

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of -

the application for permits to expand a landfill pursuant to Environmental Conservation Law (ECL) Article 24 (Freshwater Wetlands) and Part 663 of Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR); Federal Clean Water Act - Section 401 (Water Quality Certification); ECL Article 27 (Solid Waste Management Facility Permit) and 6 NYCRR Part 360; ECL Article 19 (Air Pollution Control - Title V) and 6 NYCRR Part 200 et seq.; ECL Article 17 (State Pollutant Discharge Elimination System - General Permit No. GP-02-01 for Stormwater Discharges from Construction Activity) and 6 NYCRR Part 750

- by -

Seneca Meadows, Inc.

DEC Application ID #: 8-4532-00023/00046

Stage 2

ISSUES RULING, SUMMARY REPORT, AND ORDER OF DISPOSITION

_____/s/_____
Helene G. Goldberger
Administrative Law Judge

June 6, 2007

PROCEEDINGS

Background

The applicant, Seneca Meadows, Inc. (SMI), owns and operates a permitted landfill at 1786 Salcman Road, Waterloo, in the Town of Seneca Falls, Seneca County, New York. At its permitted disposal rate of 6,000 tons per day (tpd), this facility will have reached its capacity by 2009 when its current Part 360 permit expires. Seneca Meadows is the largest landfill in New York State, with most of its waste coming from within New York State and other fractions from Massachusetts, Connecticut, and other states. Locally, during 2003 and 2004, Seneca Meadows accepted 87,400 tons of waste and beneficial use determination (BUD) materials from Seneca, Wayne, and Yates counties and another 222,980 tons of waste and BUD materials from Cayuga, Livingston, Onondaga, Schuyler, Tioga, and Tompkins counties. See, Draft Supplemental Environmental Impact Statement (DSEIS), Draft Generic Environmental Impact Statement (DGEIS), and Summary Report and Order of Disposition dated July 10, 2006, for more background on the landfill.

SMI has applied to the New York State Department of Environmental Conservation (DEC or Department) for a 178-acre expansion of this landfill operation that would provide approximately 14 years of additional landfill capacity at the current 6,000 tpd disposal rate. This application was reviewed by the Department in two stages. For the first stage, DEC staff reviewed SMI's application to fill 71 acres of Class 2 regulated freshwater wetland, to realign the Black Brook in the project area, temporarily affecting another 19 acres of wetlands, and to construct a new Route 414 bridge. The expansion will affect another 1.67 acres of wetland due to the relocation of utilities. SMI proposed to mitigate the loss of wetland with a plan to restore and enhance 585 acres of wetlands on other property owned by the applicant and to enhance 350 acres of habitat along the relocated Black Brook corridor.

Stage 1

Due to the extensive impacts to wetlands, the applicant and staff agreed to subject stage 1 of the project to review prior to moving on to the preparation and examination of the detailed Part 360 design and the other necessary permit applications pursuant to Environmental Conservation Law (ECL) Articles 17, 19, and 27. In the first stage, pursuant to the State Environmental Quality Review Act (SEQRA), ECL Article 8, DEC, as lead agency, also conducted its review based upon the applicant's submission of its DGEIS, June 2005, revised December 2005. On May 16, 2006, I conducted a legislative hearing where 17 people spoke, all in

favor of SMI's application. No persons or organizations applied for party status and accordingly, the issues conference was devoted solely to organizing the application record. I issued a Summary Report and Order of Disposition dated July 10, 2006, in which I remanded the application to staff to finalize the Article 24 permit and make the requisite findings pursuant to SEQRA. On October 5, 2006, subject to SMI's receipt of a Section 401 Water Quality Certification and the remaining permits, Department staff issued the Freshwater Wetlands permit to SMI.

Stage 2

For this phase of the application process, on December 22, 2006, SMI submitted to DEC its applications for its air pollution - Title V permit, its solid waste management facility permit, and its State Pollutant Discharge Elimination System (SPDES) permit. In addition, SMI prepared a DSEIS to address potentially significant environmental impacts that were brought to light as a result of the detailed landfill design work. In letters dated September 8, 2006 and October 31, 2006, SMI sent DEC the proposed scope of the DSEIS. On November 22, 2006, SMI transmitted to DEC the Notice of Availability of the Draft Scope of the supplemental EIS. Based upon this scope, the applicant prepared the DSEIS and on March 20, 2007, the Department staff made the determination that the DSEIS was adequate for public review. The Department published its Notice of Complete Application and Acceptance of DSEIS in the April 4, 2007 editions of the *Environmental Notice Bulletin* and the *Reveille Between the Lakes*.

Legislative Hearing

Pursuant to the notice of public hearing and issues conference that was published in the April 18, 2007 edition of the *Environmental Notice Bulletin* and the April 19, 2007 edition of the *Reveille Between the Lakes*, the public hearing on Stage 2 of this application process was conducted at Vince's Park, located outside the Village of Seneca Falls, on May 21, 2007, commencing at 6:00 p.m. Approximately 100 people attended and 43 people provided oral comments in addition to presentations by DEC staff and the applicant. Of those that provided comments, 19 people expressed unequivocal support for the landfill expansion. The majority of the remaining speakers did not oppose the expansion but did ask that the impact of truck traffic on local state highways running through their towns be addressed and that a permit condition be fashioned to address these effects. Of this latter group of speakers, 3 people opposed the expansion based upon the truck traffic impacts.

The first speaker was Don Gentilcore of SMI, who summarized the expansion plans, emphasizing that the expansion would not result in an increase in daily intake at the landfill. He commended the staff at SMI who he said had worked diligently and with dedication on the project's design and throughout the two-stage application process. He stressed that the project documents, including the draft scope for the supplemental environmental impact statement, were made publicly available and that the received comments were incorporated. Mr. Gentilcore also spoke to the need for the landfill capacity, SMI's provision of many local jobs at the landfill, and its commitment to environmental controls to minimize negative effects.

With respect to traffic impacts, Mr. Gentilcore maintained that the majority of traffic used the New York State Thruway and that SMI did its best to promote the use of this route. However, he explained further that because SMI did not haul the material to the landfill, it did not control which route the haulers take. Mr. Gentilcore noted that other commodities such as salt were also shipped by large tractor trailers and undoubtedly accounted for a portion of the truck traffic on the local roads. And, he pointed out that there are a number of other landfills in the region, which also generate traffic along local roads. He said that SMI would continue to work with Senator Charles Schumer and others to address the local truck traffic issues. In the meantime, he said all trucks coming to Seneca Meadows are tarped, with no protruding garbage.

Deputy Permit Administrator Kimberly Merchant of the DEC Region 8 office introduced the Department staff members who have been reviewing the SMI application. She explained that the number of trucks coming to SMI would not increase with the expansion because the per day disposal limit would remain the same. She stated that the draft permits were available for the public to review.

A number of elected officials and leaders of local not-for-profit organizations in the vicinity of the landfill - primarily in the Town of Seneca Falls and the Town of Waterloo - spoke to the many beneficial impacts of SMI's involvement in the community. Speakers such as Seneca County Sheriff Leo Connolly; Waterloo Town Supervisor Richard Clark; Waterloo Fire Department Captain Jim Mooney; Fayette Town Supervisor Edward Barto; Patricia Jones of the Seneca County IDA; Jacqueline Grey of the Seneca Falls Library; Laurie Loncosky of the Magee Volunteer Fire Department; Waterloo Deputy Mayor Dave Duprey; and Peter Van Tyle of the NY Chiropractic College, spoke to SMI's active commitment to the community in terms of financial and other types of

assistance. Repeatedly, these speakers and others called SMI a "good neighbor." In addition, the 160 jobs at the landfill combined with the host community agreement with Seneca Falls and the payment of taxes by SMI were cited as positive impacts. Fred Gaffney, the executive director of the Seneca County Chamber of Commerce, stated that SMI is among Seneca County's top 20 largest employers, with a payroll of \$8 million. SMI operations generate \$900,000 in sales taxes and \$12 million is paid annually to local vendors. Town fees and taxes in addition to charitable giving total \$3 million. And, a \$40 million greenhouse using energy derived from landfill gas is in the planning stages.

Peter Same, Town of Seneca Falls Supervisor, explained that the Town had entered into a host community agreement with SMI that brought a lot of economic benefits to the town. He pointed out that the landfill had been limited to the M-2 zone and that the expansion would bring a new hydroponic tomato project fueled by the landfill as well as a beneficial wetland restoration.

Other speakers expressed a concern about the impacts of heavy trucks traveling on relatively narrow state highways that run through their small communities -- Ulysses, Skaneateles, Romulus, Aurora, Varick, Owasco, Auburn, Ithaca, and Trumansburg - on roads including Routes 20, 34, 34B, 41, 41A, 38, 38A, 79, 89, and 96. These individuals -- private citizens as well as elected leaders and community leaders -- stated that the noise of these trucks and the damage they are causing to old structures are significant. Of even more concern, they emphasized that these vehicles present a grave safety threat to the pedestrians, bicyclists, joggers, and home owners that share the roads. A number of these speakers noted that the SMI DSEIS indicates that the bulk of the truck traffic coming to the landfill comes from the north via Route 414, inferring that the waste haulers are using the NYS Thruway. However, these speakers dispute that conclusion and ask that further analysis be done in relation to impacts of truck traffic on local roads.

John Hennessy, Tri-County Clerk of Skaneateles, said that there is more to this process than dollars and that the historic nature of the area, the irreplaceable structures, increasing population that included children, the beautiful villages, the proximity of the watershed, require that these large trucks be kept off the local roads and that they be required to travel the interstates which are better prepared to handle their loads.

Like Mr. Hennessy, Mayor Gunderson of Aurora has no quarrel with the landfill expansion, recognizing that the people and the towns of the Finger Lakes rely upon this disposal capacity.

However, he objected to the use of local roads by trash haulers, specifically Route 90 which he said is not only a designated scenic highway but is also too narrow for these vehicles, so that their use creates a traffic hazard. He suggested that regulations be promulgated so that trash truckers use interstates. He said that these small villages cannot tolerate another 16 years of heavy traffic.

Thomas Bjorkman of the Varick Planning Board said that in the local planning process that his town has recently undergone, the "hottest" topic was the truck traffic. He believes DEC can do something about this traffic. He emphasized that people came to the area for lake views and the beauty of the area and that this traffic belonged on Interstates 81 and 90. He said that there needed to be contractual arrangements among the generators, landfill and haulers, and that SMI could not be relied upon to address this issue without DEC's assistance.

Owasco Town Councilman John Klink said that there has been an increase in the number of trucks going to SMI, and that he has had good discussions with the company, the Thruway Authority, DEC, and even John Dougherty, the Commissioner of the New York City Department of Sanitation, on this subject, but the trucks keep coming. He said that on Route 38A there are bicyclists, runners, and people trying to get to their mailboxes, and a water supply proximate to the road. He wants the trucks to stay on the interstates.

Barbara Clary of the Upstate NY Safety Coalition Task Force in Auburn said that the issue was longstanding - 14 years. She added that her organization has been meeting for over two years and that everyone in these communities is affected by the increase in garbage truck traffic. She emphasized that the roads are too narrow for the trucks to safely navigate. She stated that SMI was a good company providing a necessary service but that there would be more trucks. Attached to Ms. Clary's written statement is a press release from Senator Charles Schumer's office dated October 19, 2006, a letter to Governor Eliot Spitzer from State Senator John A. DeFrancisco dated January 19, 2007, a resolution of the NYS Association of Chiefs of Police dated July 20, 2006, an editorial from the *Finger Lakes Times* dated February 6, 2007, a resolution dated January 8, 2007 from the Village of Skaneateles, and a resolution dated February 13, 2003 from the Owasco Town Board.

Pamela MacKesity of the Tompkins County Legislature also spoke to the waste haulers driving on non-designated routes through communities where the possibility of fatal accidents was

significant. She read a resolution from the County Legislature that speaks to the noise and safety impacts of the trucks on State Routes 34, 34B, 79, 89 and 96 in Tompkins County and calls upon DEC to use the permitting process to address these issues.

Fernando de Aragon, director of the Tompkins County Transportation Council in Ithaca, stated that the DSEIS process should be used to address truck traffic and that the haulers must use the interstate system. He said that this application presented an excellent opportunity to begin the process to require haulers to show that they require trucks to use the interstates. Director de Aragon maintained that more work needed to be done on the DSEIS, and that all environmental impacts related to the landfill expansion appeared to be addressed except for those related to truck traffic. He said that DEC and SMI would get the assistance of the localities in resolving this matter. He concluded by stating that SMI was only one landfill and that DEC did need a bigger solution.

Ed Marx, the Commissioner of Planning and Public Works for Tompkins County, stated that he had not heard many oppose the expansion but that it was important that the best thing be done for the entire region. He pointed out that the DSEIS indicates that the waste deliveries come via the Thruway and he stated that this was a flawed conclusion. He argued that there were two ways to correct this error: 1) perform a regionwide traffic analysis, or 2) make the statement true by requiring the trucks to use the interstates. He explained that he didn't think that those who largely benefit from the low landfill disposal cost - the community of Seneca Falls and the downstate municipalities who ship their wastes there - should do so to the detriment of neighbors to the east, north, and south. He said that he believed that the localities would aid in the enforcement of any conditions that required the haulers to use the interstates.

Town of Skaneateles Supervisor Phil Tierney, submitted a letter petition dated May 21, 2007, in which he requests that the Town be granted party status because it is adversely impacted by the truck traffic that is generated by Seneca Meadows Landfill and would continue with the proposed expansion. In the letter, he maintains that DEC has not properly considered the issue of truck traffic as the SDEIS incorrectly characterizes this truck traffic as confined to interstate roads. He described the route that the traffic takes as being along I-81 to Cortland and then traversing two-lane state roads along the western and eastern shores of Cayuga Lake to avoid tolls. He described past accidents and property damage that is attributed to truck traffic as evidence of the need to address this issue. The supervisor

emphasized Lake Skaneateles' role as a major water supply for the City of Syracuse and the region. Also signing this letter petition are John Klink, Councilman of the Town of Owasco; Barbara A. Clary, President of the Upstate NY Safety Coalition Task Force; and Tom Gunderson, Mayor of Aurora. In his oral comments, the Supervisor also requested an extension of time to organize to participate as a party in this process. A DEC staff person provided me with a study performed by the Community Link Program of Syracuse University's Maxwell School of Citizenship and Public Affairs entitled "*Truck Traffic in the Village of Skaneateles - February - March 2007.*" This study, conducted for the Village of Skaneateles, was prepared by Kimberly Harris and dated April 2007 (Harris study). I understand this study to be submitted by the Town as part of its letter petition.

Dave Rauscher, a trucking company representative provided the perspective of the trucking industry by explaining that the reason trucks use the local roads comes down to dollars. He said his company ships one seventh of the material that goes to SMI and that to put it on the toll road would involve a \$351,000 increase that he could not pass onto his customers. He says that his company pays \$16,000/year to operate on state highways and that the trucking company cannot control the route utilized unless the shipper cooperates in mitigating the expense.

The legislative hearing concluded at approximately 8:35 p.m.

Written Comments

The period for submission of written comments on SMI's DSEIS ended on June 2, 2007. In addition, to the written comments submitted by some of the speakers at the May 21, 2007, legislative hearing, the Department staff received 11 letters and two e-mails reflecting the opinions provided at the public hearing. In addition, Joseph L. Siccardi, publisher of *Reveille Between the Lakes*, submitted to the Department an editorial that was published in the paper's May 31, 2007 edition and which supported the SMI expansion stating that SMI should not be singled out to address the truck traffic complaints.

By letter dated June 1, 2007, State Assemblywoman Barbara S. Lifton of the 125th District wrote to DEC Region 8 Deputy Regional Permit Administrator Kimberly Merchant asking that ". . . DEC undertake an environmental review of the impact of the Seneca Meadows Landfill over the entire Central and Southern Tier region of Upstate New York . . ." The assemblywoman stated that many of her constituents who live on state roads in Tompkins County had contacted her about the large numbers of 18-wheel

trucks using these roads and the resulting negative effects on the quality of their lives. She stated that these trucks should be restricted to the state's four-lane highways whenever possible to avoid the noise, safety, and other negative impacts on the local towns she represents.

By letter dated June 1, 2007, State Senator James L. Seward wrote to me stating his support for the Tompkins County Legislature's resolution requesting that trucks headed to and from the Seneca Meadows landfill travel primarily on interstate highways. He expressed concern regarding the safety, noise, and "unwanted wear and tear on the local highway system" related to solid waste trucks on Routes 79 and 81. He asked that the Department "stipulate that any operating or expansion permits for the Seneca Meadows Landfill include a requirement that any trucks en-route to and from the landfill travel on interstate highways."

This office also received a letter dated May 18, 2007 from Daniel F. Davis, assistant regional director of the New York State Office of Parks, Recreation, and Historic Preservation. In this letter, Mr. Davis focuses on the "increase in traffic along Route 89. We have four busy state park facilities along this route . . . The increase in the volume of trucks traveling N.Y.S. Route 89, the speeds they are traveling and the noise they create have significant impact on our patrons' safety (vehicle and pedestrian traffic) and quality of experience (noise of trucks in general and use of Jake brakes in particular)." Mr. Davis comments on Route 89 as a major tourism route and designation as a Scenic Byway by the New York State Department of Transportation in 2003. He states that the traffic impacts were inadequately researched in the DSEIS and requests that they be studied more and/or that a condition requiring the use of the interstates be incorporated into the permit.

Issues Conference

The issues conference was convened at 10:00 a.m. at Vince's Park on May 22, 2007. There were approximately 20 people in attendance, including Department staff and SMI representatives. Representing the Department staff was Regional Attorney Paul D'Amato and representing SMI was Scott Turner, Esq. of Nixon, Peabody, LLP. There were no representatives from the Town of Skaneateles in attendance. See, issues conference transcript (TR), p. 5.

I opened the conference by summarizing the background of the proceeding. I explained that because no timely petitions for party status were presented, normally the purpose of the

conference would be limited to confirming the application documents. TR 4. However, in light of Supervisor Tierney's submission the prior evening, I asked the parties to respond to the Town of Skaneateles' letter petition. TR 5.

Mr. Turner stated SMI's objection to the Town's late submission on the grounds that the Town had had ample opportunity to participate in the scoping process, to comment on the DGEIS, and to present a timely petition regarding the traffic issue. Because the SDEIS was directed at potential impacts that arose as a result of the Part 360 design process, he argued that the Town's concerns regarding traffic were more properly raised in the Stage 1 DGEIS process. Mr. Turner emphasized the public nature of the entire environmental review process and the failure of the Town of Skaneateles to participate in that review by raising this issue previously. He complained that there was no reason that the Town could not have provided the Harris study to the applicant and DEC earlier. Given the Town's resources, Mr. Turner argued that there was also no reason why it could not have filed a timely petition and, therefore, the Town should be denied party status. TR 5-8.

On behalf of staff, Mr. D'Amato stated that the Town's failure to come to the issues conference compounded the late filing of the petition. He also argued that Skaneateles failed to provide any reason why its filing was late consistent with 6 NYCRR § 624.5(c). With respect to the Town's substantive complaint regarding truck traffic, Mr. D'Amato reiterated that the Department has not given SMI any authority to expand the volume of traffic. He explained that the Department was concerned with preserving landfill space so that it lasts for the expected 14-15 years and therefore, the volume is being kept to the current limit of 6,000 tpd. TR 8-11.

I referred to 6 NYCRR § 624.5(c) regarding late petitions and then asked the parties to address the substantive issue of traffic raised at the legislative hearing. TR 11-13. Because DEC is the lead agency and a DEIS has accompanied the application, pursuant to 6 NYCRR § 624.4(a)(3), "all statements made at the legislative hearing will constitute comments on the DEIS and all substantive comments must be addressed pursuant to the procedures set forth in section 617.14 [617.9(b)(8)] of this Title." Therefore, the staff and applicant will be required to address the issue of traffic in the responsiveness summary.

Mr. Turner stated that this issue requires a resolution on a state-wide level. To the extent that waste trucks are seen as an issue, he argued that SMI does not operate the only landfill in

the region. To the west there are a number of other facilities to which these trucks could be heading with capacities exceeding that of SMI. He explained that SMI and other solid waste industry representatives ought to be part of any discussions to attempt to resolve this on a state-wide level but he maintained that all the haulers, generators, and landfills should be treated equally. Mr. Turner offered that perhaps pursuant to the ECL or the Department's regulations a requirement for planning units could be included requiring generators to follow particular routes and be compensated for that requirement. TR 14-17.

Mr. D'Amato concurred with the applicant, stating that this was a broader issue that involved more than this one application. In addition, he explained that trucks do not haul only garbage and that garbage trucks are not limited to those that go to Seneca Meadows. Mr. D'Amato reflected that the legislative hearing sounded like a Department of Transportation public forum. He said it appeared that there must be incentives to get the trucks off the local roads and that economics govern currently. He said he would take this issue back to the Department and advise those in Albany of the extent of the problem. However, he said it was not appropriate to target one applicant in an attempt to rectify a broader problem. TR 17-20.

I asked whether there should be a permit condition requiring that those SMI contracts with use the interstates. Both attorneys stated that this was unfair as it singled out SMI and would potentially place SMI in a competitive disadvantage. Moreover, Mr. Turner explained that contracts expire and are entered into at different times. And, there was the issue of enforcement - how would such a condition be enforced? Mr. Turner advocated for a more effective solution on a statewide basis that puts all facilities on an equal and level footing starting perhaps with the generators. He proffered that legislation might be required. TR 20-24.

Upon the conclusion of this discussion, Mr. Turner requested the opportunity to file a brief in response to the Town of Skaneateles' petition. We agreed that the applicant and the Department staff would have the opportunity to submit a short brief by June 1, 2007. TR 29-30.

As during the Stage 1 issues conference, prior to adjourning, we reviewed the list of documents that staff and the applicant have identified as constituting the application. I suggested that these documents be listed on "Schedule B" and annexed to the Part 360 application. In addition, Ms. Merchant made us aware that there were some additional documents that needed to be incorporated into "Schedule A" concerning the

Freshwater Wetlands permit.

ISSUES RULING

Application of Town of Skaneateles for Party Status

As noted above, there were no timely petitions for party status and the applicant and staff have not brought forward any disputes between them that would mandate an adjudicatory hearing.¹ However, as also described at pp. 6-7, *supra*, Supervisor Phil Tierney, on behalf of the Town of Skaneateles, provided me with a letter petition dated May 21, 2007 during the legislative hearing. He also provided a DEC staff member with the Harris study that I have deemed as the Town's support for its petition.

In addition to the opposition voiced by counsel at the issues conference on May 22, 2007, SMI and DEC staff filed briefs on May 31 and June 1, 2007, respectively, reiterating their positions on the Town's application for party status.

Section 624.5(c) of 6 NYCRR sets out the rules governing late filed petitions for party status as follows:

(1) Petitions filed after the date set in the notice of hearing will not be granted except under the limited circumstances outlined in paragraph (2) of this subdivision.

(2) In addition to the required contents of a petition for party status, a petition filed late must include the following in order to receive any consideration:

(i) a demonstration that there is good cause for the late filing;

(ii) a demonstration that participation by the petitioner will not significantly delay the proceeding or unreasonably prejudice the other parties; and

(iii) a demonstration that participation will materially assist in the determination of issues raised in the proceeding.

¹ The week before the legislative hearing, I was contacted by the parties and Marc Gerstman, Esq., counsel for the Town of Seneca Falls, regarding the host community agreement. As there were a few details that were still being negotiated, Mr. Gerstman had entered into a stipulation with the parties to extend the Town's date to file a petition in the event that it did not reach an agreement. The extension was until May 21, 2007. As reported by Supervisor Same at the legislative hearing, because an agreement was reached between SMI and the Town, no petition was filed.

The Town of Skaneateles has failed to meet these standards for a late filing. The Supervisor did not provide any rationale for the late filing or for his request that the Town be given an "extension" until June 1, 2007.² In fact, Supervisor Tierney left the hearing room shortly after giving his statement and did not appear at the issues conference, thus preventing the parties and this ALJ from questioning him about the Town's application.

At this stage, if the Town's petition were to be considered, another issues conference would have to be held in order to have a discussion among the Town, the Department staff and the applicant regarding the traffic issue. This would delay the permitting process which has been lengthy and should be completed expeditiously.

With respect to the third requirement, the Town's letter petition sets forth in general terms its concerns shared by other municipalities and citizens regarding the volume of heavy truck traffic through the area's state highways. In addition, the Town has submitted a report that is intended to support these concerns. However, the report is insufficient to support a finding that the Town would materially aid in addressing the issue of traffic assuming it was found to be an adjudicable issue. The study does not indicate what the author's credentials are in terms of her ability to perform this study or make the relevant conclusions. The study itself identifies several flaws in its analysis including the limited period of study (22 hours) and the varying accuracy of the observers, including possible misidentification of buses as trucks. There is little support for how the author of this study determined the destination of the vehicles studied and therefore, it is uncertain how it could form the basis of any permit conditions for the SMI facility.

² Subsequent to the issues conference, Supervisor Tierney contacted Department staff inquiring about the process. I called him to explain that I was reviewing the Town's submissions as part of this ruling and a decision would be made concerning the Town's request for party status. He advised me that he was unaware that it was necessary for the Town to attend the issues conference. However, as noted by counsel for SMI in its post-issues conference filing, the hearing notice published in the *Environmental Notice Bulletin* and the *Reveille Between the Lakes* 33 days before the legislative hearing explicitly stated that "IT IS EXTREMELY IMPORTANT THAT ANY PERSONS REQUESTING PARTY STATUS APPEAR OR BE REPRESENTED AT THE ISSUES CONFERENCE . . ."
[emphasis in original.]

Even if the petition were to be considered despite its late submission and the Town's failure to meet the requirements in 6 NYCRR § 624.5(c), it does not meet the requirements for a petition set forth in 6 NYCRR § 624.5(b)(1). While the Town identifies itself as seeking party status, it also alludes to other "similarly situated municipalities" without identifying specifically which jurisdictions these are that wish also to be part of this application. 6 NYCRR § 624.5(b)(1)(i). The petition is signed by representatives of the Town of Owasco and Aurora as well as Ms. Clary from the Upstate NY Safety Coalition Task Force, but it is not clear if these towns and organization are seeking party status and/or if there are others that were not identified in the letter.

The Town does identify its environmental interest by describing the impacts of the heavy truck traffic. 6 NYCRR § 624.5(b)(1)(ii). And, the Town also specifies that it finds that the application does not adequately address this issue. 6 NYCRR § 624.5(b)(1)(iii). Although not stated in this petition, it would appear that the Town is criticizing the DSEIS and asking the Department to address its concerns through the SEQRA process. The Town does not specify whether or not it is seeking full party or *amicus* status. 6 NYCRR § 624.5(b)(1)(iv). As noted, the Town does set forth its grounds for opposing the application based on its perception that the heavy truck traffic coming through its streets is caused by trucks headed for Seneca Meadows. 6 NYCRR § 624.5(b)(1)(v).

Assuming that the Town is seeking full party status, the petition fails to clearly identify a substantive and significant issue pursuant to 6 NYCRR § 624.4(c) for the reasons discussed above. 6 NYCRR § 624.5(b)(2)(i). The petition also does not specify the witnesses, the nature of the evidence that would be presented (beyond the study described above), and other grounds upon which the Town would base its case against the application. 6 NYCRR § 624.5(b)(2)(ii).

Ruling

I decline to grant the petition of the Town of Skaneateles for party status. As set forth above, the Town provided no explanation for its late filing. The regulations require that good cause exists in addition to the requirements addressed at p. 11, *supra*. The Town has failed to meet any of these requirements. As argued by SMI, this has been a very public process over 2½ years and the applicant has worked diligently to perform its responsibilities so that there would be timely public notice, Department review, hearings, and decisions in order that

the expansion can be completely in a timely fashion. As noted by SMI counsel in its post-issues conference filing, the appropriate time to have raised concerns regarding traffic would have been in Stage 1 when the DGEIS was developed. Yet, despite the Town's admission of the issue of traffic being a long-time concern, it failed to attend the legislative hearing held on May 16, 2006 or file a petition for party status at that time. Apart from being late to the Stage 2 environmental review process, because the environmental review reveals no changes in the traffic impacts based on the landfill expansion other than the proposed relocation of the site access road, SMI was not required to address those issues in the SDEIS. 6 NYCRR § 617.7(c). Thus, as strenuously argued by Department staff in its post-issues conference filing, to allow the Town (and others) to skirt the filing requirements would be contrary to the regulations and unfair.

In addition, as noted above at pp. 11-13, the Town has not submitted a petition that if timely filed would have met the requirements set forth in Part 624. Without identification of experts and grounds, there would be no basis to determine that a viable issue for adjudication exists.

Clearly, the issue of heavy truck traffic in the small towns that lie to the north, south and east of Seneca Meadows is of great concern to these communities and should not be ignored by this Department or the applicant. Section 624.4(a)(3) of 6 NYCRR provides that ". . . all statements made at the legislative hearing will constitute comments on the DEIS and all substantive comments must be addressed pursuant to the procedures set forth in section 617.14 [617.9(b)(8)] of this Title." Thus, in addition to the discussion held at the issues conference, staff will work with the applicant to address these concerns in the responsiveness summary. As noted in Matter of William E. Dailey, Inc. [Interim Decision, June 20, 1995, p. 4] and Matter of Waste Management of New York, LLC (Albion) [Issues Ruling, December 31, 1999, p. 53], traffic is a potential environmental impact that must be considered as part of the SEQRA review. SMI included a traffic analysis in its DGEIS [see, pp. 3-66 - 3-68 and Appendix E]³. However, this review appears limited to impacts of landfill-related traffic on the roads near the landfill. The

³ The SDEIS also contains a traffic impact assessment. See, pp. 5-1 - 5-5. This analysis addresses SMI's applications to the New York State Department of Transportation regarding SMI's work related to Route 414 as well as additional information regarding local traffic impacts.

DGEIS makes the conclusion that most of the landfill-bound traffic comes from Rt. 414 from the north inferring that the waste haulers use Interstate 90.

As noted in Dailey, this Department does not need to use the adjudicatory forum to resolve all substantive comments related to the DEIS. While the Seneca Meadows expansion permit will not increase the volume of waste coming to the landfill, other factors that were expressed at the legislative hearing may account for the increased truck traffic on the local roads. I urge the Department staff together with SMI and the representatives of the affected and interested municipalities, and citizen groups meet with the Department of Transportation, the Thruway Authority, OPRHP, industry representatives, as well as elected officials to work towards a resolution that addresses this problem on the scale necessary to identify the problem and solve it. Traffic headed towards Seneca Meadows undoubtedly contributes to the problem; however, there are heavy trucks other than waste haulers and Seneca Meadows is not the only destination for waste haulers. Thus, a solution that only addresses this one landfill will not be fair and more importantly, will not resolve the public's concerns.

In conclusion, I find that there are no issues for adjudication in this proceeding and specifically that truck traffic and the routes trucks take are not appropriate issues to be pursued in this forum.

APPEALS

A ruling of the ALJ 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 pursuant to 6 NYCRR § 624.6(e). Expedited appeals must be filed to the Commissioner in writing within five days of the disputed ruling. 6 NYCRR § 624.6(e)(1). Because this ruling is being mailed by regular first class mail, those wishing to appeal have an additional five days to serve their appeal. 6 NYCRR § 624.6(b)(2)(i). Appeals must be sent to the attention of Commissioner Grannis (Attn: Louis A. Alexander, Assistant Commissioner, NYSDEC, Office of Hearings and Mediation Services, 625 Broadway, Albany, NY 12233). Copies of appeals must be sent to me, to the Department Chief Administrative Law Judge, James T. McClymonds (also at my address), and to all others on the service list noted below at the same time as the appeal is sent to the Commissioner. No submittals by telecopier will be allowed or accepted. Appeals should address the ALJ's ruling directly,

rather than merely restate the party's contention.

CONCLUSION and ORDER OF DISPOSITION

Based upon the record established in Stage II of these proceedings, I remand this matter to staff to finalize the permits pursuant to Articles 17, 19 (Title V), and 27 of the ECL and to make the requisite findings pursuant to the State Environmental Quality Review Act for this project. Staff is to correct and finalize the document lists identified as Schedules A and B and annex them to the appropriate permits so that they will be accessible if questions concerning permit conditions arise. I deny the late-filed petition of the Town of Skaneateles for party status, and find no issues that would require an adjudicatory hearing for this application.

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