

Law Office of Gary A. Abraham
170 No. Second Street
Allegany, New York 14706
(716) 372-1913
gabraham@eznet.net

July 13, 2001

VIA EMAIL AND U.S.MAIL

TO: David S. Denk, Permit Administrator
NYSDEC Region 9 Headquarters
270 Michigan Ave.
Buffalo, NY 14203-2999

Re: Application ID: 9-1462-00001/00006 Permit(s) Applied for: Article 27
Title 7, Solid Waste Management; Article 23 Title 27, Mined Land
Reclamation (Waste Management of New York's C.I.D. Landfill)

Please consider these comments on the above-referenced application, on behalf of three residents of Chaffee, Lana and Ronald Sheridan and Tess Cullis, all of whom live on Hand Road in close proximity to the applicant's solid waste landfill.

1. The public notice for this application states that "material [clay and gravel] to be excavated is for use at the facility's existing landfill and will be used for closure operations and other uses." It is unclear whether any "other uses" for the materials include cover or capping activities at any future disposal areas not currently permitted. Has the Department had any meetings with the applicant or the applicant's contractors to discuss the relationship between the proposed mining and a future landfill expansion application? If the Department is considering this application in relation to the applicant's proposed landfill expansion application, the Department should postpone review until an application for the landfill expansion is complete. If the Department considers the proposed mining activities to be related to the landfill expansion, the applicant's Long EAF is incorrect when it states the proposal presently under review will not "involve disposal of solid waste." (Page 7 of 21). It appears that this proposal and the landfill's future planning for expansion of disposal activities cannot be separated, because the permitted life of the existing landfill ends in the year 2003 and (in the Short EAF's Section B., "Project Description") the application presently under review states, "[t]he [mining] project will be developed in multiple stages throughout the next 5 to 10 years." If the mining activities presently under review and future landfilling activities not yet formally proposed for review are related they cannot be considered separately under the State Environmental Quality Review Act (SEQRA). Such separate consideration would be impermissible segmentation under SEQRA. However, if the mining application presently under review is limited to activities in support of capping the existing landfill, no segmentation would occur but the permit should expressly include conditions incorporating this limitation. If such conditions are not included in any permit, approval of this application is bound to favor the applicant's proposal to more than double the landfill footprint, a proposal for which there is no complete application but which has been informally noticed to the local town board. Failure to include such conditions in the permit will not only violate SEQRA, they will also circumvent the requirement to provide the town and local residents an opportunity

to consider and comment on activities that may be integral to future landfilling activities. The present application provides no such opportunity. If the applicant's need for the gravel and soil materials proposed to be excavated are connected to future proposed landfilling areas that are no part of this application, the applicant must withdraw the application and incorporate the mining proposal into a new application, for which proper notice and an opportunity to comment can be provided.

2. Local law prohibits new gravel mining in the town. The applicant has not secured the necessary local permits for the proposed activity and, in light of the local mining law, cannot show a reasonable likelihood it can secure local permission. In fact, the applicant has not even made a local application for permission for a new soil and gravel mine. No local approval for the proposed mining activities is possible unless the town undertakes new planning allowing for an expansion of mining activities in the town. Therefore the applicant's statement (in the Long EAF, Page 8 of 21) that the proposed mining activities do not "involve a planning or zoning decision" is clearly incorrect. Until the applicant can show a reasonable likelihood it will obtain the necessary local approval for this proposed activity, the Department cannot approve the application.

3. Mining in the area proposed will expose the groundwater to contamination from a major source of pollution, an adjacent landfill that is among the largest ten percent of such facilities in the nation. The proposed mining area is located over the federally designated Cattaraugus Creek Sole Source Aquifer. However, the applicant has not provided adequate information to weigh the costs of alternative sources of gravel and soils for its existing landfill cover activities against the risks of contamination to the underlying Sole Source Aquifer and the potential for harm to existing and future users of that aquifer. Among other things, such a cost-benefit analysis requires an identification of the population of users involved. Until such information is provided by the applicant, the Department should not approve the application.

4. The application states (in the Short EAF's "Project Information Notes") that bedrock depths were determined on the basis of a 1985 USGS report, but that USEPA's 1987 Cattaraugus Creek Basin Aquifer System, Support Document" was consulted for the location of the Sole Source Aquifer. Is there any inconsistency between the 1985 and the 1987 documents regarding bedrock depths?

5. Department Staff have noted in the past that the existing mining area is impermissibly eroded by excavation of clay, requiring replacement of some clay to meet permeability and grade requirements under Part 360. This also threatens to contaminate the Cattaraugus Creek Sole Source Aquifer and its recharge zone. This is an additional reason for permit conditions that limit the use of materials to be excavated to the areas of the existing facility already permitted for mining and landfilling. Such materials should be used first to remediate areas that are or are close to noncompliance with regulatory protections. Should the Department decide not to approve or to vacate the application presently under review, clay soil materials should be imported for purposes of remediation of the existing mining area.

6. The inability of the applicant to control landfill gas emissions is another longstanding and continuing instance of noncompliance that should be addressed either by permit conditions on the use of the materials to be excavated or outside the mining proposal altogether. The applicant's failure to consistently comply with daily and intermediate cover requirements under its existing permit is part of the reason it cannot consistently comply with its duty to control landfill gas. Should the Department vacate its review of the mining application, as we strongly urge it to do, the applicant must be ordered to take immediate measures to import daily and intermediate cover materials that are much more impermeable and emit less hazardous gas than the C&D materials and petroleum contaminated soil materials it is currently using for cover. This will have the predictable effect of increasing the need for active gas collection, since effective cover will increase gas pressure within the landfill. The applicant's resources should be devoted first to these compliance issues before any consideration is given to activities that seem designed primarily to increase the life of a facility that has yet to show the ability to achieve and maintain compliance with the minimum protections provided under its existing permit.

cc: Kenneth Eng, Chief
Air Compliance Branch, Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Anthony DiFilippo, III
Attorney for the Town of Sardinia
681 Main St.
East Aurora, NY 14052

Lana and Ronald Sheridan
100 Hand Rd.
Chaffee, New York 14030

Tess A. Cullis
100 Hand Rd.
Chaffee, New York 14030