

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 Part 200, et seq. of 6 NYCRR; 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

SUMMARY REPORT AND ORDER OF DISPOSITION

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

July 10, 2006

PROCEEDINGS

Background

The applicant, Seneca Meadows, Inc. (SMI), has applied to the New York State Department of Environmental Conservation (DEC or Department) for permits to expand its landfill operation located in the Town of Seneca Falls, Seneca County, New York. SMI seeks to site this expansion near its current operation in order to use the existing infrastructure. SMI proposes an expansion of 178 acres that would provide approximately 14 years of additional landfill capacity based upon the current 6,000 ton per day disposal rate. The majority of the waste that SMI accepts is from municipalities across New York State. SMI also receives waste from Massachusetts, Connecticut, and other states. SMI anticipates that the current landfill will reach capacity in 2009.

In addition to permits required by Environmental Conservation Law (ECL) Article 19 (air pollution control - Part 200 of Title 6 of the New York Compilation of Codes, Rules and Regulations [6 NYCRR] et seq.), Article 27 (solid waste management facility - 6 NYCRR Part 360) and Article 17 (state pollutant discharge elimination system - general permit No. GP-02-01 for stormwater discharges from construction activity - 6 NYCRR Part 750), this proposed expansion requires a freshwater wetlands permit (Article 24 - 6 NYCRR Part 663) and a Federal Clean Water Act § 401 water quality certification and § 404 permit. SMI proposed to fill in 71 acres of Class 2 regulated freshwater wetlands. In order to redirect flows of the Black Brook, the applicant intends to realign the Black Brook, which currently goes through the project area, resulting in temporary impacts to 19 acres of wetlands, and to construct a new Route 414 bridge. In addition, another 1.67 acres of wetland will be either temporarily or permanently disturbed as a result of relocation of utilities. To mitigate the loss of wetland habitat, SMI has put forward a wetland mitigation plan of 585 acres on the Dove property (owned by SMI) to restore and enhance existing wetlands in addition to a proposal to enhance 350 acres of habitat along the relocated Black Brook corridor.

The project area has been the site of landfill operations since the 1950's. In 1981, the Department issued the first permit at this site when it authorized landfilling operations. SMI took over the operation in 1983. Within the property lies the Tantalio Waste Disposal Area of approximately 26 acres, classified as a Class 2 Inactive Hazardous Waste Disposal Site (No. 850004). The applicant is engaged in remedial activities pursuant to the Department's directives.

Because of the extensive costs involved in detailed landfill design, the applicant requested that its application for this site take place in two phases. In the first phase, the applicant seeks approval for the proposed filling of 71 acres of wetland, realignment of Black Brook, construction of the new Route 414 bridge, and the proposed mitigation and enhancement plans. The Department's decision to grant this permit would mean the applicant's advancement to the second phase of the application process - the air, solid waste, and stormwater permit applications. The applicant would not be permitted to perform any work pursuant to the wetlands permit without the other permits. In addition, should environmental issues arise concerning wetland impacts in the course of the Phase 2 permit applications, the applicant and the Department staff agreed that the Article 24 permit would be re-visited.

The applicant submitted a Draft Generic Environmental Impact Statement (DGEIS) to the Department in June 2005. The Department, as lead agency for the review of this project pursuant to the State Environmental Quality Review Act (SEQRA), accepted a revised version of the DGEIS as complete and acceptable for public review on March 1, 2006. This DGEIS covers all phases of the project. If, in the second phase of this project's review, the Department determines that there are significant adverse environmental impacts that were not adequately addressed by the DGEIS, a supplemental DGEIS will be required. 6 NYCRR § 617.10(d).

Legislative Hearing

Pursuant to the notice of legislative hearing and issues conference that was published in the April 19, 2006 edition of the *Environmental Notice Bulletin* and in the April 20, 2006 edition of the *Reveille Between the Lakes*, the legislative hearing was convened at the Seneca Falls Community Center at 7 p.m. on May 16, 2006. At this hearing, the public was invited to submit comments on any aspect of the environmental impacts of the project. Approximately 50 people were in attendance and 17 people spoke in addition to the representatives of DEC staff and the applicant. All of the speakers recommended that the Department grant SMI's application.

The first speaker was Don Gentilcore of SMI who summarized the proposed expansion plans and emphasized the company's commitment to environmental compliance. He explained that the planning process for this application began in 2000 and that the examination of the necessary elements for landfill construction and operation revealed that wetland impacts were unavoidable.

Mr. Gentilcore reported that the chosen alternative would affect areas of wetland that had the lowest ecological significance. He explained that SMI had conducted an extensive review of alternative sites that covered 50 towns in four counties resulting in a conclusion that all of these sites had significant environmental problems. He explained that the relocation of Black Brook would put it towards an existing tributary of the Montezuma National Wildlife Refuge and would result in enhancement of a 300 foot corridor of enhanced wetlands - an improvement over the existing straight agricultural ditch. He continued with a description of the 585 acre wetland mitigation project that would provide a diversity of habitat on the Dove property resulting in a community benefit that would include a nature center and trail system. Mr. Gentilcore explained SMI was committed to long term maintenance of the 900 + acres of wetland enhancement and mitigation. He concluded by stating that the granting of the permits would allow SMI to continue to provide solid waste disposal and community benefits in addition to the increased diversity in habitat provided by the wetland mitigation proposal.

Kimberly Merchant, DEC's Region 8 Deputy Permit Administrator, explained the proposed two phase permit application process with the first phase comprising review of the actions requiring a freshwater wetlands permit and a water quality certification. With respect to the latter, Ms. Merchant explained that until the applicant provided its stormwater pollution prevention plan (SWPPP), the Department staff would reserve judgment on issuance of the § 401 water quality certification.

The Deputy Permit Administrator further explained that the Article 24 permit would be issued contingent upon the applicant's receipt of the other necessary permits (Stage II). She stated that special conditions were being drafted by staff to address wetland issues and solid waste management in the region. Ms. Merchant stated that the mitigation plan proposed does compensate for the loss of the 71 acres and would mean permanent protection of this mitigation. She stated that the staff was satisfied with the applicant's study of alternatives and that by utilizing the existing facilities, less land would be disturbed due to avoidance of new construction of infrastructure. Ms. Merchant explained that the applicant was in good standing as a permittee and used sound environmental practices in its operation. She concluded that the project as designed would meet State standards and that the Department staff would have a draft permit available for public review by about May 23, 2006.

Seneca Falls Mayor Smith stated that at the March 6, 2006 meeting of the Board of Trustees, the Board voted to adopt a resolution supporting the expansion of the landfill. She stated that as a resident, mother, business person, and representative of the Village she was comfortable with SMI's application based upon its professionalism and environmentalism. She explained that the presence of the landfill was no longer a matter of debate and that SMI proved to be a very good steward by providing many jobs, being generous to the community, by furthering industrial growth with the use of landfill gas to generate electricity, and by demonstrating concern for the environment. She concluded by describing SMI as an "exceptional operation."

Jim Terryberry, Deputy Supervisor of the Town of Seneca Falls, read a statement for Peter W. Same, Town Supervisor that characterized SMI as an outstanding partner and good neighbor.

Robert Shipley, Chairman of the Seneca County Board of Supervisors stated that the expansion served the best interests of the County through SMI's employment of so many individuals and its financial assistance to the community. He stated that it was important to retain quality businesses such as SMI because this will spur economic growth. Chairman Shipley also read a statement from a representative of the Town Board of the Town of Waterloo which has declared formal support for the expansion as in the best interests of the Town.

Dave Duprey, Trustee of the Village of Waterloo came to represent the Mayor who had fallen ill and stated that the expansion will have a positive impact on the community.

A number of speakers represented community organizations such as the fire department and the Chamber of Commerce. All of these speakers endorsed SMI's application and spoke in glowing terms with respect to the company's contributions to these community organizations.

Tom Rhoads, Executive Director of the Onondaga County Resource Recovery Agency (OCCRA), stated that in the 10 years that he has served as executive director he has found SMI to operate in a sound manner. He explained that he had visited the landfill often and was always favorably impressed. He stated that SMI was financially sound and was engaged in the appropriate remediation of the Tantalio hazardous waste site. He explained that Seneca Meadows resolved the tire disposal problem in Central New York and that odor and litters issues were addressed appropriately. He stated that the proposed expansion would be economically beneficial and would alleviate the need to develop

another landfill for at least a decade. Director Rhoads explained that the ash residue from OCCRA's facility that was deposited at SMI was always tested and had been shown to be non-hazardous. He agreed with SMI that the alternative proposed had environmental, social, and economic advantages over other sites. He stated that 585 acres of compensatory wetlands and 350 acres of enhanced wetlands along the Black Brook corridor was beneficial. Mr. Rhoads concluded by stating that SMI had an excellent track record and had OCCRA's strong support.

June Summers, President of Genesee Valley Audubon Society, explained that she had reviewed the information related to the proposal and had visited SMI. Ms. Summers stated that she had been against the expansion of the landfill in Seneca Falls 10 years ago but found the mitigation proposal now offered unprecedented. Ms. Summers explained that this mitigation project will complement the Montezuma National Wildlife Refuge and believes that SMI will do an excellent job. She reported that SMI had solicited GVAS's input on the plan and the Board of Directors supports it. She concluded by stating that since there did not seem to be a reduction in the waste society generates, the landfill will be needed.

All of the other speakers offered similar statements of support. There were no speakers in opposition to the project. The legislative hearing concluded at 8:30 p.m.

Issues Conference

The Office of Hearings and Mediation Services did not receive any petitions for party status on this application. On May 31, 2006, DEC Region 8 Regional Attorney Paul D'Amato requested that the ALJ, the applicant, and the staff discuss the status of the draft permit and the plans for the issues conference. That discussion revealed that the draft permit had been sent to the applicant on the evening of May 30, 2006 and that more time was needed for SMI to review it and for the parties to discuss it. Therefore, it was agreed that the issues conference would be postponed until June 20, 2006.

Administrative Law Judge Helene Goldberger convened the issues conference on June 20 at 10:00 a.m. at the Holiday Inn in Waterloo. Representing the Department staff was Regional Attorney Paul D'Amato and representing the applicant was Scott Turner, Esq. of Nixon Peabody, LLP. The parties informed me that they had been spending a great deal of time discussing the draft permit conditions and were close to resolution. They proposed to continue these discussions and report back to me on Monday, June

26 with the status of the draft permit. Prior to adjourning, we identified the documents that constitute the application including those listed on "Schedule A". I suggested that this document be annexed to the permit once it is issued and that the listed documents be kept together in a readily accessible location so that when questions arise as to interpretation of permit conditions, the source material is readily available. If there are revisions to any of these documents or additions to the list, these should be incorporated into Schedule A.

On June 26, 2006, Messrs. D'Amato and Turner called me to report that the staff and the applicant had reached agreement on the draft permit conditions. Mr. Turner stated that while there may still be some minor changes in language, there would be no further alterations in the substantive content. Mr. D'Amato explained that the draft permit would be available for my review within a couple of days.

I have reviewed the draft permit and it appears to reflect the intentions of the parties as expressed in the application, at the legislative hearing, and at the issues conference with respect to the loss of wetlands attendant to the proposed landfill expansion and the compensation for those impacts. The draft permit makes it clear that the Article 24 permit is contingent upon the applicant's receipt of all the other necessary permits for the expansion. In addition, among many specific requirements, the draft permit addresses the submission of detailed plans for the mitigation and enhancement projects, the submission of a performance bond by the applicant for these projects, and the establishment of a conservation easement and a trust to protect these wetlands in perpetuity.

CONCLUSION and ORDER of DISPOSITION

Based upon the agreement of the parties and the record established in this proceeding, I remand this matter to staff to finalize the Article 24 permit and make the requisite findings pursuant to the State Environmental Quality Review Act for this project. As other permits are still required for the landfill expansion, I will retain my copy of the file until the second phase of this permit application is completed.

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