

In the Matter of the Application of the
SULLIVAN COUNTY DIVISION OF SOLID WASTE
for permits for the Phase I (Cell 6)
expansion of the County landfill in the
Village of Monticello, Sullivan County.
(Application No. 3-4846-00079/00021)

**RULING OF THE
ADMINISTRATIVE
LAW JUDGE**

BACKGROUND

There have been two issues rulings in this matter. The first, dated July 20, 2004, identified two potential issues for adjudication: one concerning the control of odors and the other concerning the control of blowing litter. The second, dated December 15, 2004, eliminated odor control as a potential issue after the Sullivan County Division of Solid Waste ("the County") developed a new odor control plan that was incorporated, with an addendum, into the draft permit for the Phase I (Cell 6) expansion of the landfill.

On February 15, 2005, Deputy Commissioner Lynette M. Stark issued an interim decision resolving appeals from the rulings of July 20, 2004. The decision confirmed that this hearing would not pursue certain matters that I had ruled did not raise issues for adjudication or require the submission of additional information. There were no appeals from my ruling of December 15, 2004.

On February 16, 2005, I held a conference call with Samuel Yasgur, County attorney, and Jonah Triebwasser, counsel for Staff of the Department of Environmental Conservation ("Department Staff"). I initiated the call primarily to discuss the remaining potential hearing issue, litter control, which I had certified for adjudication because of a dispute between the County and Department Staff concerning relevant permit terms. Though not parties to this dispute, the other issues conference participants - - Special Protection of the Environment of the County of Sullivan, Inc. ("SPECS"), through its attorney, Gary Abraham; the Village of Monticello and Town of Thompson, through their attorney, J. Benjamin Gailey; and the Sullivan County Association of Supervisors, Inc. ("Supervisors Association"), through its attorney, David A. Engel - - were also included in the call.

As explained in the rulings of July 20, 2004, Department Staff entered the issues conference last year with proposed modifications of the landfill permit [Issues Conference Exhibit No. 18], including a modification of special condition no. 10 addressing litter control. After the first day of the

conference, a revision of this condition [Exhibit No. 18-A] was negotiated between the County and Department Staff and agreed to by both parties. However, on the last day of the issues conference, the County said that if I determined that an adjudicatory hearing was necessary on any other issue, it would not consent to the revised condition on the ground that it required more of the County than the Department requires of other landfill operators, and because the costs of compliance would exceed the public benefit. The County added that if I did not determine that an adjudicatory hearing was necessary on any other issue, then, in order to expedite construction of the Phase I expansion, it would accept the revised condition it had previously negotiated.

My rulings of July 20, 2004, required the County to submit a new odor control plan. They also said that adjudication of odor control issues would be required only to the extent that Department Staff objected to the County's plan or, if Staff did not object, to the extent that the other issues conference participants, with an adequate offer of proof, could raise issues about the plan. When the issues conference reconvened on December 7, 2004, the County's new plan, with an addendum developed at the conference, was accepted by Department Staff. None of the other issues conference participants appeared at the conference, effectively waiving their right to participate in the plan's refinement.

My rulings of July 20, 2004, said that the need to adjudicate litter control issues would depend solely on whether the County maintained its objection to the minimum requirements of the revised litter control permit condition. I ruled that if the County indicated its written consent to the condition, the submission of a new litter control plan could be deferred until after issuance of a permit authorizing the Phase I (Cell 6) expansion. (The permit condition requires that a revised litter control plan be submitted within 30 days of that permit's effective date.) On the other hand, I said that at such point that the County confirmed its objection to the condition, an adjudicatory hearing would be commenced forthwith.

The particular rulings identifying odor and litter control as potential hearing issues were not appealed by any of the issues conference participants. Prior to the release of the Deputy Commissioner's Interim Decision on February 15, 2005, the County reserved additional comment on the litter control condition, waiting to see if the interim decision would add other issues for adjudication.

No other issues were added as a result of the interim decision, which confirmed that the only possible issue for adjudication would relate to the litter control measures in revised special condition no. 10 of the draft permit. In her interim decision, Deputy Commissioner Stark remanded the matter to me to proceed with an adjudicatory hearing on litter control measures, unless the County withdrew its objection to revised special condition no. 10, in which case she said there would be no issue for adjudication in this proceeding. In the event the County withdrew its objection, the Deputy Commissioner directed me to remand the matter to Department Staff for issuance of the permits for the Phase I landfill expansion, consistent with the draft permits prepared by Department Staff and further developed in this proceeding.

No other issues remaining at the time of the February 16, 2005, conference call, I asked the County for its position on revised special permit condition no. 10. The County was instructed to submit a letter either accepting the condition (thus removing the last barrier to permit issuance) or contesting the condition (in which case a hearing would be held to determine the permit requirements for litter control). After the call, on February 17, 2005, Mr. Yasgur issued a letter indicating that "the County hereby waives any objection to the presently proposed Litter Control Plan" and looks forward to receiving the Cell 6 permit expeditiously. Because Mr. Yasgur's letter referred to the plan (which has not yet been developed) rather than the permit condition (which specifies the plan's minimum requirements), I held a second call with Mr. Yasgur and Department Staff representatives on February 23, 2005, to confirm the County's position. Immediately after that call, Mr. Yasgur sent me a letter clarifying that the letter of February 17 was intended to state that the County "hereby withdraws its objection to revised special condition #10."

DISCUSSION

The County's written confirmation that it has withdrawn its objection to the revised permit condition for litter control [as set forth in Exhibit No. 18-A] means that there are no remaining issues for adjudication and, therefore, that the adjudicatory hearing may be canceled. Litter control was certified as an issue for adjudication under 6 NYCRR 624.4(c)(1)(i), which provides that an issue is adjudicable if it relates to a dispute between Department Staff and an applicant over a substantial term or condition of the draft permit. My issues ruling had indicated, and the interim decision affirmed, that no prospective intervenor had demonstrated that it could make a meaningful

contribution on the litter control issue, and therefore that, if a hearing was necessary, participation would be limited to the County and Department Staff. The County and Department Staff now agree on the language of the permit condition. Therefore, no hearing is necessary.

RULING

No issues remain for adjudication in this matter. Therefore, as directed by the interim decision, there will be no adjudicatory hearing. This matter is remanded to Department Staff for the purpose of completing processing of the Phase I permit application in accordance with applicable law and issuing the requested permits consistent with the drafts prepared by Department Staff and further developed in this proceeding. Staff shall assure that, at the time the final permits are issued to the County, copies of the permits are provided to me and to counsel for SPECS, the Village of Monticello, the Town of Thompson, and the Supervisors Association.

Albany, New York
February 24, 2005

/s/
Edward Buhrmaster
Administrative Law Judge