

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 II Expansion
of the County Landfill in the
Village of Monticello, Sullivan County

- by -

SULLIVAN COUNTY DIVISION OF SOLID WASTE,
Applicant.

DEC Project No. 3-4846-00079/00027

INTERIM DECISION OF THE COMMISSIONER

March 28, 2008

INTERIM DECISION OF THE COMMISSIONER

BACKGROUND

The Sullivan County Division of Solid Waste (the "County") proposes to expand its existing landfill, which is located in the Village of Monticello, Town of Thompson, New York. The County's proposal, which is referred to as the "Phase II expansion," would expand the existing landfill by 35 acres, adding cells designated 7 through 11 to the east side of the existing facility. The Phase II expansion would partially overlap the existing landfill and raise its maximum height by about 100 feet. The currently permitted 200,000 ton maximum annual disposal rate would not change.

The Phase II expansion requires modification of three permits previously issued to the County by the New York State Department of Environmental Conservation ("Department"): a solid waste management facility permit; an industrial State Pollutant Discharge Elimination System permit; and a Title V air permit. The County also requested that the Department issue a freshwater wetlands permit to allow the Phase II expansion to be constructed on one-tenth of an acre of Freshwater Wetland MO-67, a state-regulated Class 2 wetland, and approximately two-thirds of an acre of the wetland's adjacent area. Additionally, the County requested a Water Quality Certification under section 401 of the Federal Water Pollution Control Act for the elimination of a small portion of a federally regulated wetland and the disturbance of state-regulated wetland MO-67.

The matter was referred to the Department's Office of Hearings and Mediation Services and assigned to Administrative Law Judge ("ALJ") Edward Buhrmaster. On January 18, 2007 the ALJ issued his Rulings on Issues and Party Status ("Issues Ruling") by which he granted party status to Mountain Lodge Estates ("MLE")¹ and determined that the only issue to be adjudicated

¹By petition dated June 1, 2005, Concerned Citizens of Sullivan County ("CCSC") sought party status in these proceedings. During the issues conference, counsel for CCSC advised that its membership was comprised entirely of the residents of a seasonal community known as Mountain Lodge Estates and that his client did not object to party status being granted in the name of Mountain Lodge Estates. Accordingly, the Concerned Citizens' petition is granted as an award of party status to Mountain Lodge Estates (Issues Ruling, at 70).

would be whether the Phase II expansion can meet a regulatory requirement pertaining to noise. The ALJ ruled that no other proposed issue was substantive and significant.

MLE filed a timely appeal from the Issues Ruling, which was received on February 16, 2007 ("Appeal"). In its appeal, MLE challenged the ALJ's determination that the following two issues failed to meet the regulatory criteria for adjudication:

- whether the Phase II expansion could meet regulatory requirements pertaining to odor control; and
- whether the application for the Phase II expansion was incomplete as a matter of law in the absence of a modification of the County's Solid Waste Management Plan.

Additionally, by its appeal, MLE seeks to challenge rulings of the ALJ, dated July 29, 2005 ("2005 ALJ Ruling"), that precluded consideration of materials related to odor issues that were presented in letters submitted by MLE in July 2005, after the deadline for petitions for party status had passed.

Both the County and Department staff filed timely responses in opposition to the appeal ("County Reply" and "Staff Reply," respectively).

Based upon my review of the record in this proceeding, I hereby affirm the ALJ's rulings.

DISCUSSION

In accordance with the Department's permit hearing procedures, a potential party must demonstrate that an issue it proposes for adjudication is both "substantive" and "significant" (see 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]). In determining whether an issue is substantive, 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 authorized by the ALJ" (id.). 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]).

Pursuant to 6 NYCRR 624.4(c)(4), where Department staff has determined that "a component of the applicant's project, as proposed or as conditioned by the draft permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion is on a potential party proposing any issue related to that component to demonstrate that it is both substantive and significant." As previously stated by the Commissioner:

"A potential party's burden of persuasion at the issues conference is met with an appropriate offer of proof supporting its proposed issues. . . . Any assertions made must have a factual or scientific foundation Speculation, 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, or the record of the issues conference, among other relevant materials and submissions"

(Matter of Waste Management of New York, LLC, Interim Decision, October 20, 2006, at 4-5).

Additionally, "[w]here an issues ruling is appealed, substantial deference is given to the ALJ on factual issues" (id. at 5).

My review of the record confirms that the ALJ appropriately applied the substantive and significant standards in this proceeding. The ALJ's analysis is comprehensive and well-reasoned, and MLE has failed to demonstrate that the substantive and significant standards were misapplied or to otherwise rebut the ALJ's analysis.

Odor Control

As noted, MLE challenges the ALJ's determination that no adjudicable issue exists with regard to the ability of the County to "comply with the odor control requirement at [6 NYCRR] 360-1.14(m) when Phase II is operational" (Appeal, at 1). MLE asserts that "the Rulings fail to address the dispute between the expert opinions offered by MLE and the County, and the absence of a reasoned analysis of these offers of proof by Department staff" (id. at 5-6). MLE further asserts that its offer of proof would

demonstrate that "by 2009 before Phase II would begin operation, emissions . . . would exceed the odor threshold off site on account of the [hydrogen sulfide] concentration in expected emissions A combined Phase I and Phase II landfill could therefore not avoid violating the odor control requirements of [6 NYCRR] 360-1.14(m)" (id. at 8).

In response, the County argues that adjudication of the odor issues raised by MLE is time barred. The 2005 ALJ Ruling granted motions by the County and Department staff to preclude consideration of odor issues raised in filings submitted by MLE subsequent to the deadline for petitions (County Reply, at 6-9). The County notes that MLE did not appeal the 2005 ALJ Ruling at the time it was issued and, on that basis, argues that MLE "does not have standing to raise the issue on appeal" (id. at 9).

Additionally, the County asserts that the ALJ gave the odor issues due consideration and determined that those issues did not satisfy the criteria for adjudication. The County states that the ALJ "noted that Department Staff and the County had resolved all of the issues between them to the satisfaction of Department Staff and that Department Staff had issued draft permits which appropriately addressed all of the issues" (County Reply, at 10). The County contends that "[t]here being no issue between the County and Department Staff there is no issue for adjudication" (id.).

Department staff raises similar points in its opposition to the appeal. Specifically, staff asserts that "[t]he issue regarding compliance with the odor requirements of Part 360 was not in the petition and is not [based upon] new information" (Staff Reply, at 1). Staff quotes from the 2005 ALJ Ruling, wherein the ALJ notes that MLE had conceded that "the development of the new material in [its consultant's] July 14 [2005] letter is based on review of the application which he performed since June 1 [2005, the deadline for petitions for party status]" (2005 ALJ Ruling, at 10). As does the County, Department staff asserts that MLE's failure to timely raise the odor issues leaves MLE without standing to raise the issues on appeal (Staff Reply, at 1).

Department staff also concurs with the County's assertion that the odor issues were addressed and resolved to Department staff's satisfaction and notes that the draft permit "will require numerous improvements to address odor at the landfill" (Staff Reply, at 2). Staff concludes that it "properly accounted for [the odor issues raised by MLE] in calculations, and as the County has ceased accepting the waste (construction

and demolition debris fines as alternative daily cover) which may well have been contributing to the odor, the hydrogen sulfide issue is now moot" (id.).

-- 2005 ALJ Ruling

The 2005 ALJ Ruling addressed separate motions dated July 22 and 26, 2005 filed by the County and Department staff, respectively. The County and Department staff, by their motions, sought to preclude consideration of air issues that MLE outlined in its post-petition letters dated July 14 and 15, 2005 ("Letters"). ALJ Buhrmaster granted the motions, thereby "preclud[ing] consideration of the issues-related material in the [Letters]" and further noted that the Letters "shall not be considered part of the [MLE] petition, because they were filed after the deadline" (2005 ALJ Ruling, at 9-10). MLE appeals this ruling as a separate challenge from its claim that the ALJ erred in his determination that odor issues would not be subject to adjudication.

MLE's appeal from the 2005 ALJ Ruling is clearly untimely. Pursuant to 6 NYCRR 624.6(e), interlocutory appeals must be filed to the Commissioner in writing within five days of the disputed ruling. MLE's appeal of the 2005 ALJ Ruling was filed over a year and a half after the date of the ruling and MLE has advanced no cause for this protracted delay. In light of the foregoing, the 2005 ALJ Ruling will not be disturbed and, therefore, the issues raised by MLE in the Letters shall not be considered as part of MLE's petition.

-- Issues Ruling

With regard to MLE's appeal from the Issues Ruling, MLE's arguments challenging the ALJ's denial of adjudication of the odor issues are not persuasive.

As an initial matter, MLE's appeal of this aspect of the Issues Ruling appears to be little more than an attempt to appeal the 2005 ALJ Ruling. One of the odor related issues that was precluded by the 2005 ALJ Ruling was whether "[t]he proposed expansion would exceed odor nuisance thresholds due to the expected emissions of hydrogen sulfide calculated by [MLE's expert]" (2005 ALJ Ruling, at 9). Despite this express preclusion, the appeal attempts to revive MLE's arguments and asserts that "the question whether the County Landfill can comply with the odor control requirement at Part 360-1.14(m) [requiring odors to be controlled so that they do not constitute a nuisance] when Phase II is operational was raised in MLE's petition"

(Appeal, at 1). This attempt to circumvent or otherwise revisit the 2005 ALJ Ruling is rejected.

Pursuant to the 2005 ALJ Ruling, Department staff was instructed to "evaluate [MLE's odor related] claims on their merits, and if it finds them to raise legitimate concerns, pursue them as issues of [its] own" (ALJ Ruling, at 11). Department staff acknowledged this directive and states that it "immediately undertook [its] own independent inquiries regarding the [odor issue]. . . . considered [the issue], with input from MLE and their consultant [and the issue] was resolved to Department staff's satisfaction" (Staff Reply, at 2).

Given the extended lapse of time since both the 2005 ALJ Ruling and Department staff's addressing the odor issues in the manner directed by the ALJ, it would be highly prejudicial to reopen the issue at this stage of the proceedings. Accordingly, I affirm the ALJ's determination that the odor control issue "was not timely raised in this hearing [and] can be excluded on that basis" (see Issues Ruling, at 43).

Furthermore, even if MLE's appeal of the ALJ's ruling on the odor issues were to be considered on its merits, the issue would be rejected for adjudication. In the Issues Ruling, the ALJ concludes that the odor issues "may be excluded on the basis of changes in the landfill's operation that came about during the Phase I expansion proceeding" (Issues Ruling, at 43). As detailed in the Issues Ruling, the County has been undertaking several operational changes in recent years to reduce odor emissions from the facility including: the installation of carbon filters on the vents of the two primary leachate storage tanks; improvements to the gas collection system; repairs to the flare unit to reduce venting of gas to the air; accelerated capping of the existing Phase I landfill; and cessation of the use of construction and demolition debris ("C&D") fines as alternative daily cover (id. at 15-17, 43).

As stated in the Issues Ruling, the County stopped using C&D fines "specifically to remove the main source of hydrogen sulfide odors, which is gypsum (calcium sulfate) wallboard" (Issues Ruling, at 43). The ALJ noted that the County's air expert offered that, where this change has been implemented at other landfills, there has been an average reduction in hydrogen sulfide concentrations in landfill gas of approximately 25 percent per year and that, to date, at the Sullivan County landfill site "reductions . . . have been even greater" (id.).

The Issues Ruling further states that MLE "failed to raise an adjudicable issue about the adequacy of [the odor control measures that would be imposed under the draft permit] such that a reasonable person would inquire further" (Issues Ruling, at 44). The draft permit, as modified, contains numerous special conditions to ensure that the Phase II expansion minimizes off-site odors. These conditions include a requirement for the Phase II expansion to comply with and implement the terms and conditions of the facility "Odor Plan" and, if so directed by the Department, to "propose and implement approvable changes to the Odor Plan to improve the odor/gas situation at the facility" (Exhibit 13, at 4 [special condition 11B]). Staff has determined that these measures will appropriately address the odor issues. MLE has failed to meet its burden of persuasion to overcome that determination.

Finally, in MLE's petition for party status, MLE identified an air expert "to support the proposed issues involving erroneous emissions estimations" (Exhibit 11, at 3). These emissions estimates were provided as part of MLE's argument that the County underestimated landfill emissions and thereby "evaded applicable [Clean Air Act] requirements" (*id.* letter to ALJ Buhrmaster, dated May 20, 2005, at 7). At the time of its petition, MLE did not offer the air expert in support of its argument that odors from the Phase II expansion would violate the nuisance provision of 6 NYCRR 360-1.14(m). Therefore, MLE's offer of proof concerning the odor issue was deficient as it did not properly specify the witness and nature of evidence to be presented (*see* 6 NYCRR 624.5[b][2][ii]).

As noted, the odor issue was not timely raised and can be excluded on that basis. Even if considered on the merits, the odor issue raised by MLE does not meet the "substantive" and "significant" standards set forth in the hearing regulations. Several operational and engineering changes have been undertaken at the existing landfill to address odors. Furthermore, the draft permit contains conditions to minimize and address odor issues that may arise due to the Phase II expansion. In light of the foregoing, the odor issue shall not be adjudicated.

Completeness of Application/Modification of the Solid Waste Management Plan

MLE argues that the Phase II expansion application is incomplete as a matter of law in the absence of modifications to the County's Solid Waste Management Plan ("SWMP"), as approved by the Department on March 31, 1993. Specifically, MLE asserts in its appeal that the Phase II expansion is not expressly provided

for under the existing County SWMP and that the expansion will impermissibly interfere with the County's ability to achieve the recycling goals established under its SWMP. These deviations from the County SWMP, argues MLE, are of such significance that the SWMP should have been modified prior to Department staff's completeness determination for the Phase II expansion application.

The County argues the Phase II expansion will not interfere with the County's recycling goals and asserts that MLE's claims to the contrary are "hypothetical and speculative" (County Reply, at 15). The County admits that it has not achieved the recycling goal established under its SWMP but asserts that it is making significant progress in that direction (id.). Further, the County asserts the size and disposal capacity of the expansion "have nothing to do with the success of the County's recycling program" (id. at 16). Nevertheless, the County notes that it has agreed to a permit condition that will ensure improvements are made to its recycling program and will obligate the County to modify its SWMP recycling analysis within 90 days of the issuance of the Phase II permit (id.).

Department staff states that "[t]here is no regulatory requirement of a certain percentage of recycling rate which the County is not meeting. The County has indicated [its] intention to increase [its] recycling rate, has committed to doing so, and has accepted a permit condition requiring [it] to undertake increased recycling activities" (Staff Reply, at 5). Staff also asserts that MLE failed to identify how this issue is "significant" as defined by 6 NYCRR 624, because MLE has "not identified how there is a potential for denial or a major modification of the permit" (id.).

-- Complete Application

A "complete application" is defined by 6 NYCRR 621.2(f) to be "an application which is in an approved form and is determined by the department to be complete for the purpose of commencing review of the application." By regulation, the completeness of an application will not be an issue for adjudication (see 6 NYCRR 624.4[c][7]). Accordingly, the determination by Department staff that the County's Phase II expansion application is complete is not an adjudicable issue in this proceeding. Additionally, as discussed below, the SWMP-related issues raised by MLE do not meet the standards for adjudication.

-- Expansion/SWMP

The ALJ considered and rejected MLE's argument that the Phase II expansion was inconsistent with the County SWMP. The ALJ acknowledged that the Phase II expansion was not specifically identified in the County SWMP; however, as the ALJ states, the County "has never abandoned landfilling" of solid waste as a component of its SWMP (Issues Ruling, at 45). While the County SWMP discusses methods of reducing the volume of waste to be disposed of at the landfill, the SWMP also anticipates the continuing role of landfilling in the County's management of solid waste for the foreseeable future (see, e.g., County SWMP, at 6-35[i] [noting "[t]he County will continue to re-evaluate its position of reliance on landfilling throughout the 20 year planning period"]; County SWMP, at 6-40 [noting that use of additional acreage at the landfill site is "projected to be necessary to meet the needs of the County for the next 25 years"])).

MLE also asserts that, in the absence of an express provision for the Phase II expansion in the County SWMP, the expansion application must be deemed incomplete. While it is true that 6 NYCRR 360-2.12(b)(1) requires a proposed new landfill or expansion to be identified in the local SWMP, this provision is inapposite where the siting criteria set forth in 6 NYCRR 360-2.12(a) are satisfied. By its express terms, 6 NYCRR 360-2.12(b) applies only to proposed landfill "sites that do not exhibit the characteristics identified in [6 NYCRR 360-2.12(a)]."

Accordingly, the ALJ correctly determined that because "the [Phase II] expansion site exhibits all of the characteristics set out in [6 NYCRR] 360-2.12(a)(1)," its absence from the County SWMP "is not a barrier to permitting" (Issues Ruling, at 46-47; see also Final Environmental Impact Statement for 6 NYCRR Part 360, May 1993, at RS 2-30 ["[i]nclusion in an approved solid waste management plan is only required if the proposed landfill site does not exhibit the characteristics required by 360-2.12(a)"]; Department Technical and Administrative Guidance Memorandum [TAGM] SW-96-08, dated May 3, 2001, "Review of Local Solid Waste Management Plans," section III.D ["[i]n accordance with 6 NYCRR 360-2.12(b)(1), inclusion in an approved [local] SWMP is required for both municipal and private sector applicants if the proposed site of the landfill or landfill expansion does not exhibit all of the characteristics required by 6 NYCRR 360-2.12(a)(1)"])).

It is clear from the Issues Ruling that the ALJ fully evaluated whether the Phase II expansion conformed with the

siting criteria set forth in 6 NYCRR 360-2.12(a)(1). Based on that evaluation, the ALJ determined that "the expansion site exhibits all of the characteristics set out in [6 NYCRR] 360-2.12(a)(1)" (id. at 46). The record supports the ALJ's determination.

MLE also attempts to support its argument that the expansion is inconsistent with the SWMP by citing the County's 2001-2003 SWMP compliance report update ("Report Update"). MLE notes that language in the Report Update refers to the County becoming an export community and to landfill closure by 2009 (Appeal, at 14). This argument is unpersuasive.

First, as the ALJ notes, the County was already pursuing an expansion of its landfill at the time the Report Update was submitted to the Department, thereby demonstrating the County's desire to continue use of the landfill site for solid waste disposal (Issues Ruling, at 46). Further, the Report Update does not state that the County has made a determination that it will become an export community" (see Exhibit 18, at section 1[A][3]). With regard to the statement in the Report Update concerning the planned closure of the landfill by 2009, this is clearly a reference to the existing (Phase I) landfill, not to the Phase II expansion.

Further, and contrary to the proposition that the County SWMP requires closure, the Report Update states that "[a]dditional property has been acquired by Sullivan County for expansion of the Sanitary Landfill" (id. at section 3[B]). The Report Update recognizes the expansion now under consideration. Additionally, as noted, the County SWMP explicitly references the use of additional acreage at the landfill site to meet the County's landfilling needs (see County SWMP, at 6-40).

-- Recycling/SWMP

MLE argues that the County has failed to meet the recycling goals established under its SWMP and the Phase II expansion will serve to exacerbate this situation. MLE concludes that the Phase II expansion "would be at odds with both the approved [County SWMP] and the state [SWMP] [goals of] discouraging disposal and encouraging recycling" (id. at 17).

MLE correctly notes that the Department seeks to encourage resource recovery from solid waste (see, e.g., section 27-0101[2] of the Environmental Conservation Law [ECL] [stating that it is "the purpose of the legislature of the state of New York to effect maximum resource recovery from solid waste on a

cost-effective basis . . . with due concern for the primacy of the local and regional role in resource recovery procedures upon the basis of public knowledge and consent"]; ECL 27-0106[1] [setting forth the state's solid waste management hierarchy]). MLE is also correct in its assertion that the County has not attained its recycling goal as set forth in its SWMP. These factors, however, do not form a basis upon which to reverse the ALJ's determination that the issue of recycling fails to meet the standards for adjudication.

Landfilling remains a component of the County SWMP. This also is true of recycling. The fact that the County has not achieved the recycling goal it established in its SWMP does not, by itself, create an issue for adjudication. A proposed issue must engender "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]). However, MLE has not cited any statute or regulation that mandates a specific recycling rate. Department staff states that "[t]here is no regulatory requirement of a certain percentage of recycling which the County is not meeting" (Staff Reply, at 5). Accordingly, this does not present an issue that is "substantive" as defined by 6 NYCRR 624.4(c)(2).

Moreover, Department staff's objection to the County's recycling rate "was resolved . . . by revising a draft permit condition to increase recycling activities prior to construction of Phase [II]" (Appeal, at 10-11). Both the County and Department staff reference this revised draft permit condition in their respective replies to MLE's appeal. Staff states that the County has "committed to [increasing its recycling rate], and has accepted a permit condition requiring [it] to undertake increased recycling activities" (Staff Reply, at 5). The County similarly states that it "has accepted, as a proposed Part 360 permit condition a requirement that the County make certain improvements to its recycling program" (County Reply, at 16;). Improvements include various initiatives to expand a textile recycling program, implement an electronic scrap recycling program and a pilot yard waste composting program (see Exhibits 14-J and 14-M [County submittals from April 2006 that are to form the basis of the County's new comprehensive recycling analysis]; see also Exhibit 13-A [draft permit condition requiring County to officially adopt its recycling submittals by County resolution within ninety days after issuance of the permit]; Hearing Report, at 47-48).

Thus, the recycling issue was considered over the course of the issues conference and addressed to Department

staff's satisfaction. This places the burden of persuasion on MLE to demonstrate that the issue is adjudicable (see 6 NYCRR 624.4[c][4]), and MLE has failed to meet that burden.

-- Other SWMP Issues

MLE also raises several issues that were not presented at the issues conference or discussed in the Issues Ruling. As such, these new issues are untimely raised and are rejected on that basis (see, e.g., Matter of Town of Brookhaven, Interim Decision of the Commissioner, July 27, 1995 [attempt to raise new offer of proof on appeal of issues ruling rejected as untimely]). Potential parties must raise their issues and make their offers of proof in a timely fashion and in accordance with the requirements of 6 NYCRR part 624 for such issues to be considered.

Even if the new issues were considered on their merits, however, they would not be adjudicable. For example, MLE cites ECL 27-0107(1)(a) for the proposition that the County SWMP has expired (Appeal, at 14). According to MLE, ECL 27-0107(1)(a) "limit[s] the term of any [SWMP] to 10 years" (id.). This argument misconstrues the statute which reads, in relevant part, "[a] planning unit may undertake and complete a timely process leading to a local solid waste management plan for such unit for at least a ten-year period" (ECL 27-0107[1][a]; see also 6 NYCRR 360-15.9). Thus, the ten-year period is a minimum, not a maximum as MLE suggests. Further, the County SWMP expressly states that it "will identify the County's projected plan for managing these wastes through the year 2015" (County SWMP, at ES-1).

MLE also contends that "the requested acceptance rate of 200,000 tons [of solid waste] per year will violate the [County SWMP]" (Appeal, at 13-14). According to MLE, this is because the County's Solid Waste Management Rules ("Solid Waste Rules") are incorporated into the SWMP and section 401 of the Solid Waste Rules prohibits disposal of solid waste generated outside the County in the County landfill. MLE asserts that, given the current volume of solid waste generated within the County, the permit will allow importation of a large volume of solid waste from outside the County (id. at 15). MLE's argument is speculative and, therefore, does not merit adjudication (see Matter of Waste Management of New York, LLC, Interim Decision, October 20, 2006, supra, at 5).

The proposed permit neither allows nor disallows importation. Furthermore, although the Solid Waste Rules establish a prohibition relative to the disposing of waste

generated outside of the County at the County landfill, section 401 of the Solid Waste Rules establishes that the County Commissioner of the Department of Public Works may upon application waive the prohibition "upon good cause shown" (Solid Waste Rules, section 401). The rules further provide the factors to be considered for purposes of any such waiver (see id.).

To the extent that MLE has raised other arguments not specifically addressed herein, I have considered them and found them to be without merit.

CONCLUSION

Based upon my review of the record, I find that MLE's appeal fails to raise any substantive and significant issues for adjudication. Accordingly, MLE's appeal is dismissed and the only issue for adjudication pertains to noise impacts set forth by ALJ Buhrmaster in his Issues Ruling.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Alexander B. Grannis
Commissioner

Dated: March 28, 2008
Albany, New York

TO: Service List