
Concerned Citizens of Cattaraugus County, Inc.

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Earth Day 2003 Edition

CCCC Newsletter

Bankruptcy Will Not Stop Progress on IWS Application for a Landfill Permit

A dummy holding company for Integrated Waste Systems, Inc. of Buffalo declared bankruptcy last January to avoid paying Cattaraugus County \$317,151 for three years worth of back taxes. This will have little effect on IWS's application for major regional landfill in Farmersville. Quite the opposite: because the hope for a new landfill is the only asset the company has left, it can be expected to try even harder to get the DEC to accept its application.

So far five volumes of a supplemental environmental impact statement for the new dump have been submitted to the DEC. The County and CCCC are reviewing these materials and commenting on them as they come in. DEC Staff have also been imposing additional requirements on IWS before they will accept the application as complete.

What's the Next Step?

CCCC expects that later this year DEC will declare IWS's application complete. When that happens, a public notice for a hearing on the application will be published in local newspapers, and interested persons and organizations may apply for a further hearing before an administrative judge. To get the second hearing, issues must be presented that cause a reasonable person to want to inquire further into details of the IWS application.

Cattaraugus County and CCCC will apply to be parties in the second-level hearing. Anybody who wants to help us should review the files at the DEC office in Allegany, or call Glen Chambers at (716) 557-8362. Those who are familiar with the Ischua Valley watershed, wildlife around Farmersville or air quality east of the site could be particularly helpful.

The case against the landfill proposal will have to be presented by attorneys familiar with the regulations. But they need evidence and expertise from people who know the land, water, community and ecology.

Don't We Need Landfills?

We will always need landfills. But we have little historical experience with gigantic landfills like IWS proposes. All the ones in existence for any length of time have leaked, started to fall apart from the pressure of landfill gas, and emit toxic odors that have serious health effects on those who live nearby and are chronically exposed to landfill gas.

For a good example of what has happened elsewhere, see the complaint filed in federal court against the CID Landfill on Route 16 in Chaffee, posted on our web site:

www.homestead.com/concernedcitizens/maplink_CID.html

Residents in Cattaraugus County produce about 55,000 tons of garbage per year, and we recycle about half of it. The rest goes to Chautauqua County, whose landfill has more than 50 years of projected life.

IWS proposes to dump about 20 million tons of garbage on the side of a steep slope looking down on Route 98. The company would dump for 20 years, then monitor the dump for another 30 years. As discussed by Barbara Dyskant below, under current law, a town that contracts with the landfill is liable for the full cost of cleaning it up if it leaks, or if its gas control system breaks down. Gas controls must be maintained for about 100 years, starting about five years into the life of the landfill.

Water pollution and air pollution from landfills are not entirely unconnected, as the next article suggests . . .

Report on Water

by Thomas Krampf of Hinsdale

One of the great ironies today is that much of the world, including parts of the United States, could run out of water before it runs out of oil. Potentially worth billions of dollars, water is one of Cattaraugus County's most pristine and precious assets. This should give a greater sense of urgency to stopping the landfill in Farmersville.

Currently Southern Tier Waste Services (STWS), the company that owns the proposed 440-acre site, has declared bankruptcy. As it purchased the land from IWS for a dollar, this is a tactical maneuver to gain more time while waiting for a permit. The original IWS application is still being processed by the DEC, and once this permit is issued, IWS retains the right to repurchase the land from STWS.

Perhaps one of the most critical issues that CCCC and Cattaraugus County face in the permit review is IWS' demand for a variance from groundwater protection requirements. Normally, New York State requires that a landfill have five feet of impermeable material between the bottom of a liner and the groundwater. (Any water underground, as opposed to surface water, is by definition considered an aquifer). But as the Farmersville site is full of springs, this would be impossible, so IWS is asking for a variance. It claims by digging deeper and engaging in some high-tech engineering, it can provide an equivalent

level of protection. Even so, the risk of contaminating the groundwater remains substantial.

The risk of surface water contamination has not been adequately addressed in the permit proceedings. A number of independent studies, however, have confirmed there is considerable risk of surface water contamination. Passing through Johnson Creek, the run-off would travel downstream and reach the Olean filtration plant within a matter of days. This plant is mainly equipped to handle sediment. It would offer little protection against chemicals that pass through its filters on a molecular level.

Once a regional water supply is contaminated by a landfill, it can never be cleaned up. Substances such as vinyl chloride, toluene, benzene, and xylene have half-lives of tens of thousands of years. They also are volatile and spread through groundwater and surface water very quickly. The EPA recently found that trichloroethylene (TCE), when it volatilizes into gas, is 5 to 65 times more toxic than one thought. It is known to cause cancer and respiratory, liver, and lung disorders.

Who Pays When Landfills Close?

by Barbara Dyskant of Olean

What happens after a landfill reaches capacity, or closes for any other reason? Serious problems can still occur, as the garbage remains right there. These problems include toxins leaching into the soil and water and being emitted into the air, just like when the landfill was operating.

Under federal and state law, the company that operates the landfill posts a bond (which means putting up money) to cover costs for MONITORING, or watching and testing the landfill to see if there are leaks or other damaging things. The bond doesn't cover the actual CLEAN-UP, or the damages resulting from the landfill.

Those who can be held responsible for cleanup include the operating company, the transporters, and the entity that arranged to have the landfill. The entity that arranged for the landfill is THE MUNICIPALITY, which means YOUR TOWN, which gets its money from THE TAXES YOU PAY. If it has to pay, you foot the bill.

Furthermore, each "potentially responsible party" (PRP) (this includes the municipality) can be held "jointly and severally liable." That means that if only one PRP is still around, that one can be held responsible for the ENTIRE amount. This can amount to millions of dollars. If a PRP wants the expense shared, it needs to go to court to show what proportion of the expense others are responsible for and court costs are expensive both for the one suing and the one being sued.

Often, operators have sued municipalities to recover some of the costs they are assessed after the landfill closes AND HAVE WON, successfully forcing the

towns to pay a portion of the cost of clean-up. This has cost towns hundreds of thousands of dollars. Court costs pile up on top of these, whether the municipality wins or loses the case.

This would be even worse if the operator and transporters all disappear or go bankrupt. Then your town has to pay the ENTIRE charge, and that could be in the millions!

IF YOUR TOWN is considering "hosting" a landfill, and is tempted by monetary incentives offered by the developer, they need to look at the huge potential cost after the landfill closes. Even if the operator pays a share, the municipality may STILL be charged a hefty amount, or even the ENTIRE amount. That means you, your children, your grandchildren.



There's a not-so-hidden power behind IWS. CCCC believes that Casella Waste Systems of Vermont is waiting in the wings to buy any permit IWS wins. The Chief engineer for IWS Vince Grandinetti now oversees all of Casella's New York operations—over 20 garbage haulers, transfer stations and landfills in New York. The next article asks whether we can trust Casella's companies.

Casella's Record

by Barry Miller of Olean

Casella Waste Systems is an enormous company that owns facilities including the Hyland Landfill in Angelica, SDS of Olean and over 151 facilities throughout New York and New England as well as Midwest and Southeast states.

So far there have been numerous incidents of mismanagement of the facilities and bullying of communities where these facilities are located.

Let's see what type of record Casella Waste Systems Inc. has. In the last five years there have been 22 lawsuits involving fraud, failure to conform to local laws and regulations, and failure to honor workers and business obligations. Casella's companies have faced 14 administrative enforcement actions. These involve spilling and leaking hazardous materials into groundwater under Casella facilities, failure to comply with regulations, and failure to pay fines. There also have been 20 community complaints, some ongoing. These include complaints about excessive amounts of leachate, drastic fee increases, extending limits of landfill capacity, and dumping recyclables in New York landfills.

The company acts as though it is cheaper to pay fines than to obey the law. If the reader is interested in further details, they can be found on the CCCC web site, at

www.homestead.com/concernedcitizens/Casella.html

The David and Goliath Trust is currently working in Bethlehem, New Hampshire, to protect the citizens and area from the greed and environmental threat presented by Casella's operations. At issue is the right of

towns—especially small towns in low-income areas—to control their land, water and air resources.

If Casella prevails against Bethlehem, the entire state of New Hampshire will be opened up to landfilling and incineration, perhaps even with tax-exempt status given to the polluters.

What can be done?

Casella can be stopped. Local governments have the power to stop the Casella mob in their tracks. When communities stand by their laws there is no recourse for Casella but to go elsewhere or cooperate with the wishes of the community to have a safe and successful approach to waste and its management.

What's Up with Farmersville?

by Gary Abraham of Allegany

In the year 2000 Larry Justus campaigned successfully on his opposition to the dump proposal and was elected Supervisor of Farmersville. However, Justus mysteriously resigned just before the regular April board meeting at which a new, more restrictive landfill law was to be acted on. The new law was enacted by the remaining four-member board in June, 2000, but under threat of a lawsuit the board later caved in, repealing portions of the law in October, 2000.

Repealing the landfill law provisions Justus introduced gives away powers the town has to protect its people.

The Town's engineers have advised the Board it is doubtful IWS can construct a safe landfill of the massive size proposed on a hillside site with a 30 percent slope. The DEC appears to be having serious doubts as well. However, the current Town Supervisor Fritz Zuech makes a living dumping residential septage, and under the Town's contract with IWS, town residents may dump for free at the proposed landfill.

IWS sued the Town twice already, once in 1990 and again in 1991. The current contract with the town is what IWS settled out of court for in 1991. But Farmersville, like other New York towns, retains its authority to regulate landfills.

You can read more on this topic at:

www.homestead.com/concernedcitizens/Farmersv_links.html

No New York town has ever lost in court after being sued by a landfill developer for exceeding its powers to regulate dumps. The decisions that have come out of past litigation are still good law, and could even support an award of attorney fees to the town.

In case you were wondering . . .

The plan to build a park at the proposed Farmersville dump site is on the county's website:

www.co.cattaraugus.ny.us/planning-board/plan-activities.asp?did=6

- County law prohibits any landfill unless it is needed to dispose of solid waste generated in the county. However, in New York county law applies only to towns without a landfill law.

Under Farmersville's contract with IWS, *once landfill operations begin* the town (not IWS) must pay out of royalties for additional fire fighting and emergency medical response equipment and personnel; special training for these personnel; construct new turn lanes on Route 16 and Route 98; and offset declining tax revenues due to property devaluations in the town.

- Cattaraugus County today pays about \$50,000 per year to take care of leachate produced by two closed landfills, Farwell on Route 16 and Five Points in Mansfield. These dumps contain only a tiny fraction of the 20 million tons of garbage to be dumped under the IWS proposal.

Over 80 percent of what now goes to a landfill could be recycled. In Europe the manufacturer that sells items with packaging materials is responsible for collecting those materials. Taking materials back into the production process increases profitability, encourages use of non-toxic reusable materials, saves energy and reduces waste.

- New York City last year stopped city pickup of recyclables. Prior to abolishing recycling, New York city recycled less than ten per cent of its garbage.

Over 95 percent of New York State's entire landfill capacity is accounted for by six privately owned giant landfills. All six are located in western and central New York.

- Cattaraugus County Legislature Chairman Jess Fitzpatrick wrote to New York City Mayor Rudolph Giuliani on May 12, 1999, asking whether the Mayor would keep his promise "not to send New York City solid waste to any community that does not want it." Mayor Giuliani's Deputy Mayor Joseph L. Lhota responded on his behalf that it is up towns, not counties to make community agreements with landfill speculators.

In DuPage County, Illinois, the county government set aside \$80 million to pay for post closure monitoring of a modern municipal landfill. Still, the landfill had to be declared a federal Superfund site to get the financing that was necessary to clean up hazardous leaks from the dump.



Angelica residents voted last month to shut down Casella's Hyland Landfill

Concerns over who will pay for the cleanup after the landfill is gone helped tip the popular vote in Angelica against a major expansion proposal at the Hyland dump. The dump was narrowly permitted in 1995 by the Commissioner of the N.Y. Department of Environmental Conservation, after a DEC judge hearing the evidence recommended against a permit because the groundwater table at the site is too high to prevent pollution. The dump then sued the Town of Angelica in order to force the town to rescind its landfill ban law. A year later the town caved in for a quarter-million dollars, unable to sustain prolonged litigation. Right after the settlement, Casella stepped in as the new owner of the landfill.

The settlement of the Hyland landfill lawsuit resulted in one important tool for Angelica residents. An agreement with the landfill provides that no further expansion can take place unless approved by a majority of the voters in a popular referendum, which can be put up four times, no more than once a year. Voters turned Casella away last November and again last March. The next time they must vote will be in 2004. Voters need to remember : the host town is liable for the full cost of the cleanup after the landfill closes and the company has been purchased or merged with another company, or has simply dissolved and is not available to address the problems left behind.



Concerned Citizens of Cattaraugus County is a nonprofit 501(c)(4) corporation formed in 1991 in New York State. Contributions are not currently tax deductible, but are very useful in our work researching and distributing factual information to the people of Cattaraugus County and Western New York. Currently, Glen Chambers of Ischua is CCCC President. **The current Board of Directors** is composed of Mr. Chambers, Don Farrington of Franklinville, Franklinville businessman Scott Merkel, Farmersville residents Gary Green, and Olean residents Hal Jacobi and Marie Johnson.

Our goal is to keep the public armed with information not generally distributed by government officials or private corporations. Please help us in this effort. **Membership dues** (\$18 family, \$11 seniors) will pay for periodic mailings of newsletters and notices of public meetings and hearings, but don't forget to include your address and contact us if you ever move. If you want to volunteer, include your phone number in your response.

We urge new contributors to join our longstanding members. To all those making contributions: THANKS!

- ✓ LOOK FOR NOTICES OF CCCC MEETINGS IN THE TIMES HERALD COMMUNITY CALENDER
- ✓ PLEASE PAY YOUR DUES IF IT'S BEEN MORE THAN ONE YEAR

Concerned Citizens of Cattaraugus County supports responsible waste management. Corporations want to grab our land, buy up local trash haulers and force county transfer stations out of business. We speak for those in the community who believe this is bad development. Many believe the Farmersville landfill proposal is a "done deal," but we have a long road of hearings ahead. We don't ask often, but now would be the time to support us with your pocketbooks and your voices.

Special Earth Day Edition

A proposed major landfill to service urban and downstate garbage could be permitted on Route 98. The proposal is being reviewed by NYSDEC, and permit hearings may be scheduled later this year.

Do you know what the issues are?

For over a decade Concerned Citizens of Cattaraugus County has provided accurate and timely information about the impacts of the landfill if permitted, and the options citizens and public officials have to decide for themselves whether hosting a regional landfill is in their best interests.

Concerned Citizens of Cattaraugus County, Inc.

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