

IN THE MATTER OF THE APPLICATION OF  
CHEMUNG COUNTY, Pursuant to Title 7 of Article 27 of  
the Environmental Conservation Law, to modify the  
solid waste permit at the Chemung County MSW Landfill  
in the Town of Chemung, New York

**PETITION FOR FULL  
PARTY STATUS**

Application No. 8-0728-00004/00013

X

**INTRODUCTION**

In accordance with 6 N.Y.C.R.R. § 624.5, this Petition is submitted on behalf of Residents for the Protection of Lowman and Chemung, Inc. (“RFPLC”) in opposition to the above referenced permit modification, which would increase the waste acceptance rate at Chemung County Landfill from 120,000 to 180,000 tons per year.

RFPLC was formed as a not-for-profit corporation in New York, recognized as a charitable organization under IRC Section 501(c)(3) in 2005 in response to Chemung County’s decision to privatize the operation of county-owned waste management facilities, including the landfill at issue in this petition. Under a 2005 lease with Vermont-based Casella Waste Systems, Inc. subsidiary New England Waste Services of New York, Inc. (“NEWSNY”), the County committed to accept without opposition a series of 49% tonnage increases at the landfill up to 417,000 tons per year, adding four new cells to the landfill.<sup>1</sup> The current permit modification request was submitted on December 19, 2006<sup>2</sup> and is the first of the 49% tonnage increases to

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<sup>1</sup>CHEMUNG COUNTY SOLID WASTE MANAGEMENT PLAN COMPLIANCE REPORT [for 2003 and 2004], February 25, 2005, p. 7, Fig. 1 (annual landfill tonnage, 1991-2004).

<sup>2</sup> Application File, Item 3. On November 12, 2007, NEWSNY asked that action on the request be suspended indefinitely. *Id.*, Item 37.

which the County is contractually committed.

Privatization in 2005 presented issues of landfill expansion and disincentives to recycling, which otherwise could diminish the need for a county landfill in an environmentally and culturally sensitive location. However, the landfill site has not been studied since the late 1980s,<sup>3</sup> the last time a landfill expansion was requested on the existing operating 28 acre footprint, and the County's approved local solid waste management plan ("LSWMP") has not been modified since 1991. From that time until operations were privatized, the landfill operated at less than 90,000 tons of waste per year ("tpy").<sup>4</sup> The waste acceptance rate increased in 2005, when Casella took over, and the following year rose to the maximum permitted waste acceptance rate, 120,000 tpy.<sup>5</sup>

According to Department Staff, the current landfill "is in direct recharge of the principal aquifer, which lies downgradient," providing "significant pathways for leachate movement in the event of a breach in the liner system," and groundwater elevations are less than five feet from base of the liner.<sup>6</sup> The landfill is in close proximity to the Chemung River floodplain and is

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<sup>3</sup> The current request to increase the waste acceptance rate was reviewed under the State Environmental Quality Review Act ("SEQRA") by the County as lead agency in 2006, which issued a Negative Declaration of Environmental Significance, thus dispensing with an environmental impact statement. *See* Application File, Item 16.

<sup>4</sup>CHEMUNG COUNTY SOLID WASTE MANAGEMENT PLAN COMPLIANCE REPORT, February 25, 2005, p. 7, Fig. 1, *above*, note 1.

<sup>5</sup> Chemung County Solid Waste Management District, Annual Reports to NYSDEC, 2005, 2006.

<sup>6</sup> Letter from Frank E. Shattuck, P.E. (for DEC) to Dennis Fagin, Fagin Engineers (for Chemung County), August 1, 1986, sections 1, 5(b) and 8. *See also* Shattuck to Robert Roller, Chemung County Solid Waste Disposal District, January 30, 1987, at 2 ("the [landfill] site is considered adjacent to and upgradient from a principal aquifer which lies within the Chemung

surrounded by residential properties and some of the most important historical sites in the nation.<sup>7</sup>

As discussed further below, the Department funded and approved the Chemung County solid waste management plan in 1991 which calls for a 40 percent recycling rate, to be achieved by means of a county waste district and county operated waste management facilities, including two landfills, a recycling facility, and transfer stations. Nineteen years later, as required under its lease with NEWSNY, the County has abandoned its waste district and NEWSNY has turned the county's landfill into a regional facility. Waste is now accepted from an interstate service area, and some waste streams from the county are transported to out-of-county private facilities NEWSNY operates. Despite conditioning the landfill's last permit renewal in 2006 upon submission of a new solid waste management plan, the County has failed to submit a plan. Today the percentage of materials recycled by the County has not risen above single digits, the same recycling rate it had in 1991.

Every landfill application in the State must be measured against the State policy of discouraging landfilling and maximizing recycling.<sup>8</sup> In 1988 the Legislature made landfilling the lowest priority for waste management and mandated recycling,<sup>9</sup> putting most of the burden for

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River Valley”).

<sup>7</sup> The numerous historical sites in close proximity to the landfill site and their national significance were identified and discussed in several comment letters submitted to the Department in 2007. *See especially* Application File, Items 13, 15, 21 and 28.

<sup>8</sup> N.Y. Env'tl. Conserv. L. (“ECL”) § 27-0106(3).

<sup>9</sup> Solid Waste Management Act of 1988, Laws 1988 Ch. 70, 1988 N.Y. Sess. Law Serv. 70 (McKinney), amending the ECL to provide that solid waste in the state must be managed in accordance with a hierarchy of priorities in this order: reduce, reuse, and recover for energy all

diverting waste from land disposal on municipal planning units<sup>10</sup> and directing the Department “to foster and facilitate local planning” through further regulations.<sup>11</sup> “Twenty-two years later, the majority of the materials generated are managed by the lowest priority strategy, and the state is still striving to achieve its recycling goals,” according to the Department’s draft state solid waste management plan.<sup>12</sup>

The applicant is currently planning another permit modification application requesting approval to accept 417K/yr. and is preparing a modified LSWMP that would reflect recent substantial changes in the manner of operations and the planned build-out to 417K tpy. Because remaining disposal capacity under the currently permitted waste acceptance rate allows NEWSNY to operate the County’s landfill for four more years,<sup>13</sup> and because the current application is an integral part of a plan to increase the acceptance rate to 417K tpy, the current application is premature and should be made part of the long term planning process mandated by the County’s permit and the Department’s regulations implementing the State’s solid waste management policy.

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managed waste, and “dispose of solid waste that is not being reused, recycled or from which energy is not being recovered.” ECL § 27-0106(1).

<sup>10</sup> ECL § 27-0106(2) (“the basic responsibility for the planning and operation of solid waste management facilities remains with local governments”).

<sup>11</sup> ECL §§ 27-0107(2), 27-0109(1).

<sup>12</sup> Mary Beth Pfeiffer, “N.Y. recycling ‘well below’ U.S. rate, report says,” Poughkeepsie Journal, March 6, 2010 (reporting that the Department’s draft state solid waste management plan finds that “New York state recycled only 20 percent of its municipal solid waste in 2008, ‘well below’ the national rate of 33.4 percent”).

<sup>13</sup> Chemung County, *Update to Integrated LSWMP* (April 2009), at 6 (projecting filling of Cell IV-B “by 2014”).

Finally, under the Department's Uniform Procedures and Part 360 this application is a major project and should have been accompanied with a formal public comment period. Major projects require a public comment period.<sup>14</sup> Since a public hearing is scheduled for this project, under the Department's Uniform Procedures it is a major project.<sup>15</sup> In addition, with certain exceptions that do not apply here, in 2009 the Department adopted a policy requiring a request to increase the waste acceptance rate, regardless of a lateral or vertical expansion, be treated as a major project under Part 621.<sup>16</sup> In addition, the applicant's theory that the tonnage increase requested is less than 50% is not consistent with Part 360, which requires a comparison of the highest quarterly acceptance rate requested to the comparable quarter in the year preceding submission of the application.<sup>17</sup> The application was submitted in 2006 and suspended at the applicant's request until now.<sup>18</sup> The proper calculation results in a 55% increase.<sup>19</sup>

For these reasons, the Department should suspend action on this application until the

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<sup>14</sup> 6 NYCRR § 621.7(b)(6).

<sup>15</sup> 6 NYCRR § 621.8(e).

<sup>16</sup> Program Policy DSHM-SW-09-01 SOLID WASTE MANAGEMENT PERMITTING POLICY (May 20, 2009), at 2-3.

<sup>17</sup> 6 NYCRR § 360-1.8(e)(1)(ii) (where, as here, no approved design capacity is set forth in the existing permit, an increase in waste received of 50 percent or more over "the comparable quarter of the preceding year" must be treated as a new application).

<sup>18</sup> Application File, Items 3 and 37.

<sup>19</sup> The initial public notice for this project states that the landfill received 30,228.68 tons in the first quarter of 2006, in the year preceding submission of the application. Application File, Item 20. Since the landfill would be permitted to receive 54,600 tons per quarter, (*id.*), an increase over 55 percent, the project is a major modification for purposes of Part 621 and must be treated as a new application. 6 NYCRR § 360-1.8(e)(1)(ii).

applicant submits its application for the planned full-build-out. However, should the Department decide to advance the application, RFPLC proposes substantive and significant issues as detailed below.

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**Information required by 6 NYCRR Part 624.5(b)(1)**

**Part 624.5(b)(1)(i)**

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**Part 624.5(b)(1)(ii)**

The environmental interest of RFPLC in this proceeding is basic to its mission, to advocate for sound management of solid waste in Chemung County. RFLPC is a charitable corporation whose members live, work, attend school and travel near the landfill. All of RFPLC's members are residents of Chemung County. Fifteen members live in close proximity to the landfill on Roberts Hollow Road, and another fifteen in close proximity to the landfill on County Route 60, including Earl Robinson (1594 County Route 60), Joe Morrison (997 Roberts Hollow Rd.), Linda Stevens (851 Roberts Hollow Rd.), Candy Wagner (1524 County Route 60), Andrea and Clarence Fleming (1043 Roberts Hollow Rd.), and Dana and David Fleming (1318 County Route 60).

**Part 624.5(b)(1)(iii)**

The primary interest relating to statutes administered by the Department is RFPLC's interest in the proper implementation and enforcement of New York's Environmental

Conservation Law (“ECL”), Article 1; Article 3; Article 27, Title 9; ECL Article 19; ECL Article 15; and ECL Article 70; and the Department’s regulations that implement these statutes, specifically 6 NYCRR Parts 200, 201, 202, 208, 212, 231, 360, 380, 382, 608, 617, 621 and 624. Accordingly, the members of RFLPC have a substantial interest in the manner in which the Department carries out its responsibilities under SEQRA and its implementation of the state and federal environmental statutes noted above.

**Part 624.5(b)(1)(iv)**

RFPLC is requesting full party status, in opposition to the permit modification requested by the applicant.

**Part 624.5(b)(1)(v)**

In addition to the basis for its request that the Department suspend action on the application, the precise grounds for RFPLC’s opposition include offers of proof discussed further below that the offers to prove that the County cannot comply with the following applicable requirements:

1. Dose limits for land disposal of radioactive waste under Parts 360, 380 and 382. *See* 6 NYCRR §§ 360-1.1(b), 360-1.5(b), 360-2.17(m), 380-1.2(e), 380-4.1(a)(4), 380-6.1(b), 380-8.5, 382.1(c)(5).
2. Noise limits for landfills under Part 360. *See* 6 NYCRR § 360-1.14(p).
3. Submission of a local solid waste management plan, requirement to submit a plan of action to achieve recycling goals identified in County’s approved 1991 plan, and requirement to modify the 1991 plan to reflect substantial changes in operations, as required under the applicant’s current Part 360 permit.

## 1. Dose limits for land disposal of radioactive waste

An application for a permit may be denied on when “a material change in environmental conditions” occurs.<sup>20</sup> In addition, applications to modify a permit under Part 360 must contain “a demonstration that, as modified, the facility will be capable of compliance with the applicable requirements of the ECL and this Part.”<sup>21</sup>

On January 10, 2010, Department Staff approved acceptance of Marcellus shale gas drilling wastes at the Chemung County Landfill based on a determination that the waste is not ignitable and thus is not a regulated hazardous waste.<sup>22</sup> Drill cuttings and dewatered brine sludge from Marcellus shale wells in volumes up to 2,000 tons per week have since been disposed in the landfill.<sup>23</sup> However, these waste streams are potentially highly radioactive, changing the environmental conditions at the landfill.<sup>24</sup> Moreover, processed and concentrated naturally occurring radioactive materials must be disposed in a landfill licensed to accept such waste,<sup>25</sup> and the Chemung County Landfill is not so licensed.

Through testimony and a technical memorandum prepared by Dr. Marvin Resnikoff of

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<sup>20</sup> 6 NYCRR § 621.10(f); 621.13(a)(4).

<sup>21</sup> 6 NYCRR § 360-1.9(c)(4).

<sup>22</sup> Gary Malenka, DEC, to Larry Shilling, Casella, email dated January 21, 2010, attached hereto as **Exhibit A**.

<sup>23</sup> Tom Wilbur, *Questions raised as landfill seeks to increase intake of Marcellus drilling waste*, STAR GAZETTE (Elmira, NY), March 31, 2010, available at <http://www.stargazette.com/apps/pbcs.dll/article?AID=20103310383> and attached hereto.

<sup>24</sup> Staff’s approval letter, (note 22, above), does not address the levels of radioactivity in this waste stream.

<sup>25</sup> 6 NYCRR §§ 380-1.2(e), 382.1(c)(5), 360-1.1(a).



Radioactive Waste Management Associates, attached hereto as **Exhibit B**, RFPLC offers to prove that these waste streams likely exceed levels of radioactivity allowable for materials that may be disposed in a landfill under Part 360, and additional information must be provided to determine the specific radioactivity of these waste streams.<sup>26</sup>

According to Dr. Resnikoff, drill cuttings from Marcellus shale wells have radium concentrations substantially higher than the maximum permissible dose at the boundary of an operating nuclear reactor, and dewatered brine sludge from such wells have even higher concentrations of radioactivity, and leachate from this landfill treated at the City of Elmira waste water treatment plant can be expected to exceed allowable drinking water standards for radium if the treated waste water is discharge to the Chemung River.

According to a recent local news report, radioactivity sensors to be installed at the landfill are “on order,”<sup>27</sup> but there is no indication that the County or the Department has inquired into the radioactivity of the Marcellus shale drilling waste currently being managed at the landfill. Instead, Chemung County Executive Tom Santulli reportedly sought approval of this waste stream in order to justify “receiving about \$1 million a year after it [the landfill] exceeds the 180,000-ton threshold” for annual waste receipts, under the County’s contract with NEWSNY.<sup>28</sup>

If the reported facts outlined above are true, the timing of the current request to expand

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<sup>26</sup> Dr. Resnikoff concludes, at page 4 of his memo, that disposal of these materials at the landfill can be expected to result in exposure as high as 200 millirem per year, exceeding the 10 millirem per year threshold for permitting major projects under Part 380. 6 NYCRR § 621.4(q)(2)(ii).

<sup>27</sup> Wilbur, *Questions raised as landfill seeks to increase intake of Marcellus drilling waste*, op. cit.

<sup>28</sup> *Id.*

the landfill's waste acceptance rate to 180K per year is tied to the acceptance of Marcellus shale gas drilling waste. Otherwise, the projected life of the landfill under the currently permitted rate of 120K per year is about four years.<sup>29</sup>

The County and NEWSNY have also submitted an application, not yet deemed complete, to increase the annual tonnage rate at the landfill to 417K, requiring a lateral or vertical expansion, or both.<sup>30</sup> Reportedly, the County and NEWSNY currently see the 417K plan as a means "to provide additional space for drill cuttings from gas well sites in Pennsylvania."<sup>31</sup>

No application has ever been submitted to the Department in compliance with Part 360-2.3 disclosing the County's and NEWSNY's construction plans,<sup>32</sup> including an operations and maintenance manual that addresses the "sequencing of all major landfilling activities."<sup>33</sup> Nor is the disposal of radiologically contaminated waste identified in the landfill's operations and maintenance manual.<sup>34</sup>

Based on Dr. Resnikoff's analysis and proffered testimony, RFPLC offers to prove that

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<sup>29</sup> See above, note 13.

<sup>30</sup> Cf. *id.* at 2 (noting that a proposal to increase annual tonnage to 417K is "being reviewed") and Fig. 1 (map showing planned development of four new landfill cells beyond Cell IV).

<sup>31</sup> Matt Hicks, *Landfill plan moves forward: Legislators to act on tonnage increases next week*, MORNING TIMES (Sayre, PA), April 6, 2010, <[http://www.morning-times.com/articles/2010/04/06/local\\_news/doc4bbb2541e1d66427511291.txt](http://www.morning-times.com/articles/2010/04/06/local_news/doc4bbb2541e1d66427511291.txt)>.

<sup>32</sup> 6 NYCRR §§ 360-2.3(a), 360-2.4(c).

<sup>33</sup> 6 NYCRR § 360-2.9 (preamble).

<sup>34</sup> See Part 360-2.9(a) (requiring in the O&M manual a description "stipulating how this facility will be operated in an environmentally sound and resource conscious manner").

disposal of the Marcellus shale gas waste streams in the Chemung County Landfill does not comply with Part 360, and the permit should be modified to specifically prohibit acceptance of these waste streams.

## **2. Noise limits for landfills**

The Chemung County Landfill is located in a rural residential area, and Cell IV, where the pace of operations would increase under the current tonnage increase request, is located about 800 feet from residential properties on Roberts Hollow Road, to the immediate west of the landfill.<sup>35</sup> Noise complaints have already been submitted to the Department.<sup>36</sup> Subpart 360-1.14(p) of the Department's regulations limits noise at the property boundary of a landfill located adjacent to residential property in a rural community to 57 decibels between the hours of 7:00 AM and 10:00 PM, and 47 decibels before 7:00 AM, measured as A-weighted decibels ("dBA") during a one-hour period, or hourly equivalent sound level ("Leq"). 6 NYCRR §§ 360-1.14(p), -1.14(p)(2).<sup>37</sup> The applicant has provided the results of a noise assessment conducted based on measurements taken on October 28, 2005. These results show the landfill would exceed the limit of 57 dBA in a rural area for at least three hours during peak operations at the requested waste

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<sup>35</sup> *Cf.* Application File, Item 38, Fig. 1, "Existing Chemung County Landfill Noise Attenuation Buffer."

<sup>36</sup> Application File, Items 18, 22.

<sup>37</sup> Currently, landfill operations begin at 6:00 AM, and NEWSNY has agreed that "the current permit for the facility should be modified to indicate that the facility will not start operations until 7:00 AM." Application File, Item 38, NEWSNY letter to Lisa Schwartz, Esq., March 4, 2010.

acceptance rate.<sup>38</sup>

However, RFPLC asked The Noise Consultancy, LLC (“TNC”), to estimate noise levels emitted by the working face and, based on TNC’s review, the landfill cannot avoid exceeding 57 dBA beyond the landfill property boundary to the west of Cell IV, along Roberts Hollow Rd., and north of a large parcel for which NEWSNY has obtained a noise easement.<sup>39</sup> The primary difference between NEWSNY’s noise estimate and TNC’s is the sound level expected from working face operations. These estimates, the starting point for any noise assessment, differ by about 12 dBA.

Based on TNC’s analysis and proffered testimony, RFPLC offers to prove that without additional distance from Roberts Hollow Road, noise barriers or other mitigations, the landfill cannot comply with the noise limit under Subpart 360-1.14(p).

### **3. Failure to submit a modified local solid waste management plan**

An application for a permit may be denied for “noncompliance with previously issued permit conditions.” The applicant’s current permit, issued on February 21, 2006, requires it to submit a new LSWMP by August 31, 2006.<sup>40</sup> However, the applicant has not complied with this permit requirement.

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<sup>38</sup> Application File, Item 33, at 3 (Wolfe to DEC Staff, August 9, 2007). The applicant’s noise assessment is inadequate to the extent it is based on sound measurements taken “every 30 seconds.” *Id.* at 1. This method would not be expected to capture the sound of “[b]ird whistlers and bangers . . . used to scare birds away,” as noted in NEWSNY’s response to public comments. Application file, Item 24 (Response to Comments, June 27, 2007, Comment 19).

<sup>39</sup> See The Noise Consultancy, Memo to Gary A. Abraham, Esq., April 8, 2010, Section 2.0, attached hereto as **Exhibit C**; Application File, Item 38, Fig. 1.

<sup>40</sup> Application File, Item 1 (Part 360 permit, Special Condition 71(c)).

The current permit also requires the County to implement its recycling program in accordance with the time frames indicated in the County's CRA, and if the time frames are not met the County must submit "a plan of action to correct this shortfall."<sup>41</sup> However, the County has failed to meet the time frames for implementing the recycling program in its CRA, and has not submitted a plan to correct this failure.

In addition, according the Department's regulations,

A planning unit must undertake a plan modification pursuant to subdivision (a) of this section if there is:

- (1) a significant change in the method of managing all or any significant portion of the solid waste generated within the planning unit;
- (2) a significant change in the management or administration of the planning unit; or
- (3) a change of more than one year to any significant component of the solid waste management plan implementation schedule.<sup>42</sup>

As discussed in the Introduction, above, as required by the County's 2005 lease with NEWSNY, county waste management facilities that were previously operated by the County have all been privatized<sup>43</sup> and no meaningful progress has been in meeting the County's 1991 LSWMP

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<sup>41</sup> *Id.*, Special Conditions 66-68.

<sup>42</sup> 6 NYCRR § 360-15.11(b).

<sup>43</sup> The lease agreement required the County to transfer to NEWSNY operation of the County's four waste transfer stations; operation of all the equipment and buildings associated with the County's Recycling Program; operation the County's waste tire shredder operation to NEWSNY; and transferred all County solid waste contracts to NEWSNY; and required the County to dissolve its Solid Waste Management District. *See* Chemung County-NEWSNY Management and Lease Agreement, dated September 19, 2005, pp. 3 (defining facilities transferred), 6 (specifying the shredder operation, the "Mill"), 7 (specifying the County's

implementation schedule for achieving a 40% recycling rate. In addition, as required by the lease the County has repealed a crucial element of its LSWMP, its solid waste law, which prohibited importation of waste into the county and prohibited exportation of county waste to outside facilities, and has rescinded its scale of disposal charges for all its waste management facilities, giving over to NEWSNY the power to set all such charges.<sup>44</sup> Thus all three triggers requiring a plan modification under Subpart 360-15.11(b) have occurred. However, the County has not submitted a plan modification since its LSWMP was approved in 1991.

In addition, an application for a permit modification must “include a statement of necessity or reasons for modification.”<sup>45</sup> However, the reasons for the requested increase in the waste acceptance rate given in the application, to respond to market conditions outside the County,<sup>46</sup> contravene the County’s 1991 LSWMP which limits the service area for the landfill to

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recycling facilities), 19 (section 4.6, regarding the County’s Solid Waste District). These contract terms were met soon after the lease was executed.

<sup>44</sup> Chemung County Legislature, Resolution Nos. 05-316, 05-317 (2005). In addition, once NEWSNY’s agreement with the County was executed, the company negotiated a host benefit agreement with the Town of Chemung, the host town for the landfill, including annual financial payments of about \$1 million per year for the next 25 years, in return for the town rescinding its local landfill ban law.

<sup>45</sup> 6 NYCRR § 621.11(a).

<sup>46</sup> Application File, Item 3, at 3. Similarly, the County’s annual reports to the Department show that County waste is transported to NEWSNY’s Hakes C&D Landfill in Painted Post, NY, and NEWSNY’s Hyland Landfill in Angelica, NY, the latter about 90 miles west of the Chemung County Landfill. The additional transportation required for in-County waste is dictated by NEWSNY’S need to maximize profits rather than to minimize potential environmental impacts or to implement the County’s LSWMP.

“exclusively Chemung County.”<sup>47</sup>

The County’s failure to make any progress toward achieving approved recycling goals and its noncompliance with the requirement to modify its LSWMP implicates the two purposes for Article 27 set forth in the ECL, to develop projects “in such a manner as will assure full consideration of all aspects of *planning for proper and effective solid and hazardous waste disposal*,” and to encourage “maximum resource recovery from solid waste on a cost-effective basis, with minimum environmental debit, energy-efficient materials recovery, prudent land use, maximum economic benefits and maximum effective private sector participation, with due concern for the primacy of the local and regional role in resource recovery procedures upon the basis of public knowledge and consent.”<sup>48</sup> The Department’s regulations imposing on solid waste management planning units in the State the obligation to seek approval for LSWMP modifications under certain conditions specifically implement the planning directives of the ECL.<sup>49</sup> Because the County is out of compliance with the long overdue requirement to modify its LSWMP to reflect changed operations and fundamental changes in the manner in which it manages its waste, and is out of compliance with the requirement that it at a minimum submit a plan for reaching its recycling goals, the Department should suspend action on this application

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<sup>47</sup> Chemung County, 1991 LSWMP, p. IV-15. According to the County’s annual reports, following NEWSNY’s takeover of operations in 2005, the landfill began accepting waste from nearby counties, including substantial volumes from Ostego, Tioga and Broome counties, and from counties well outside the region, including Orange and Queens counties and Bradford County, Pennsylvania. In 2006 the landfill’s service area added Nassau County on Long Island; Kings Green and Rockland counties, in the Hudson Valley; Schoharie County in the Mohawk Valley. Today the landfill also accepts waste from several Pennsylvania counties and Canada.

<sup>48</sup> ECL §§ 27-0101(1), (2).

<sup>49</sup> *Cf.* ECL §§ 27-0107(1)(a), (2).

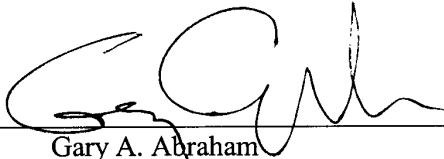
until a new or modified LSWMP is submitted and fully reviewed.

### Conclusion

On the basis of its offers of proof and its identification of substantive and significant issues,<sup>50</sup> the Petitioner respectfully requests it be granted full party status.

Dated: April 8, 2010

By: \_\_\_\_\_



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<sup>50</sup> 6 NYCRR § 624.5(d)(2)(ii).



## LIST OF EXHIBITS

- A Gary Malenka, DEC, Email to Larry Shilling, Casella, dated January 21, 2010.
- B Memo from Dr. Marvin Resnikoff, Radioactive Waste Management Associates, to Gary A. Abraham, Esq., dated April 7, 2010, together with Dr. Resnikoff's resume.
- C Letter from The Noise Consultancy, to Gary A. Abraham, Esq., dated April 8, 2010, with these attachments:
  - 1. Gary B. Jobe, Project Engineer, Al-Jon, Memorandum listing sound emissions for the Al-Jon ADV600 Compactor, April 24, 2006.
  - 2. Caterpillar, Operation & Maintenance Manual for 816F Series Landfill Compactor, 815F Series II Soil Compactor and 814F Series Wheel Dozer Before Operation (2007).
  - 3. Resume of Eric Zwerling, President, the Noise Consultancy.
  - 4. Resume of Steven Szulecki, Vice President, the Noise Consultancy.