

In the Matter of the Application
of the City of New York Department of
Sanitation for a Solid Waste Management
Permit pursuant to Environmental
Conservation Law article 27 (Spring
Creek Yard Waste Composting Facility)

SUPPLEMENTAL RULING
ON ISSUES

February 8, 2005

DEC Application No. 2-6105-00666/00001

This supplemental ruling on issues concerns the hearing on the application by the New York City Department of Sanitation (the Applicant) for a permit from the New York State Department of Environmental Conservation (DEC or the Department) for construction and operation of a 19.6 acre yard waste composting facility within Spring Creek Park in southeastern Kings County (Brooklyn), New York. The application is for a permit under Environmental Conservation Law (ECL) article 27 and part 360 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR part 360). The hearing is taking place under the DEC permit hearing regulations, 6 NYCRR part 624.

My August 30, 2004 ruling on issues and party status (issues ruling) requested or allowed submission of certain additional information regarding proposed issues in the above hearing. The present ruling concerns whether the additional information modified the issues that would be included in the adjudicatory hearing. As with the issues ruling, my analysis of whether the proposed issues are substantive and significant may be appealed to the Commissioner of Environmental Conservation. I anticipate that any such appeals would be decided as part of the Commissioner's interim decision on the appeals of the issues ruling that have already been submitted by the parties.

The following additional submissions were required or allowed by the issues ruling:

(a) the Concerned Homeowners Association (CHA) was allowed to state the dates and places where waste was allegedly dumped from the Applicant's vehicles and a description of the waste, and to identify any DEC regulatory or permit requirements such as dumping allegedly violated in addition to the prohibition on disposing of waste other than at authorized or exempt disposal facilities (issues ruling, at 26 - 27);

(b) the DEC Staff was asked to clarify whether, and why, the part 360 setback requirements applicable to this facility are or are not an operational requirement (issues ruling, at 30);

(c) the Applicant was allowed to change answers on its coastal consistency assessment form (issues ruling, at 37), was required to provide a map showing certain boundaries related to waterfront revitalization (issues ruling, at 36), and was required to provide a copy of Section VI of its waterfront revitalization plan, if it exists (issues ruling, at 37 footnote 27); and

(d) the Applicant was required to provide a copy of the noise analysis discussed in its environmental assessment statement, the supplemental information requested by DEC Staff in the June 19, 2002 notice of incomplete application, and a copy of section 6.8.1 of the project's engineering report as it read at the time of the June 19, 2002 notice of incomplete application (issues ruling, at 43).

Correspondence was submitted on these subjects, as discussed further below. In addition, the Applicant, DEC Staff, and CHA appealed numerous aspects of the issues ruling. The Applicant, CHA, New York/New Jersey Baykeeper, and a consolidated amicus party composed of the Municipal Art Society of New York and New Yorkers for Parks replied to the appeals.

Allegations by CHA

In a letter dated September 9, 2004, CHA stated that many New York City Department of Sanitation trucks would come to a privately-owned waste transfer station located in Brooklyn on Stanley Avenue between Shepherd Avenue and Essex Street, on a regular basis during the week and on Saturdays, and dump their paper loads on the sidewalks and street. CHA asserted that the facility operator would use the sidewalks and streets as tipping and processing floors and as storage areas, and that these are not part of the areas designated for these activities. CHA described its efforts to record these activities (for a period of two or three weeks in early 2002) and to report them to the New York City Department of Sanitation's illegal dumping program. CHA stated that the Department of Sanitation refused to take action in response to CHA's complaint.

CHA also alleged that on the afternoon of July 6, 2003, a Sunday, Department of Sanitation trucks lined up around the same transfer station although this facility's registration does not allow for Sunday operation. CHA submitted a copy of a letter

from Ronald J. Dillon to the New York City Comptroller that described this incident and that listed identifying numbers for 36 of the vehicles involved. CHA also described its efforts at pursuing a complaint about this incident through various city and state offices including the New York City "311" action line.

The Applicant, in its appeal of the issues ruling, stated that this additional offer of proof should not have been allowed. The Applicant argued that the alleged violations are claimed to have occurred at private facilities and are not relevant to this hearing (Applicant's appeal, at 32-33). CHA, in its reply, stated that the Applicant did not deny that the vehicles in question were at the location specified during the dates and times specified and did not deny having received affidavits from CHA about the March 2002 situation. CHA also stated that the private facility operates under a contract with the Applicant and that the vehicles were those of the Applicant (CHA reply, at 14, 54-55). DEC Staff did not respond to CHA's September 9, 2004 letter or to the statements by the Applicant in its appeal.

These allegations do not raise a separate new issue, but are relevant to the outcome of a portion of an issue already identified. In the context of alleged odor, litter, dust and vector impacts of the facility, the issues ruling stated that the proposed proof regarding whether the City of New York's "311" line is a meaningful recourse in the event of nuisance conditions is relevant to the DEC's record of compliance policy. The issues ruling also stated that if a permit is issued, effective and feasible enforcement measures might need to be added as permit conditions (issues ruling, at 24). The two situations described in CHA's September 9, 2004 letter allegedly involved the Department of Sanitation's waste delivery activities, even though these occurred at a private facility, and CHA's efforts at using the "311" line and other City mechanisms to report the events. No new issue is identified for adjudication, but evidence regarding these situations may come into the record to the extent it is relevant to the issue already identified.

Setbacks

Part 360 contains setback distances between yard waste composting facilities and features including residences, places of business, surface waters, and the property line of the facility. The Applicant requested three variances from these setback requirements. Amendments to part 360 that included changes in these setback requirements became effective in early 2003, shortly after DEC Staff issued a notice of complete application on December 20, 2002. At the issues conference, DEC

Staff cited the transition provision in 6 NYCRR 360-1.7(a)(3)(vi) as providing that the variance requests are to be reviewed under the requirements in effect when the variance applications were submitted (issues conference transcript, at 87-89). This subject is discussed in more detail at pages 27 through 32 of the issues ruling.

Section 360-1.7(a)(3)(vi) of 6 NYCRR distinguishes between "operational, closure and post-closure" requirements of part 360 and other requirements (such as design requirements) in determining whether an amendment to part 360 applies to an application that is complete on the effective date of the amendment. In the issues ruling, I asked for clarification, particularly from DEC Staff, concerning whether the setback requirements are an operational requirement.

DEC Staff discussed this question in a letter dated September 20, 2004 and in its appeal of the issues ruling, stating that setback requirements are essentially design and construction provisions rather than operational requirements. DEC Staff stated that to ensure proper siting decisions, setbacks must be addressed before the construction phase of a project, and thus prior to commencement of operations. DEC Staff stated that although the 1999 version¹ of part 360 lists setbacks in sections identified as operational requirements, setbacks are a siting requirement and are now in a section entitled "Design criteria and operational requirements" that includes both kinds of requirements. Under DEC Staff's interpretation, the 1999 version of the setback requirements for yard waste composting facilities would apply to this project.

The Applicant, in its appeal, agreed with DEC Staff's interpretation (Applicant's appeal, at 35). Baykeeper's reply to the appeals stated that because the Applicant has not yet been issued a permit, the Applicant is subject to the amended regulation. Baykeeper's reply appeared to assume that setbacks are an operational requirement but did not explain the reason for this or respond to DEC Staff's reasoning (Baykeeper reply, at 29).

¹ The date 1999 may relate to the date on which other sections of part 360 were most recently amended prior to the 2003 amendment. The sections from which the Applicant is seeking variances, former sections 360-5.5 and 360-4.4, were amended in 1988 and in 1993, respectively, and then both were replaced in 2003.

CHA commented on this question in one of its letters dated October 1, 2004 and in its reply to the appeals (CHA reply, at 56 and 68 - 69). CHA argued that identifying a requirement as operational or not is affected by whether it has to do with infrastructure that is relatively inflexible or infrastructure that can be redesigned to accommodate significant changes in operational requirements. CHA also argued that the plain language "of the regulations" (presumably the former version of part 360) identify the setback requirements as operational. With regard to the terms "design" and "operational" in the current section headings, CHA argued that DEC Staff's position was based on counting the requirements in the section and was not logical.

CHA also stated that applicants should be subject to the most current regulations and that, if these pose a hardship, an applicant can apply for a variance. Although an agency might structure its updates of a regulatory program in this manner, this is not the way in which the transition provisions of section 360-1.7(a)(3) operate.

Under the transition provision of part 360, it is necessary to determine whether a particular requirement is "operational, closure or post-closure" or not. Although the section headings led to confusion in applying the transition provision of 6 NYCRR 360-1.7(a)(3)(vi), DEC Staff's conclusion that the setbacks are not an operational requirement is reasonable. While in some situations the perimeter of a site might be able to be changed to accommodate changes in setback distances, the geographical location of a facility and its boundary areas are relevant to siting decisions. Further, it could be expected that features such as fences, berms and drainage structures would be near the perimeter of a composting facility or that their location would relate to where the facility's perimeter is located. The design and construction of such features could be affected by setback distances.

Consequently, the setback requirements in the version of part 360 that existed at the time the application was determined to be complete apply to this project. The review of this application will proceed under the setback requirements of former sections 360-5.5 and 360-4.4 as these existed on December 20, 2002.

Coastal consistency assessment form

The issues ruling concluded that several of the Applicant's answers on its coastal consistency assessment form were

incorrect. In addition to identifying an issue for adjudication regarding the project's consistency with the New York City Waterfront Revitalization Program (WRP), the ruling allowed the Applicant to change its answers on the form. The ruling also required the Applicant to provide a map showing the site boundary, the boundary of the Jamaica Bay Special Natural Waterfront Area (SNWA) and the boundary of the designated significant coastal fish and wildlife habitat. The ruling required the Applicant to provide a copy of section VI of its waterfront revitalization plan, if it exists. Section VI is the section, in an approved local waterfront revitalization plan, that lists state agency actions subject to consistency with the particular plan.

In a letter dated September 10, 2004, counsel for the Applicant reported that the Waterfront Division of the New York City Department of City Planning confirmed that the City's WRP has no section VI.

The Applicant's September 10, 2004 letter also stated that the Waterfront Division confirmed that the facility is outside of the Jamaica Bay SNWA, based on review of the map in the engineering report for the proposed composting facility and a map in the waterfront revitalization plan.

The Applicant did not submit the map specified in the issues ruling, and provided no response concerning the boundary of the significant coastal fish and wildlife habitat. The Applicant stated, "There is no other map to submit." The map to which the Applicant referred concerning the Jamaica Bay SNWA is the one discussed in the issues ruling, in which I stated "the boundary of the SNWA is not depicted clearly enough to determine whether the site or portions of it are within the boundary, but it appears that part of the site may be within the boundary" (issues ruling, at 36). The Applicant did not identify the person or persons in the Waterfront Division who provided the information cited in the September 10, 2004 letter.

With regard to the consistency assessment form, the form as revised by the Applicant on September 8, 2004 has "yes" checked off where "no" was checked on the original form, for the questions numbered 30, 38, 42, 46, 48 and 50. Some, but not all, of these are questions for which the issues ruling stated that the original answers were not correct. The revised version also contains extensive additions and changes in the narrative attachment accompanying the form, in comparison with the attachment that accompanied the original form. The Applicant incorporated into the narrative certain arguments it made at the

issues conference and in the correspondence following the issues conference.

The issues ruling stated there is a substantive and significant issue for adjudication regarding the project's consistency with the New York City Waterfront Revitalization Program. This ruling took into account the answers that should have been provided to certain questions on the form, and the Applicant's recent changes to the form and its attachment do not resolve the issue. The issue regarding consistency with the WRP remains an issue for adjudication, unless the Commissioner determines otherwise in the interim decision on the appeals of the issues ruling.

Noise

The issues ruling required the Applicant to provide for the record: (1) a copy of the noise analysis discussed in the environmental assessment statement (EAS) for this project; (2) the supplemental information that was requested by DEC Staff in its June 19, 2002 notice of incomplete application but not provided for the hearing record by the Applicant as of the August 30, 2004 date of the issues ruling; (3) and a copy of section 6.8.1 (noise) of the engineering report as it read at the time of the June 19, 2002 notice of incomplete application. The information requested by DEC Staff in this notice of incomplete application was a detailed description of the noise monitoring program, to include "the make and model number of the noise monitoring equipment, number and location of measurements and the proximity of measurement points to heavy equipment." The issues ruling found that, as of August 30, 2004, it was premature to decide whether an issue exists for adjudication concerning noise.

On September 10, 2004, the Applicant provided a copy of the earlier version of section 6.8.1, marked "10/01" (presumably October 2001, the month in which the application was submitted to DEC). This consists of one paragraph that is the same as the first paragraph of section 6.8.1 in the current version of the engineering report. As with the current version, the October 2001 version does not contain a report of a noise monitoring program the Applicant had already carried out, nor any quantitative assessment of noise levels associated with the facility.

The Applicant's September 10, 2004 letter also transmitted a copy of what it described as the noise study discussed in the EAS and other information requested by DEC Staff in the notice of complete application. This information consists of a December 4,

2002 memo from Dilip Bhansali, of Organic Recycling, Inc. (ORI), to Steven Brautigam, of the New York City Department of Sanitation, concerning sound levels measured by an employee of Organic Recycling on four items of equipment operating at another composting site plus sound level information provided by the equipment supplier for a fifth item of equipment. The equipment is two front end loaders (Komatsu Models 380 and 420), a Husky 5100 grinder and a Frontier windrow turner (for which sound levels were measured by Gary Walton of Organic Recycling) and the diesel engine on a McCloskey MCB #833 debagging trommel (for which Mr. Bhansali provided a fax memo from McCloskey Brothers Manufacturing Canada Limited concerning sound levels with and without a muffler).

The September 10, 2004 letter contains a paragraph explaining the Applicant's position that the facility will comply with the part 360 noise standard for urban areas during 10 PM to 7 AM.

In a memorandum dated September 29, 2004, I allowed any parties that wished to respond to the noise information to do so in their appeals of the issues ruling or in separate correspondence due on the same date as the appeals. On October 4, 2004, in response to a request by CHA, I extended this deadline to October 12, 2004. The Applicant, in its appeal, stated that no issue for adjudication exists regarding noise. CHA submitted two letters, dated October 1 and October 8, 2004 concerning this subject, plus an electronic mail message dated October 2, 2004, and discussed the proposed noise issue at page 60 of its reply to the Applicant's appeal. DEC Staff did not respond to the information submitted by the Applicant on September 10, 2004 or make any appeal or argument on the subject of noise.

The issue ruling, at page 42, stated as follows:

"The noise standard in 360-1.14(p) is a quantitative standard that specifies maximum sound levels beyond solid waste facility property lines at locations zoned or otherwise authorized for residential purposes. It specifies such sound levels for rural, suburban and urban areas, with lower levels from 10 PM to 7 AM than during the rest of the day. The Spring Creek compost facility would be authorized to operate 24 hours per day during its peak season between October 1 and December 31 (Engineering Report section 4.1.3 and page 1 of draft permit). The part 360 noise standard for urban areas during 10 PM to 7 AM is an Leq energy equivalent sound level of 57 decibels (A). The engineering report and its appendices do not contain any estimate of the

sound levels that would occur at the property line as a result of the equipment that would operate at the facility.”

The additional information submitted by the Applicant does not demonstrate that this standard has been met, but rather suggests that the project as currently proposed would not comply with the part 360 urban noise standard for 10 PM to 7 AM (night) and possibly not with the corresponding 7 AM to 10 PM (day) noise standard either.

CHA argued that the site’s isolated surroundings, and its location in open parkland, indicate that the project should not be governed by the part 360 noise standards for urban areas but rather by the noise standard for rural areas. CHA also stated that the environmental assessment for the Gateway Estates project, located across Fountain Avenue from the site, “noted that because of the lack of development in the area, the ambient noise levels were much less than that associated with an urban environment.”

Section 360-1.14(p) of part 360 contains noise limits for rural, suburban and urban areas. The rural and suburban limits are lower than the urban noise limits in that section. There are no separate noise limits specified for urban parks or similar locations within cities. For purposes of this discussion, the urban noise limits will be considered as the limits applicable to this project.

The Applicant’s September 10, 2004 letter assumed a “daytime standard of 67 db. at 150 feet” but this is not the daytime urban noise standard in part 360, which instead is 67 dB(A) beyond the property line.

The Applicant’s September 10, 2004 letter stated that, “The facility operating hours are 7 AM to 4 PM, as noted in the engineering report, and the equipment in question will not operate after 10 PM and before 7 PM, even on the six weekends when leaves may be delivered at night. Thus, the Facility will comply with the Part 360 noise standard for urban areas during 10 p.m. to 7 a.m.” The assumptions in the first sentence of this statement, however, are contradicted by the Applicant’s engineering report and the draft permit.²

Section 4.1.3 of the Engineering Report provides for accepting material “on a three-shift basis” (presumably 24 hours

² A similar inconsistency was noted at footnote 15 of the issues ruling.

per day) during peak periods between October 1 and December 31. The draft permit authorizes operation between 7 AM and 4 PM, Monday through Friday, "with excursions as described in Section 4.1.3 of the December 2002 Engineering Report cited in Special Condition 16, below." The engineering report does not limit the facility operating hours to 7 AM to 4 PM all year.

With regard to limiting the use of particular equipment, neither the engineering report nor the draft permit impose such a limit. Special Condition 16 of the draft permit states that operation of the facility must conform to certain documents specified in that special condition. These documents include the December 16, 2002 EAS and the Engineering Report as updated by letters dated February 12, 2004 among other dates. The EAS attachment, at page 1, states that, "Debugging and compost screening equipment and the tub grinder will not operate at night, on weekends or on holidays." The February 12, 2004 letter, however, transmitted an updated page A-2 for the engineering report that states, among other things, "It is anticipated that the compost processing operations would be conducted during the standard workday. However, during events of peak overload, the facility may increase its manpower *and equipment usage*. In the event of peak overloads, the facility would either operate longer hours or operate on weekends until the overload was reduced or the facility would accept yard waste on a three-shift basis." (Emphasis added).

The equipment-related statement in the EAS does not address use of other noisy equipment (front-end loaders and trucks) on site at night or on weekends, and the statement in the February 12, 2004 update of the engineering report may negate even the limitation stated on page 1 of the EAS.

The engineering report and the draft permit do not limit nighttime leaf deliveries to six weekends. The EAS, which is incorporated into the draft permit by reference (special condition 16) states that, "During the fall leaf collection period [no dates identified], the facility may accept material on a three-shift basis." (EAS attachment, at 1). The EAS also states, "DSNY [Department of Sanitation] packer trucks will deliver leaves principally between noon and 8 pm, with some deliveries at night, and may occur also on Sunday during the fall collection period." (EAS attachment, at 9). These provisions would allow leaf deliveries at night during more than the six weekends assumed by the Applicant.

Limiting the hours of operation of the loudest activities at a facility is a recognized method of reducing noise impacts ("Assessing and Mitigating Noise Impacts," DEC Program Policy

DEP-00-1, revised February 2, 2001, at 23 - 24, www.dec.state.ny.us/website/dcs/policy/noise2000.pdf). The application and the draft permit do not, however, provide an effective limitation of this kind. The application and the draft permit also do not support the conclusion stated in the Applicant's September 10, 2004 letter quoted above.

An intervenor can raise an issue for adjudication by identifying a defect or omission in the application, where the defect or omission is likely to affect permit issuance in a substantial way (see, Matter of Halfmoon Water Improvement Area, Decision of the Commissioner, April 2, 1982). CHA asserted that the application and draft permit are deficient with regard to noise. CHA contended that the hours of operation are not effectively limited and that the Applicant failed to provide information requested by DEC Staff in the notice of incomplete application (including a detailed noise monitoring program). CHA also argued that the Applicant's noise information considered noise from equipment which differs from the equipment identified in the Engineering Report, did not provide the number and duration of the measurements reported, did not relate the measurements to noise levels at the property line, and did not take into account truck noise or cumulative effects of more than one item of equipment running at the same time. In comparison with the urban noise standards of part 360, CHA stated that the noise levels cited in the Applicant's September 10, 2004 letter are just below the noise limits without including truck noise.

CHA also offered the testimony of Christopher Boyd, who had previously been proposed as a witness by both CHA and Baykeeper, concerning CHA's assertion that additional analysis of truck noise would be necessary in order to provide an analysis comparable to that done for the Applicant's study of commercial waste management. CHA also asserted that the dump tickets from the Applicant's Canarsie Park facility, a predecessor of the present proposal, preliminarily indicate significant numbers of vehicles will come to the facility during the night and early morning hours.

Section 360-1.14(p) includes the following requirements:

"Noise levels resulting from equipment or operations at the facility must be controlled to prevent transmission of sound levels beyond the property line at locations zoned or otherwise authorized for residential purposes to exceed the following Leq energy equivalent sound levels: ...[Urban: 7 a.m. - 10 p.m., 67 decibels (A); 10 p.m. - 7 a.m., 57 decibels (A).] The Leq is the equivalent steady-state sound level which contains the same acoustic energy as the time

varying sound level during a one-hour period. It is not necessary that the measurements be taken over a full one-hour time interval, but sufficient measurements must be available to allow a valid extrapolation to a one-hour time interval.

(1) If the background residual sound level (excluding any contributions from the solid waste management facility) exceeds these limits, the facility must not produce an Leq exceeding that background.

(2) The sound level must be the weighted sound pressure level measured with the slow metering characteristic and A-weighted.

(3) Measuring instruments must be Type 1 general purpose sound level meters, Type 2, or corresponding special sound level meters Type S1A or S2A.

(4) Mufflers are required on all internal combustion-powered equipment used at the facility. Sound levels for such equipment must not exceed 80 decibels at a distance of 50 feet from the operating equipment."

This provision is applicable to the present project. Much of the area around the site is zoned residential (Engineering Report, Fig. 2-7) and the area immediately across Flatlands Avenue from the northwest corner of the site consists of small lots that are shown as "Residential (Private)" on Fig. 2-9 of the Engineering Report. CHA's petition for party status also made reference to new homes located north of the eastern portion of the facility (March 18, 2004 petition, at 21 and 22).

The noise-related information in the application, the EAS and the Applicant's September 10, 2004 letter does not demonstrate compliance with 6 NYCRR 360-1.14(p). The information submitted with the September 10, 2004 letter does not constitute a noise analysis, study or assessment, but instead is a report of measured and predicted sound levels that do not provide sufficient information to determine whether the project would comply with section 360-1.14(p).

The Applicant did not provide a calculation of the sound levels that could be expected at the property line, but instead provided sound level measurements for individual units of certain equipment taken at a variety of distances from the equipment, plus the manufacturer's information about sound levels at 25 and 50 feet from an engine on a trommel. These sound levels are

reported in decibels, not decibels (A).³ The readings taken by Organic Recycling also appear to be short term measurements, not measurements taken over a one-hour period, and there is no indication that sufficient measurements were taken to allow a valid extrapolation to a one-hour time interval. The page of readings taken by Organic Recycling reports that the readings were made with a meter that meets Type II standards (presumably the same as Type 2) and provides the model number of the meter as requested by DEC Staff. There is no indication, however, that any of the reported sound levels were measured in compliance with paragraph 360-1.14(p) (2), and the units reported ("DB") suggest the measurements did not comply with this paragraph. The Applicant has not provided a measurement of the background residual sound level at the site, so one cannot tell whether paragraph 360-1.14(p) (1) applies here.

The information presented by the Applicant cannot readily be used to predict Leq sound levels at the property line during operation of the facility. (As discussed below, the information also omits some noise sources and it is not clear that it accurately reflects the equipment that would actually be used at the site.) While it might be possible that a person familiar with acoustics could make such a calculation from information of this kind, no such calculation is in the record and it cannot be assumed that the measurements provide the information necessary to do this, much less that the calculation would indicate compliance with the noise limits in part 360. Because this is a facility that has already operated, the Applicant might have submitted appropriate measurements taken during operations, but the Applicant did not submit such measurements.

CHA argued that the Applicant only provided a very small fraction of the noise level information that should have been provided (October 8, 2004 letter and Table 1 of that letter). While the columns in CHA's table reflect more measurements than would be necessary, CHA did point out that some of the equipment for which noise measurements were reported are different models or from different manufacturers than the equipment identified in the attachments to the Applicant's Operation and Maintenance

³ Sound pressure levels may be expressed in decibels (dB) or in the A-weighted decibel scale (dB(A)) which is weighted towards those portions of the frequency spectrum, between 20 and 20,000 Hertz, to which the human ear is most sensitive ("Assessing and Mitigating Noise Impacts," at 7).

(O&M) Plan.⁴ The O&M Plan, at A-34, states that individual equipment models and specifications will depend upon which pieces the contractor assigns from its equipment pool. While noise levels may be similar among various makes and models of a given type of equipment, this is not apparent from the application, particularly for relatively unusual equipment like a windrow turner, and no ranges of possible noise levels for the general types of equipment (for example, front end loaders) are provided.

The trommel and engine for which the Applicant submitted noise information are both different from the trommel and the engine shown in the Engineering Report (see Attachment 4 of O&M Plan). The information from the trommel manufacturer is for the engine on the trommel, not the whole trommel unit.

The O&M Plan refers to using a front end loader to turn windrows and states that a windrow turning machine would not be used until year three of operation (O&M Plan, at A-29 and A-34). Attachment 6 of the O&M Plan states the Frontier windrow turner would have backup alarms, but noise from these or from similar alarms on other equipment is not considered in the application documents.

Trucks, including a dump truck, Sanitation Department trucks, other trucks delivering waste, and possibly a water truck, would also operate on the site but the Applicant has not provided any quantitative analysis of noise that includes these sources.

CHA criticized the application for not including surveyed distances, in relation to both the variances requested by the Applicant from setback requirements and the evaluation of noise impacts. The application includes a survey, but this shows a portion of the undeveloped site rather than the facility. The application includes a site plan, which is to scale but does not show the location of the tub grinder or the trommel.⁵ The application also includes a Figure 4-2, with no scale specified but apparently using the site plan as the base map, that shows the location of the tub grinder, the trommel, the active composting pads and the active mulching pad. None of these drawings include a line marked as the property line, although

⁴ While CHA's table states that the noise level of the particular mechanical grinder (tub grinder) identified in the O&M Plan was tested, ORI's data reports a different model number.

⁵ The survey and the site plan are in pockets at the back of the Engineering Report.

Figure 4-2 shows a line labeled "Limits of site" which is very similar to the fence line on the site plan. If the fence line and site limits along the western and northern boundaries of the site are taken as being at the property line, and if one compares Figure 4-2 with the site plan, noise-generating activities are proposed at locations quite close to the property line.

The distances between ORI's sound measurement points and the measured equipment are greater than those between the fence line and the locations at which this equipment would be used on the site. The reported tub grinder noise was measured at 120 or 168 feet from different sides of the machine, but the tub grinder is shown as being approximately 25 feet from the fence line. Noise from the loaders and the windrow turner was measured at distances ranging from 100 to 142 feet from this equipment, but the edges of the western active compost pad (at the inner limit of the berm) are approximately 30 or 35 feet from the fence line. Because all of ORI's reported noise levels are approximately 66 dB, this strongly suggests that the noise levels at 25 to 35 feet from the equipment would be greater than 67 dB.⁶ The trommel would also be close to the property line, because Figure 4-2 shows the trommel as being approximately 40 feet from the fence line. As pointed out by CHA, the cumulative effect of multiple items of equipment also needs to be considered (for example, dump trucks or loaders bringing material to the stationary equipment).

The Applicant's September 10, 2004 letter states that the berm around the site "will provide 10 db. - 15 db. of further mitigation. See CEQR Technical Manual, 3R-21, sections 513 and 520." Section 513 of the City Environmental Quality Review Technical Manual, however, includes the statement that "[b]arrier wall attenuation has a practical limit of 10 to 15 dB(A), so it would provide complete impact mitigation only when exterior $L_{eq(1)}$ levels⁷ (for existing uses) at receptors are less than 75 dB(A). It must also be kept in mind that barriers are only effective when the line-of-sight is broken between the source and receiver. Therefore, buildings having windows higher than the barrier may not receive much benefit from the barriers..." Section 520 makes reference to the discussion of barriers found in section 513.

These sections of the CEQR Technical Manual do not state that a barrier wall (berm) will provide 10 to 15 dB(A) of noise

⁶ This paragraph considers noise levels in dB rather than dB(A) because that is how ORI reported its measurements.

⁷ $L_{eq(1)}$ refers to a one-hour measurement (CEQR Technical Manual section 123.1).

attenuation, but rather that this is the practical limit of this mitigation measure. With regard to the line of sight, the berms proposed at the facility are described in the variance applications as being approximately eight feet high. It is not clear that the line of sight would be broken between the noisy parts of large equipment and the property line.

CHA also offered to prove that, based upon records for the former Canarsie Park composting facility, one could expect that there would be significant numbers of vehicle trips to the Spring Creek Park composting facility during the late night and early morning hours. Noise due to trucks at the site was not analyzed by the Applicant, even in a general way, although this would be part of the overall noise generated by the facility's operation. As discussed above, the Applicant has not provided a quantitative assessment of the noise that could be expected at the property line due to operation of the equipment that would likely operate on the site, and truck noise would be part of such an assessment. Mr. Boyd's credentials were discussed in Baykeeper's July 6, 2004 correspondence. This document identified Mr. Boyd as a Senior Policy Analyst with the New York City Comptroller's Office and stated that he has experience in transportation planning and in assessing environmental impacts of solid waste projects including truck-related impacts. Although CHA and Baykeeper did not discuss whether Mr. Boyd has education or experience specifically in acoustics, the information in the record thus far indicates he could contribute to the record at least in the context of environmental analysis and assessing the amount of truck traffic that would be reasonable for one to include in quantifying the noise levels produced by the facility.

An issue for adjudication exists concerning whether or not the project would comply with the noise standards for solid waste management facilities found at 6 NYCRR 360-1.14(p), regardless of whether the standard for urban areas or another standard applies at this site.

Appeals

Pursuant to 6 NYCRR 624.6(e) and 624.8(d), these supplemental rulings on issues may be appealed in writing to the Commissioner on an expedited basis. While 6 NYCRR 624.6(e)(1) provides that such appeals are to be filed with the Commissioner in writing within five days of the disputed ruling, this time frame may be modified by the ALJ, in accordance with 6 NYCRR 624.6(g), to avoid prejudice to any party.

Any appeals must be received no later than 4:00 P.M. on March 3, 2005 at the following address: Deputy Commissioner Lynette Stark, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1010. Any replies must be received no later than 4:00 P.M. on March 17, 2005 at the same address.

Copies of any appeals and replies must be transmitted to all persons on the interim service list at the same time and in the same manner as they are sent to the Deputy Commissioner, with two copies being sent to my address. Service by fax is not authorized.

Revised service list

A revised service list is enclosed. Brooklyn Community Board No. 5 has been removed from this list because it did not appeal the denial of its request for party status and thus is not a party to the hearing. As before, if any correspondence is sent to me or to the Commissioner regarding this case, a copy must be sent to all persons on the service list.

Albany, New York
February 8, 2005

_____/s/_____
Susan J. DuBois
Administrative Law Judge

Encl.

TO: Christopher G. King, Esq.
John Nehila, Esq.
Ronald J. Dillon
Natara Feller
Amanda Hiller, Esq.

cc: Earl L. Williams