates for a permit to construct and operate a monofill for the disposal of municipal incinerator ash was complete. The initial proposal consisted of two contiguous cells totaling 28 acres in area, on a 289 acre site located off of 6653 Herdman Road in the Town of Angelica, Allegany County (the Facility). In addition, to the landfill cells, about 62 acres of the site were reserved for support facilities such as buildings, roads, as well as leachate and stormwater management facilities.

After public hearings, the Commissioner issued a decision on June 21, 1993, which denied the application, but allowed Hyland Facility Associates to reapply for the requested permit. Subsequently, Hyland Facility Associates moved for reconsideration of the Commissioner's June 21, 1993 Decision.

In a ruling dated November 18, 1993, the Commissioner remanded the initial application for further hearings. In March 1994, Hyland Facility Associates submitted an application addendum, and the public hearing resumed on October 11, 1994 and, after 19 days of hearing, concluded on November 23, 1994. On April 13, 1995, the Commissioner issued a Decision, which granted Hyland Facility Associates a solid waste management facility permit to construct and operate the Facility as initially proposed.

On June 18, 1997, Hyland Facility Associates filed an application with Department staff to modify its solid waste management facility permit to accept municipal solid waste and non-hazardous industrial waste in addition to the previously authorized municipal incinerator ash. Department staff referred the proposed modification to the Office of Hearings and Mediation Services. Subsequently, a legislative public hearing session was held on October 21, 1997 in Angelica, New York, and an issues conference convened on October 22, 1997 in Belmont, New York. On December 18, 1997, the administrative law judge (ALJ) issued a Summary Hearing Report, Rulings and Order of Disposition. The ALJ found that the prospective intervenors did not identify any substantive and significant issues for adjudication, and remanded the matter to Department staff to complete the review of the proposed modification request. After considering appeals from the ALJ's December 18, 1997 Summary Hearing Report, Rulings and Order of Disposition, the Commissioner issued a Decision on March 6, 1998, which denied the appeals, affirmed the ALJ's rulings, and directed Staff to issue the permit modification.

Hyland Facility Associates now proposes to expand the footprint of the existing landfill from about 90 acres (approximately 28 acres of landfill cell area plus about 62 acres for support facilities) to about 174 acres (approximately 76 acres of landfill cell area plus about 98 acres for support facilities). In addition, Hyland Facilities Associates seeks approval to increase the overall height of the landfill by 68 feet from 2,015 feet above sea level (National Geodetic Vertical Datum established in 1929 [NGVD 29]) to 2,083 feet NGVD 29. Finally, the proposed expansion would increase the maximum annual amount of waste accepted at the Facility from 232,440 tons per year (745 tons per day), to 312,000 tons per year, which is slightly less than 1,000 tons per day. The proposed expansion would extended the overall life of the Facility by 20 to 25 years.

Proceedings

On August 1, 2006, Department staff referred the captioned matter to the Office of Hearings and Mediation Services to schedule legislative hearing sessions and an issues conference concerning the proposed expansion of the Facility. The matter was assigned to the undersigned administrative law judge. Subsequently, 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 (the Combined Notice) was published in the Department's *Environmental Notice Bulletin (ENB)* on the same date. On August 28, 2006, Hyland Facilities Associates published the Combined Notice in *The Times Herald* (Olean, New York). On August 29, 2006, Hyland Facilities Associates published the Combined Notice

in *The Wellsville Daily Reporter*. The Combined Notice appeared in *The Buffalo News* on August 30, 2006.

With respect to the environmental review required by ECL article 17 (State Environmental Quality Review Act [SEQRA]; 6 NYCRR part 617), Department staff as the lead agency determined that the proposed expansion is a Type I action (see 6 NYCRR 617.2[ai]), and issued a positive declaration (see 6 NYCRR 617.2[ac]) on November 2, 2002. Department staff conducted a public scoping meeting on December 10, 2002. Subsequently, Hyland Facilities Associates prepared a draft supplemental environmental impacts statement (SEIS). As provided by the Combined Notice, the draft SEIS was made available for public review and comment.

After reviewing the application materials, Staff subsequently prepared a combined draft solid waste management permit and water quality certification, which is identified as Issues Conference Exhibit 2; a draft State Pollutant Discharge Elimination System (SPDES) permit (Exhibit 3A) and fact sheet (Exhibit 3B); and a draft air state facility permit (Exhibit 4). The application materials, and draft permits and water quality certification were made available for public review and comment upon publication of the Combined Notice.

1. Legislative Hearing Sessions

According to the August 23, 2006 Combined Notice, written comments about the application materials, the draft permits and certification, as well as the draft SEIS were due by September 27, 2006. In a ruling dated September 25, 2006, the written comment period was extended until October 16, 2006 pursuant to 6 NYCRR 617.9(a)(4)(iii) (also see 6 NYCRR 617.12[a][2][iii]).

As provided by the August 23, 2006 Combined Notice, I convened legislative hearing sessions on October 3, 2006 at the Centerpoint Christian Academy, 21 East Main Street, Angelica (Allegany County), New York at 4:00 p.m. and at 7:00 p.m. Approximately 20 people attended the afternoon session. Five people spoke. Speakers included representatives for Hyland Facility Associates, Department staff, Robert Jones, who is the Supervisor for the Town of Angelica, and Elmer Lange, a resident from Darien Center, New York. These comments are briefly summarized below.

Larry Shilling is the Landfill District Manager from Casella Waste Systems, Inc., which operates the Facility. Mr. Shilling said that Hyland Facility Associates has held an open house at the Facility and conducted additional community outreach to explain the proposed landfill expansion and to provide the opportunity for public input.

Michael Mann (McMahon and Mann, P.C., Consulting Engineers, Buffalo, New York) said that his firm designed and supervised the construction of the current Facility. Mr. Mann's firm also designed the proposed expansion. During his presentation, Mr. Mann briefly outlined some of the details about the proposed expansion.

Steven Doleski, Regional Permit Administrator from the Department's Region 9 Office, spoke on behalf of Department staff. Mr. Doleski outlined Staff's review of the application materials and the draft SEIS. With respect to the development of the draft SEIS, Mr. Doleski stated that a public scoping meeting was held on December 10, 2002. Mr. Doleski also stated that the draft permits and certificate represent Department staff's tentative determination, and that no final determinations would be made until after all public comments were reviewed.

Robert Jones is the Supervisor for the Town of Angelica. Supervisor Jones said that he was a member of the Town Board during the initial review of the Facility's permit application. Supervisor Jones explained that the Town retained an engineering firm when the Facility begin operations 10 years ago that has reviewed, on a quarterly basis, the monitoring data collected at the Facility. According to Supervisor Jones, the Town's consulting engineers have found that Hyland Facility Associates has been operating the Facility properly, and as a result, the Town's consultants have not detected any negative environmental impacts from the Facility. Supervisor Jones noted that Hyland Facility Associates has been responsive to all of the Town's requests for information about operations at the Facility. With respect to the proposed expansion, Supervisor Jones explained how the Town and its consultants have participated in the review and development of the proposed expansion. Supervisor Jones said that Hyland Facility Associates' host benefit plan is a significant source of revenue for the Town. As a result, Supervisor Jones noted that the Town of Angelica has become a very affordable place to live.

Elmer Lange owns property adjacent to the Facility. Mr. Lange expressed the following concerns with respect to the proposed expansion. First, Mr. Lange is concerned about the effects from the additional truck traffic associated with the proposed expansion. He noted that the draft solid waste management facility permit would allow an increase in the maximum daily and annual amount of waste accepted at the Facility, and that truck traffic would increase proportionally from the current level. Second, Mr. Lange expressed concern about the construction of a proposed berm that would be associated with the Facility.

The second legislative hearing session convened, as scheduled, at 7:00 p.m. at the Centerpoint Christian Academy. About 30 people attended the evening session. Three people spoke. The comments are briefly summarized below.

Jody Hooker, a resident of Angelica, spoke in favor of the proposed expansion. Ms. Hooker observed that everyone creates garbage, which requires an appropriate disposal site. According to Ms. Hooker, Hyland Facility Associates operates the Facility well. Ms. Hooker said that Department staff should authorize the proposed expansion.

Robert Chamberlain owns property down stream from the Facility where he operates a beef cattle farm. Mr. Chamberlain explained that a tributary to the Genesee River runs from the property on which the Facility is located through his farm to the Genesee River. He explained further that the draft SPDES permit would authorize discharges from the Facility to the tributary that runs through his farm. Mr. Chamberlain is concerned about the water quality of the stream, and the potential effects of any changes to the water quality of the stream on his cattle.

Donald Kaake opposes the proposed expansion of the Facility. With his statement, Mr. Kaake presented five photographs he took in the vicinity of the Facility. Mr. Kaake said that he had gone to the Facility on the morning and late-afternoon of October 3, 2006. In the morning, he observed three trucks waiting to enter the Facility and one waiting to leave the Facility. According to Mr. Kaake, the truck leaving the Facility by-passed the tire washing station, which does not operate properly. According to Mr. Kaake, the photographs show that landfill debris is tracked out of the Facility on the tires of the trucks as they leave. He said that this material is strewn along the Town's roadways.

In addition to the photographs presented during the legislative hearing session, Mr. Kaake provided the uniform resource locator (URL) for his website (www.angelical4709.com), on which he has posted several hundred photographs taken in the vicinity of the Facility. Mr. Kaake said that the photographs he presented at the hearing and those posted on his website demonstrate how poorly Hyland Facility Associates operates the Facility, and how Department staff has failed to enforce the terms and conditions of the current permits for the Facility.

2. Written Comments

As stated at the October 3, 2006 legislative hearing sessions, written comments would be weighed equally with oral statements made during the legislative hearing sessions, and that written comments would be received until October 16, 2006. Timely filed written comments were received from: (1) Marika

Burke, (2) Jean E. Chamberlain, (3) Robert T. Chamberlain, (4) Concerned Citizens of Allegany County with 21 photographs and captions, (5) Naysim X. Simon with enclosures, and (6) the Town of Angelica with attached report dated September 26, 2006 by Delta Consultants. A summary of these written comments follows.

Marika Burke opposes the proposed expansion. According to the two undated letters filed by Marika Burke, there have been numerous violations listed in the NYS Landfill Reports for the Facility that have occurred over the last five years, and that the Department has "turned a blind eye" to them. Under these circumstances, Marika Burke does not understand why the Department would consider issuing permits for the proposed expansion. Solid waste material is being tracked out of the Facility on the tires of the trucks that just disposed of solid waste there. Marika Burke referenced Mr. Kaake's website, which displays other pictures from the Facility.

Jean Chamberlain filed a letter dated October 16, 2006. Ms. Chamberlain explained that she and her husband, Thomas Santarsiero, were members of the Concerned Citizens of Allegany County during the first round of hearings, and that Mr. Santarsiero testified as an expert witness on behalf of Concerned Citizens. Ms. Chamberlain and her husband used to own property near the Facility, but have since sold the property due to the construction of the Facility. Ms. Chamberlain said that she asked members of the Department staff to include her name and address on a mailing list of interested parties concerning the Facility. According to Ms. Chamberlain, Department staff refused to put her name and address on such a list. Ms. Chamberlain wished that she had been informed of the public scoping session in December 2002 because she and her husband would have participated. Ms. Chamberlain requested a full and complete hard copy of the application materials to review.

Ms. Chamberlain observed that the proposed expansion is essentially the third landfill in the area. The first and second being the Allegany County Landfill and the original Hyland Facility, respectively. In addition, Ms. Chamberlain said that Hyland Facility Associates does not operate the Facility in compliance with the terms and conditions of its current permit, and stated that Pennsylvania has shut down a facility operated by Casella, which is Hyland Facility Associates parent. With her October 16, 2006 letter, Ms. Chamberlain enclosed a copy of the public notice shutting down the solid waste management facility in Pennsylvania.

Robert T. Chamberlain filed a letter dated October 15, 2006. He is Jean Chamberlain's brother, and owns 690 acres of property two miles west of the Hyland Facility. Mr. Chamberlain requests "'interested party' status." Mr. Chamberlain is concerned about

the water quality of the stream that passes from the site of the Facility onto his property and then onto the Genesee River toward Rochester. Mr. Chamberlain would like Hyland Facility Associates to pay for water quality analyses of the stream on his property.

The Concerned Citizens of Allegany County filed a letter dated September 6, 2006 and included 21 photographs with captions. In its letter, Concerned Citizens explained how it had participated in the public hearings concerning the original proposal, and that the hearing process was very costly, among other things. According to Concerned Citizens, there were, and continue to be, significant problems with the liner, the leachate collection system, and methane gas management at the Facility. Concern Citizens is concerned about the use of "contaminated soils" as an alternative daily cover, and that sources may be from the Seneca Army Depot and a former lead smelting site in Buffalo. Concerned Citizens contends that Hyland Facility Associates does not operate the Facility in a manner consistent with the current permit, and objects to the lack of enforcement by Department staff. To demonstrate this point, Concerned Citizens referred to the Casella facility that the Pennsylvania Department of Environmental Protection recently shut down. Concerned Citizens are troubled that garbage from New York City could be disposed at the Facility if the Department grants the proposed expansion.

With its letter, Concerned Citizens included 21 photographs with captions. The pictures show how material disposed in the Facility is tracked out on the tires as trucks leave the Facility. According to Concerned Citizens, truck drivers either by-pass the tire washing station, or the tire washing station does not work properly. As a result, lots of debris, and a clay slurry cover the Town's roadways leading from the Facility to the interstate highway. On dry days, the material creates a lot of dust. On wet days, the material makes the roadways very slippery.

With a cover letter dated October 16, 2006, Naysim X. Simon filed several articles concerning leachate management at landfills. Some of these articles were initially presented at the 6th Environmental Engineering Specialty Conference of the CSCE (Canadian Society for Civil Engineering) and the 2nd Spring Conference of the Geoenvironmental Division of the Canadian Geotechnical Society. In his cover letter, Mr. Simon expressed concerns about clogging problems in and around the leachate collection system.

With a cover letter dated October 11, 2006, the Town of Angelica filed a report by Delta Consultants dated September 26, 2006. The Town retained Delta Consultants to perform a third-party review of the application materials concerning the proposed

expansion and the draft SEIS. The scope of the review focused on issues related to surface and ground water quality. Delta Consultants reviewed historical surface and ground water monitoring data, and concluded first, that since its construction, the Facility has not adversely impacted surface and ground water quality, and second, that the expansion would not adversely impact water quality. In its report, Delta Consultants concluded that Hyland Facility Associates' engineering consultants used sound engineering practices to prepare the proposed leachate management plan for the proposed expansion, and that the leachate management plan would comply with applicable regulations.

3. Issues Conference

The August 23, 2006 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, no petitions for either full party status or amicus status were received at the Office of Hearings and Mediation Services. I convened an issues conference at 10:00 a.m. on October 4, 2006 at the American Legion Hill Warner Post #414, 16 West Main Street, Angelica (Allegany County), New York.

During the issues conference, I marked a copy of the August 23, 2006 Combined Notice for identification as Exhibit 1A, and a copy of the Combined Notice as it appeared in the Department's *ENB* as Exhibit 1B for identification. For identification purposes, I marked the affidavits of publication as Exhibits 1C (*The Times Herald*), 1D (*The Wellsville Daily Reporter*), and 1E (*The Buffalo News*).

Pursuant to 6 NYCRR 624.5, the participants to the issues conference are Applicant and Department staff (see 6 NYCRR 624.5[a]), as well as those who have filed petitions for either full party status or amicus status (see 6 NYCRR 624.5[b]). At the October 4, 2006 issues conference, I stated that I had not received any petitions prior by the September 27, 2006 filing date, and inquired of those present whether any one had appeared with a petition. Late-filed petitions are authorized by 6 NYCRR 624.5(c) when certain criteria are met. No one responded to my inquiry. As a result, I concluded that the participants to the October 4, 2006 issues conference would be limited to Applicant and Department staff.

At the October 4, 2006 issues conference, Thomas S. West, Esq. from the West Firm (Albany, NY) appeared on behalf of Applicant, Hyland Facility Associates. David Stever, Esq., Assistant Regional Attorney, represented Department staff.

With the hearing request, Department staff provided copies of the draft permits and certification. For identification, I marked the draft permits and water quality certification for identification as described above (see Exhibits 2, 3A and 4). During the issues conference, I asked Department staff if any of the terms or conditions of the draft permits and certification, as identified above, had changed since the matter was referred to hearing. Mr. Stever, on behalf of Department staff, stated that the terms and conditions of the draft permits and certification had not been changed. I then inquired whether Hyland Facility Associates objected to any of the terms or conditions of the draft permits and certification. Mr. West, on behalf of his client Hyland Facility Associates, responded that it accepted the proposed terms and conditions of the draft permits and certification.

Based on the responses provided by Department staff's counsel and Hyland Facility Associates' counsel, I concluded there are no disputes about substantial terms and conditions of the draft permits and certification that would require an adjudicatory hearing (see 6 NYCRR 624.4[c][1][i]). Because no one filed a petition for full party status, I concluded further there are no substantive and significant issues proposed for adjudication by a potential intervenor (see 6 NYCRR 624.4[c][1][iii]). Given the absence of any substantive and significant issues for adjudication, I terminated the issues conference.

As noted above, Jean E. Chamberlain subsequently filed a letter dated October 16, 2006. In addition to her comments about the proposed expansion, Ms. Chamberlain requested party status "so that my husband's [Thomas M. Santarsiero] expertise can be utilized, and so that my brother [Robert Chamberlain] can feel assured that his land and water will remain uncontaminated" In making her request, Ms. Chamberlain acknowledged that she had missed the filing deadline established in the August 23, 2006 Combined Notice.

Late filed petitions for full party status are authorized pursuant to 6 NYCRR 624.5(c). In addition to the requirements outlined at 6 NYCRR 624.5(b)(1) and (2), late filed petitions must also demonstrate: (1) there is good cause for the late filing, (2) that participating will not significantly delay the proceeding or unreasonably prejudice the other parties, and (3) that participating will materially assist in determining the issues raised in the proceeding.

Ms. Chamberlain's request does not meet any of the criteria outlined in 6 NYCRR 624.5(b)(1) and (2), and 6 NYCRR 624.5(c). In particular, Ms. Chamberlain's request identifies neither the precise grounds for opposing the proposal (see 6 NYCRR

624.5[b][1][v]), nor any substantive and significant issues for adjudication (see 6 NYCRR 624.5[b][2][i], which references 6 NYCRR 624.4[c]). Furthermore, Ms. Chamberlain's request does not demonstrate good cause for the late filing (see 6 NYCRR 624.5[c][2][i]). Accordingly, I deny the request.

As noted above Robert Chamberlain requested "'interested party' status" in his letter dated October 15, 2006. The applicable regulations do not define this type or level of participation. To the extent that Mr. Chamberlain intended to request full party status as that term is used in 6 NYCRR part 624, I deny his request. Mr. Chamberlain's request does not meet any of the criteria outlined in 6 NYCRR 624.5(b)(1) and (2), and 6 NYCRR 624.5(c).

Appeals

During the course of a hearing, a ruling by the administrative law judge to include or exclude any issue for adjudication, a ruling on the merits of any legal issue made as part of an issues ruling, or a ruling affecting party status may be appealed to the Commissioner on an expedited basis (see 6 NYCRR 624.8[d][2]). Such appeals are to be filed with the Commissioner in writing within five days of the disputed ruling as required by 6 NYCRR 624.6(e)(1). However, this time may be extended by the ALJ, in accordance with 6 NYCRR 624.6(g), to avoid prejudice to any party.

Therefore, any appeals in this matter must be received at the office of Commissioner Denise M. Sheehan (attention: Louis A. Alexander, Assistant Commissioner for Hearings), New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, no later than the close of business on November 14, 2006. Moreover, responses to the initial appeals will be allowed and such responses must be received no later than the close of business on November 21, 2006.

The appeals and any responses sent to the Commissioner's Office must include an original and one copy. In addition, one copy of all appeal and response papers must be sent to Chief ALJ James T. McClymonds at the Office of Hearings and Mediation Services, to opposing counsel, and to me at the same time and in the same manner as to the Commissioner. Service upon the Commissioner of any appeal or response thereto by facsimile transmission (FAX) or e-mail is not permitted and any such service will not be accepted.

Appeals and any responses thereto should address the ALJ's rulings directly, rather than merely restate a party's contentions and should include appropriate citations to the record and any exhibits introduced therein.

Order of Disposition

The stenographic transcript of the legislative hearing sessions and the issues conference were received at the Office of Hearings and Mediation Services on October 17, 2006.

As noted above, Hyland Facilities Associates and Department staff do not dispute any substantial terms and conditions of the draft permits and certification that would require adjudication. In addition, I have determined that no potential intervenor has proposed any substantive and significant issues for adjudication. As a result, there are no substantive and significant issues for adjudication, and an adjudicatory hearing is not necessary.

Pursuant to 6 NYCRR 624.4(c)(5), I am remanding the matter, subject to the Commissioner's consideration of any duly filed appeals and responses, to Department staff to complete the applicable requirements outlined in 6 NYCRR part 617 in order to finalize the draft supplemental environmental impact statement, as well as any additional requirements needed to complete the processing of the applications. After complying with all other applicable requirements, Department staff shall issue the requested permits, as identified at the October 4, 2006 issues conference (see Appendix A).

/s/

Daniel P. O'Connell
Administrative Law Judge
Office of Hearings and Mediation Services
NYS Department of Environmental Conservation
625 Broadway, First Floor
Albany, New York 12233-1550

Dated: Albany, New York
October 24, 2006

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Appendix A: Exhibit List

Exhibit List

Hyland Facility Associates

DEC Application Nos.: 9-0232-00003/02
9-0232-00003/07
9-0232-00003/09
9-0232-00003/11

October 4, 2006

- 1A. Combined Notice of Complete Applications, Availability for Review of a Draft Supplemental Environmental Impact Statement, and Notice of Hearing (Combined Notice) dated August 23, 2006.
- 1B. Combined Notice from *Environmental Notice Bulletin* published on August 23, 2006.
- 1C. Affidavit of publication from *The Times Herald* notarized on August 30, 2006.
- 1D. Affidavit of publication from *The Wellsville Daily Reporter* notarized on September 12, 2006.
- 1E. Affidavit of publication from *The Buffalo News* notarized on August 30, 2006.
- 2. Combined Draft Solid Waste Management Permit and Water Quality Certification.
- 3A. Draft State Pollutant Discharge Elimination System (SPDES) permit.
- 3B. Draft SPDES permit Fact Sheet.
- 4. Draft Air State Facility Permit.

Appendix A