

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

In the Matter

- of -

the Application for Permits
for the Phase I (Cell 6) Expansion
of the County Landfill in the
Village of Monticello, Sullivan County

- by -

SULLIVAN COUNTY DIVISION OF SOLID WASTE,

Applicant.

DEC Project No. 3-4846-00079/00021

DEPUTY COMMISSIONER'S INTERIM DECISION

February 15, 2005

DEPUTY COMMISSIONER'S INTERIM DECISION ¹

The Sullivan County Division of Solid Waste ("Sullivan County" or "County") proposes to expand its existing landfill, which is located in the Village of Monticello, New York, by an additional 3.4 acres ("Phase I expansion"). The Phase I expansion would add a new cell (designated as "Cell 6") to the existing landfill. The proposal would require the modification of three permits that the New York State Department of Environmental Conservation ("Department") had previously issued to the County, including a solid waste management facility ("facility") permit, an industrial State Pollutant Discharge Elimination System ("SPDES") permit, and a Clean Air Act Title V ("air") permit.

Administrative Law Judge ("ALJ") Edward Buhrmaster issued his Rulings on Party Status and Issues on July 20, 2004 ("Initial Rulings") in which he determined that only two issues -- odor control and litter control -- may require adjudication. The ALJ ruled that all other proposed issues were not substantive and significant.

¹By memorandum dated February 8, 2005, the Acting Commissioner of the New York State Department of Environmental Conservation delegated the authority to make this decision to the Deputy Commissioner for Natural Resources and Water Quality.

The issues conference was reconvened on December 7, 2004 to further address the odor control issue. On December 15, 2004, the ALJ issued a Supplemental Issues Ruling ("Supplemental Ruling") in which he determined that, based on the County's development of a new odor control plan and the incorporation of the plan (with an addendum) into the draft facility permit, the issue of odor control did not require adjudication. No issues conference participant appealed the Supplemental Ruling and, accordingly, odor control is not an issue for adjudication in this proceeding.

With respect to the issue of litter control, the County initially consented to a revised special permit condition no. 10 in the draft facility permit that addressed litter control. The County then qualified its consent, indicating that it would object to the revised condition on litter control if an adjudicatory hearing was required on any other issue. The County continues to maintain this position.

Based on my review of the record in this proceeding, I hereby affirm the ALJ's Initial Rulings, subject to my comments in this decision.

BACKGROUND

Initial Rulings

As discussed by the ALJ in the Initial Rulings, issues were proposed for adjudication by the Town of Thompson and the Village of Monticello, which are the host communities for the County landfill and which filed a joint petition; Special Protection of the Environment of the County of Sullivan, Inc. ("SPECS"), a not-for-profit membership corporation consisting primarily of Sullivan County residents; the Sullivan County Association of Supervisors, Inc. ("Supervisors' Association"); and the County. Of these issues, the ALJ identified only two -- odor control and litter control -- as possibly requiring adjudication.

-- Odor Control

The record demonstrates that Sullivan County has experienced long-standing difficulties in controlling odors arising from landfill operations. As part of the draft facility permit, Department staff proposed language requiring that the County submit a new landfill odor control plan within 15 days of issuance of any permit for the Phase I expansion. However, the proposed permit language did not direct particular control measures, nor did it establish a timeframe for the approval or

implementation of such control measures.

The ALJ directed that the County submit an odor control plan to allow affected parties an opportunity to raise issues with regard to proposed control measures (see Initial Rulings, at 8). The ALJ ruled that adjudication would be required if Department staff objected to the County's proposed odor control plan or if any other issues conference participant raised a substantive and significant issue with respect to the odor control plan.

The ALJ granted full party status, in any adjudication of odor control issues, to the Town of Thompson and the Village of Monticello (which are the host communities for the landfill), and to SPECS.

-- Litter Control

During the proceeding, concerns were raised regarding the inadequate confinement of solid waste and resulting litter control problems beyond the landfill's working face. Department staff proposed that the County submit a revised litter control plan within 30 days of the effective date of the facility permit for the Phase I expansion. In contrast to the odor control plan, minimum substantive requirements of the litter control plan were

identified in the draft facility permit (see Initial Rulings, at 17).

During that portion of the issues conference that was held in April 2004, a revision to special condition no. 10 of the draft facility permit which addressed litter control was negotiated between, and agreed to by, the County and Department staff. However, the County subsequently indicated that, if the ALJ determined that an adjudicatory hearing were necessary on any other issue, the County would not consent to revised special condition no. 10. The ALJ ruled that, if the County indicated its written consent to the permit condition, the submission of a new litter control plan could be deferred until after the facility permit was issued, but if the County objected to the condition, an adjudicatory hearing on its objection would be held. The ALJ also determined that, because no prospective intervenor had demonstrated that it could make a meaningful contribution on the litter control issue, any adjudication of this issue would be limited to the County and Department staff.

Appeals

Appeals from the Initial Rulings were taken by SPECS and the Supervisors' Association. No appeals were filed by the County, Department staff or the Village of Monticello and the

Town of Thompson.

By letter dated July 30, 2004, SPECS set forth seven "objections" to the ALJ's Initial Rulings on the proposed air permit.² In its submission, SPECS indicated that it filed its objections "reluctantly, and specifically to preserve the legal issues regarding applicable requirements under Title V of the Clean Air Act [that] it raised in the issues conference."³ The objections included the following:

- the Department failed to comply with the public

² Although the submission lists seven objections, two objections are labeled "3" and, accordingly, the actual number of objections is eight. For purposes of this discussion, and in order to retain SPECS's numbering, the two objections labeled "3" will be considered together.

³ The County, in its responding papers, questioned whether SPECS, by raising "objections," had submitted an "appeal." The County argued that SPECS's appeal failed to comply with both 6 NYCRR 624.6(e)(1), which provides that an expedited appeal must be filed within five days of the disputed ruling, and 6 NYCRR 624.8(d), which sets forth, in part, the categories of rulings that may be appealed to the Commissioner on an expedited basis during the course of a hearing. In this proceeding, due to the length of the Initial Rulings, the ALJ allowed extra time for the parties to submit appeals, as is expressly authorized by 6 NYCRR 624.6(g). Accordingly, the County's argument based on 6 NYCRR 624.6(e)(1) lacks merit. In addition, SPECS's objections are directed to the ALJ's rulings to include or exclude an issue for adjudication, for which appeals as of right are authorized pursuant to 6 NYCRR 624.8(d)(2)(i). Although the County argues that SPECS's submission is styled as "objections" rather than as an appeal and that the submission does not comport with the ALJ's directions on the content of any appeal, I see no defect in SPECS's filing that would lead me to decline to consider it as an appeal or to consider it outside of the permissible categories subject to appeal in this proceeding.

participation requirements of Title V of the Clean Air Act;

- the project is impermissibly fragmented because the permit modification is based on a combined County final environmental impact statement which addressed the Phase I expansion and a proposed subsequent expansion ("Phase II expansion");

- it is inappropriate to require the offer of experts as part of an offer of proof on the issues of co-disposal and design capacity, which SPECS argues are "purely legal issues";

- the County's landfill is a "co-disposal landfill" because industrial and other related waste have been disposed of in that facility;

- design capacity, under the federal regulations, includes daily and intermediate cover material unless such cover material is "clean soil or other 'non-degradable' material";

- the applicable (potential to emit) emissions threshold for carbon dioxide is 100 tons per year, not 250 tons per year;

- Sullivan County should not receive the benefit of "liberal default values" for estimating emissions from the landfill in light of its history of noncompliance in controlling landfill gas flares and hydrogen sulfide emissions; and

- the Department's Title V "statement of basis" was insufficient because Department staff failed to provide calculations of potential emissions in the "statement of basis"

(SPECS July 30, 2004 submission, at 2-5).⁴

By letter dated August 11, 2004, the Supervisors' Association, which is comprised of the elected supervisors of the towns within Sullivan County, appealed from the ALJ's dismissal of the issues that the Supervisors' Association had raised in its petition for party status and from the ALJ's denial of party status to the Supervisors' Association in this proceeding. The Supervisors' Association argued that it had properly raised several issues for adjudication, including the management of the landfill's remaining disposal capacity, the "maximum tonnage limits" in the draft facility permit, and limitations on the receipt of alternative daily cover.

⁴ SPECS, on its appeal, also states that it "is pleased that the ALJ has found the odor issue to be significant enough that it must be addressed to the satisfaction of stakeholders closest to the applicant's landfill before permits can be issued." SPECS submission, at 1. SPECS's statement is not correct.

The ALJ directed that the County submit the proposed odor control plan to the Department, with copies to the prospective intervenors. Adjudication would be required to the extent that Department staff objected to the County's plan or, if staff did not object, to the extent that other parties, with an adequate offer of proof, raised a substantive and significant issue about the plan. Accordingly, formal adjudication of the odor control plan or any of its components would not depend upon the "satisfaction of stakeholders closest to the applicant's landfill," but rather upon whether a participant in the issues conference raised an issue with respect to the plan or its components that would meet the substantive and significant standard established by 6 NYCRR 624.4(c).

With respect to odor and litter control which were identified as potential issues for adjudication, the Supervisors' Association argued that the ALJ erred in concluding that the Supervisors' Association had no direct interest in the subjects of odor and litter control. The Supervisors' Association, in its appeal, maintained that it should be granted party status with respect to those two issues if they are to be adjudicated. In addition, the Supervisors' Association indicated that it had an interest in assuring that the landfill is operated in an environmentally responsible fashion.

Replies

The County replied to the appeals by letter dated August 30, 2004, and Department staff also responded by letter dated August 27, 2004.

The County rejected all of SPECS's objections, and referred to the specific sections of the Initial Rulings where the ALJ had evaluated and dismissed each of SPECS's objections to the proposed air permit. With respect to the Supervisors' Association, the County concurred with the ALJ's determination that the issues that the Supervisors' Association raised in its appeal were outside the jurisdiction of the proceeding and, therefore, not subject to adjudication. However, the County

indicated that it believed that the Supervisors' Association had the requisite environmental interest to be accorded party status in this proceeding.

Department staff also responded to the appeals of both the Supervisors' Association and SPECS. Department staff concluded that the issues that the Supervisors' Association raised on appeal all related to limiting waste imports to preserve the landfill's capacity for the County's residents. Department staff maintained that the ALJ was correct in ruling that those issues were matters for the County to determine and were not properly within the Department's jurisdiction. With respect to SPECS's appeal on air issues, Department staff indicated that the ALJ was correct in dismissing SPECS's objections.

DISCUSSION

Pursuant to the Department's permit hearing regulations at 6 NYCRR Part 624 ("Part 624"), a potential party must demonstrate that an issue it proposes is "substantive" and "significant" for it to be adjudicable (6 NYCRR 624.4(c)(1)(iii)). An issue is substantive "if there is sufficient doubt about the applicant's ability to meet statutory

or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry" (6 NYCRR 624.4(c)(2)). An issue is significant "if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit" (6 NYCRR 624.4(c)(3)).

In determining whether an adjudicable issue exists, the ALJ "must consider the proposed issue in light of the application and related documents, the draft permit, the content of any petitions filed for party status, the record of the issues conference and any subsequent written arguments [that the ALJ authorizes]" (6 NYCRR 624.4(c)(2)). Where Department staff has reviewed the application and determined that a component of the project, as proposed or as conditioned by the permit, conforms to all applicable statutory and regulatory requirements, the burden of persuasion is on a potential party proposing any issue related to that project component to demonstrate that the issue is substantive and significant (see 6 NYCRR 624.4(c)(4)).

Judgments must be made as to the strength of the offer of proof presented by a potential party. Any assertions made must have a factual or scientific foundation (see Matter of

Bonded Concrete, Interim Decision of the Commissioner, June 4, 1990, at 2). Speculations, expressions of concern, or conclusory statements alone are insufficient to raise an adjudicable issue. Even where an offer of proof is supported by a factual or scientific foundation, it may be rebutted by the application, the draft permit and proposed conditions, the analysis of Department staff, the record of the issues conference, among other relevant materials and submissions (see Matter of Thalle Industries, Inc., Decision of the Deputy Commissioner, November 3, 2004, at 19-20).

Where an issues ruling is appealed, substantial deference is given to the ALJ on factual issues (see Matter of Saratoga County Landfill, Second Interim Decision, October 3, 1995, at 3). My initial consideration is whether the ALJ has properly applied the substantive and significant standard (see Matter of Hyland Facility Associates, Commissioner's [Third] Interim Decision, August 20, 1992, at 2).

A review of the record confirms that the ALJ correctly applied the substantive and significant standard in this proceeding. The ALJ's analysis is thorough, detailed and well-reasoned, and fully considers the offers of proof that were presented in accordance with the requirements of 6 NYCRR Part

624. SPECS and the Supervisors' Association, in their appeals, have failed to rebut the ALJ's analysis and failed to demonstrate that the substantive and significant standard was misapplied.

SPECS Appeal

As indicated, SPECS challenges various aspects of the Initial Rulings on issues relating to the proposed landfill air permit. In the Initial Rulings, the ALJ fully and comprehensively evaluated each of the proposed Clean Air Act issues advanced by SPECS (see, Initial Rulings, at 35-51). Furthermore, a review of the issues conference transcript indicates that Department staff demonstrated that the applicable requirements of the Clean Air Act were met, and effectively rebutted SPECS's offers of proof.

Although I adopt the ALJ's analysis that dismissed the proposed air permit issues that SPECS raised at the issues conference, and on which it bases its appeal, certain points are worth noting with respect to SPECS's objections. As to SPECS's first objection, it argues that the Department failed to comply with Title V's public participation requirements when it made only the application materials available to SPECS. This objection is meritless. The record demonstrates that the Department provided notice to the public since early January 2004

of the opportunity to review the application materials in addition to the draft Title V air permit, as well as the locations where these materials were available. Department staff also responded to the requests that SPECS subsequently filed, pursuant to the Freedom of Information Law ("FOIL", which is codified in Article 6 of the New York Public Officers Law).⁵

In its second objection, SPECS argued that the County's application was "impermissibly fragmented" because the permit modification was based on a final environmental impact statement that addressed both the Phase I expansion (Cell 6) and the Phase II expansion (a further planned landfill expansion).⁶ The issue of fragmentation, in relation to the federal Clean Air Act regulations in general and prevention of significant deterioration review in particular, was fully addressed in the issues conference. Department staff considered emissions from the Phase I expansion and the Phase II expansion and, based on its analysis, was able to conclude that the County landfill, with emissions from both the Phase I expansion and Phase II expansion,

⁵ Furthermore, the ALJ stated at the issues conference that he would entertain motions allowing SPECS additional time to supplement its petition if SPECS could demonstrate good cause based on any late responses to its FOIL requests. No such motions were made by SPECS (see Initial Rulings, at 32).

⁶ At the time of the appeal, the application for the Phase II expansion had not been referred to the Office of Hearings and Mediation Services.

would fall below the emissions threshold for prevention of significant deterioration review (see, e.g., Issues Conference Transcript ("Tr."), at 350-51). Thus, no improper fragmentation will occur by the separate consideration of each phase.

In its third objection, SPECS argues that the County should have, in calculating emissions, treated the landfill as a co-disposal landfill due to the disposal of municipal solid waste and non-residential waste in the landfill over time. Under that rationale, the County would have been required to calculate the concentration of non-methane organic compounds in landfill gas using a default value of 2,420 parts per million by volume ("ppmv") as hexane, rather than the lower level of 595 ppmv that the County used. In addition, SPECS argues that the ALJ inappropriately imposed a requirement that SPECS would need to furnish experts on the air-related issues of co-disposal and design capacity. According to SPECS, the issues are purely legal and, accordingly, no expert offer of proof is required.

SPECS's offer of proof with respect to this issue was insufficient. As the ALJ noted, SPECS's petition "contains no factual offer, or even argument for that matter, showing how, with revised emission factors, major source thresholds would be crossed" (Initial Rulings, at 43). The issues that SPECS

presented were not merely legal ones but contained factual components for which SPECS's offer of proof was insufficient. SPECS did not offer any witness in support of its argument that emission factors were misapplied and the landfill emissions underestimated, nor did it demonstrate that the County's use of the landfill gas emissions model was inconsistent with the user's guide prepared by the U.S. Environmental Protection Agency ("EPA") and related correspondence (see Exhs. 34 & 35, respectively).

SPECS also failed to make any offer to substantiate its allegation that the County landfill had previously accepted substantial quantities of non-residential waste, including hazardous waste, that would be necessary to demonstrate whether the co-disposal default value should be used. The arguments regarding co-disposal and design capacity specifically implicate factual issues including the types and amounts of waste disposed and the time periods of such disposal. As such, these arguments are not "purely legal" as SPECS otherwise contends.

In its objection numbered four, SPECS states that under federal regulations, landfill design capacity includes daily and intermediate cover unless it is clean soil or other "non-degradable" material. However, as the ALJ noted, the federal

regulation to which SPECS is referring (section 60.751 of title 40 of the Code of Federal Regulations), refers only to "waste" and "contains no reference to cover whatsoever" (Initial Rulings, at 48). Under SPECS's reading of the federal regulation, alternative daily cover would be added to the County's determination of the landfill's maximum design capacity and the amount of waste utilized in calculating the landfill's air emissions. Contrary to SPECS's argument, the County's distinction between waste and cover in estimating emissions is consistent with the instructions in the EPA user's manual for the emissions modeling protocol that the County used (see Initial Rulings, at 47-48; see also Exh. 15, special condition no. 30).

SPECS, in its objection numbered five, asserts, without any statutory or regulatory authority, that the applicable emissions threshold for carbon dioxide for this project is 100 tons per year, not 250 tons per year. It then asserts, again citing no legal support, that the County's estimate of potential emissions of 82 tons per year would exceed 100 tons per year "if an elevated design capacity were used."

The ALJ stated in the Initial Rulings that landfills are not defined as category sources under the prevention of significant deterioration regulations and, therefore, to be a

major source the landfill must have the potential to emit at least 250 tons per year of an attainment-regulated pollutant (Initial Rulings, at 38). SPECS makes only unsubstantiated and bare assertions, without providing any authority that would contradict the ALJ's determination. In fact, even if the 100 ton per year threshold were applicable to the Phase I expansion, SPECS provides no explanation or calculations to support its assertion that potential emissions would exceed 100 tons per year.

In its objection numbered six, SPECS argues that the County should not get the benefit of "liberal default values" for estimating emissions due to its history of noncompliance in controlling landfill gas flares and hydrogen sulfide emissions. SPECS fails to explain what it means by "liberal default values" or what it believes are the appropriate values to employ. Again, SPECS's assertions are vague with no adequate definition or legal support. In fact, Department staff noted on the record that the facility's flare systems have been subject to repair and are operating properly at this time (see, e.g., Tr. at 566-567).

SPECS, in its objection numbered seven, argues that the Department's Title V permit "statement of basis" contained in the Department's permit review report was insufficient and the

Department had not included all calculations in the "statement of basis." This objection is meritless. Department staff noted on the record that Department staff's permit review report contained all of EPA's requirements for a "statement of basis" (see, e.g., Tr. at 555-57). Furthermore, the ALJ reviewed requirements for a "statement of basis," as set forth in 40 CFR 70.7(a)(5), and found that the permit review report of Department staff was the "functional equivalent" of a "statement of basis" (Initial Rulings, at 50).

SPECS's objections were fully considered and addressed at the issues conference. Its offers of proof were insufficient to raise any adjudicable issue relating to the draft air permit. No expert witnesses were proposed and no adequate grounds were presented in support of its petition for party status. SPECS failed to meet its burden of persuasion that the issues it proposed were substantive and significant. Accordingly, the issues raised on SPECS's appeal are denied in their entirety.

Supervisors' Association Appeal

The Supervisors' Association appeals from the Initial Rulings with respect to the rejection of issues pertaining to the management of the landfill's remaining disposal capacity. These include whether limitations on the importation of waste from

outside the County should be imposed, whether maximum tonnage limits should be limited, and whether the receipt of alternative daily cover materials should be restricted in an attempt to extend the life of the subject landfill.

The challenge of the Supervisors' Association, which is directed to these landfill management issues, is contrary to State policy and authority and must be rejected. New York State's Solid Waste Management Act ("Act"), which is codified at title 1 of article 27 of the New York State Environmental Conservation Law ("ECL"), establishes that a Department-approved solid waste management planning unit, and not the Department, is responsible for addressing such landfill management concerns.

The Act recognizes that "the basic responsibility for the planning and operation of solid waste management facilities remains with local governments and the state provides necessary guidance and assistance" (ECL 27-0106(2)). The Act provides for the establishment of local planning units which are charged with preparing solid waste management plans that, in part, are to provide for the management of solid waste (see ECL 27-0107(1)(c)). A local solid waste management plan is subject to Department review, and if the Department determines that it satisfies various statutory requirements (including the

requirement to address the comments and views expressed by the public, and by concerned governmental, environmental, commercial and industrial interests), it becomes the plan in effect for that jurisdiction (see ECL 27-0107(1)(e)).

A fundamental tenet of State solid waste management policy, therefore, is the central role of the local planning unit in managing the solid waste needs of its jurisdiction. The Act does not contemplate that the Department, through permit conditions, will supplant the solid waste management planning determinations of the local planning unit.

Sullivan County is the designated solid waste planning unit within whose jurisdiction the landfill falls. The solid waste management plan that the County has developed has been approved by the Department and the Phase I expansion is consistent with that plan. In the context of this proceeding, it is not for the Department to determine whether waste importation should continue or to impose limitations on a municipal landfill's service area. I fully concur with the ALJ's determination that, in this proceeding, whether to restrict or ban waste imports is a policy issue for the County and its elected officials, and not the Department (see Initial Rulings, at 20). I affirm the ALJ's ruling that issues about the

management of the landfill's remaining disposal capacity, to the extent that the issues bear on the County's ability to plan for its waste management future, are outside the scope of this proceeding.

The Supervisors' Association also challenges the ALJ's ruling that no issue exists with regard to maximum tonnage limits set forth in the draft landfill permit. The Supervisors' Association argues that it is prepared to present expert testimony on the environmental and economic impacts, including the costs associated with developing and implementing a system for long haul transport of waste, which will arise if the landfill is fully utilized or unavailable prior to the availability of an alternative means of disposal. Again, the Supervisors' Association seeks to have the Department supplant the role of the local planning unit.

Under the terms of the existing landfill permit and the proposed permit for the Phase I expansion, the Department has the authority to revisit waste tonnage limits to assure that the facility is capable of operating properly. However, the rate of waste disposal, so long as it is within the maximum waste acceptance limits set by Department staff, is appropriately within the discretion of the County as the Department-recognized

solid waste management planning unit. Furthermore, I concur with the ALJ that it was not demonstrated, by any competent offer of proof, that a reduction of the proposed waste limits is necessary to address the landfill's odor problems.

On appeal, the Supervisors' Association reiterates its proposal for a permit condition restricting receipt of alternative daily cover. The Supervisors' Association argues that this permit condition relates to its argument that adverse environmental impacts will be caused by the unavailability of disposal capacity within the County. The Supervisors' Association is seeking, by this permit condition, to extend the life of the landfill. However, the life of the landfill as a management issue is one for the County as local planning unit, not the Department, to decide.

The Supervisors' Association also challenges the ALJ's determination that it has failed to demonstrate sufficient environmental interest to be accorded party status in this proceeding. The Department's regulations establish that one of the requirements of a petition for full party status is to "identify petitioner's environmental interest in the proceeding" (6 NYCRR 624.5(b)(1)(ii)). An ALJ's ruling whether there is an entitlement to full party status, must in part be based on a

petitioner's "demonstration of adequate environmental interest" (6 NYCRR 624.5(d)(1)(iii)).

In this proceeding, the ALJ determined that the Supervisors' Association "has no direct interest in the subjects of odor and litter control" (see Initial Rulings, at 53). The ALJ further noted that the Town of Thompson (which had petitioned, together with the Village of Monticello, for party status separate and apart from the Supervisors' Association) is the only town that experienced the environmental impacts of the landfill operation (see id.).

"Environmental interest" is not defined in the Department's permit hearing regulations. Although the "environmental interest" requirement has been liberally construed to facilitate broad participation in Department administrative proceedings, an adequate demonstration must be made. I have considered the ALJ's analysis and see no basis to disturb his determination that the Supervisors' Association has not demonstrated an adequate environmental interest. Notwithstanding the foregoing, to avoid any prejudice to the Supervisors' Association while its appeal on party status was pending, the ALJ provided the Supervisors' Association with a full opportunity to participate, in the same manner as those granted party status on

the odor control issue, in the resolution of that issue (see generally Supplemental Ruling).⁷

All other matters raised in the appeals of SPECS and the Supervisors' Association that are not specifically addressed in this decision have been considered and found not to raise any adjudicable issue.

Supplemental Ruling

Following the issuance of the Initial Rulings, the County prepared and submitted a draft odor control plan to the issues conference participants for comment. A revised plan was then circulated on November 15, 2004, for review. The issues conference was reconvened on December 7, 2004 to address issues with regard to odor control. On December 15, 2004, the ALJ issued the Supplemental Ruling in which he determined that, based on the County's development of the odor control plan and the incorporation of the plan (with an addendum) into the draft facility permit, the issue of odor control did not require adjudication.

⁷ With respect to odor control, the ALJ granted party status to the two municipalities -- Village of Monticello and Town of Thompson -- in which the landfill is situated and which are directly affected by odor impacts.

The ALJ established a schedule whereby appeals of the Supplemental Ruling were to be received by December 23, 2004. No appeals were filed and, accordingly, odor control is not an issue to be adjudicated in this proceeding.

Litter control

The Department's regulations, subject to limitations that are not applicable here, provide that one of the bases for an issue to be adjudicable is that "it relates to a dispute between the department staff and the applicant over a substantial term or condition of the draft permit" (6 NYCRR 624.4(c)(1)(i)). The County has stated that it would not consent to the litter control provision (revised special condition no. 10) of the draft permit, which it previously agreed to, if the ALJ determined that an adjudicatory hearing were necessary on any other issue (see Initial Rulings, at 16).

The County's objection to revised special permit condition no. 10 establishes litter control as an issue that may still need to be adjudicated before a final determination on the County's permit applications can be made. It is the County's decision whether to withdraw its objection to revised special permit condition no. 10. If the County withdraws its objection, then no issue would require adjudication and the matter shall be

remanded to Department staff for the issuance of permits for the Phase I expansion, as the ALJ indicated in his Supplemental Ruling.

CONCLUSION

Based on my review of the record, I find that the appeals of SPECS and the Supervisors' Association have failed to raise any substantive and significant issues for adjudication.

Accordingly, the only possible issue for adjudication relates to the litter control measures in revised special condition no. 10 of the draft facility permit to which the County has objected. I hereby remand this matter to the ALJ to proceed with an adjudicatory hearing on litter control measures in accordance with the Initial Rulings and this Interim Decision. Based on my review of the record, there is no impediment to commencing the adjudicatory hearing on this issue at this time.

However, if the County withdraws its objection to revised special condition no. 10, there would be no issue for adjudication in this proceeding. In that event, the ALJ is directed to remand this matter to Department staff for issuance of the permits applied for by the County for the Phase I

SERVICE LIST

SULLIVAN COUNTY LANDFILL (PHASE I EXPANSION: CELL NO. 6)

Project Application No. 3-4846-00079/00021

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