

STATE OF NEW YORK : 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

Ruling on request by Concerned Citizens of Allegany County to extend the public comment period

Hyland Facility Associates,
Applicant.

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

September 25, 2006

Proceedings

In a letter dated September 6, 2006, Concerned Citizens of Allegany County (Concerned Citizens) requested an extension of the public comment period associated with the referenced applications. In addition to noting the complexity of the project, Concerned Citizens stated that additional time was needed to determine whether there are significant differences between the digital copies of the application matters and the Supplemental DEIS, and the hard copies of these documents. Concerned Citizens requested a 30-day comment period for each pending application to run consecutively, which would extend the public comment period into late December 2006.

With a letter dated September 12, 2006, I forwarded a copy of Concerned Citizens' September 6, 2006 letter to Department staff's and Applicant's counsel for review and comment. Applicant's counsel responded with a letter dated September 14, 2006. The Town of Angelica responded with a letter also dated September 14, 2006. Department staff responded with a letter dated September 22, 2006. With leave, Applicant's counsel filed a second letter on September 25, 2006.

Applicant objected to any extension of the public comment period. Applicant argued that the current 30-day comment period fully complies with the notice requirements of 6 NYCRR part 621. Applicant argued further that the Department encourages project sponsors to simultaneously file applications related to all applicable environmental programs administered by the Department. Applicant noted that public comments will be accepted at the

legislative hearing sessions scheduled for October 3, 2006, which is after the close of the written public comment period on September 27, 2006. Finally, Applicant stated that any unnecessary delay in processing the application materials could have significant consequences to the host community. According to Applicant, the facility is reaching its full capacity, which prompted the long-pending expansion request.

The Town of Angelica also objected to the requested extension. According to Supervisor Robert L. Jones, the Town approved a permissive referendum on November 2, 2004, and issued its final approval on January 10, 2005 concerning the requested expansion. The Town stated that further delays would result in a serious financial hardship to local taxpayers because the Town relies heavily on payments from Applicant based on the host community agreement. The Town emphasized that Applicant needs to begin construction of the new landfill cells as soon as possible. Supervisor Jones telephoned me today and reiterated his concerns.

Department staff did not object to a limited extension of the public comment period. Staff contended the applicable notice requirements have been followed. Staff reiterated Applicant's observation that project sponsors should simultaneously file applications related to all applicable environmental programs administered by the Department. Nonetheless, Staff proposed that the public comment period should be extended to the week of October 30, 2006.

In its second letter, Applicant correctly noted that Concern Citizens did not request an extension of the return date for filing petitions for either full party status or amicus status. Applicant does not want the return date for petitions changed from September 27, 2006, as provided in the August 23, 2006 Combined Notice.

Ruling

As provided in the Combined Notice dated August 23, 2006, the legislative hearing sessions scheduled for October 3, 2006 will provide members of the public with the opportunity to comment about the Supplemental Draft Environmental Impact Statement (SDEIS) concerning the proposed expansion, as well as the application materials. Region 8 Department staff is the SEQRA lead agency. To date, no public hearing has been held about the SDEIS.

Although the time frames outlined in the August 23, 2006 Combined Notice exceed the minimum 30-day public comment period required by 6 NYCRR parts 621 and 624, 6 NYCRR 617.9(a)(4)(iii) (also see 6 NYCRR 617.12[a][2][iii]) provides for an additional 10-day comment period after a public hearing about an

environmental impact statement. To provide for the comment period authorized by 6 NYCRR 617.9(a)(4)(iii), I will, therefore, extend the written public comment period from September 27, 2006 to October 16, 2006. All written comments must be received by October 16, 2006. I will announce the extension of the public comment period during the legislative public hearing sessions on October 3, 2006.

This ruling does not disturb the return date for filing petitions for either full party status or amicus status as set forth in the August 23, 2006 Combined Notice. That return date remains 3:30 p.m. on September 27, 2006.

_____/s/_____
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Dated: Albany, New York
September 25, 2006

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