

SUPREME COURT
STATE OF NEW YORK COUNTY OF MONROE

FRESH AIR FOR THE EASTSIDE, INC.,

Petitioner,

vs.

VERIFIED PETITION

TOWN OF PERINTON,
TOWN OF PERINTON ZONING BOARD OF APPEALS,
and WASTE MANAGEMENT OF NEW YORK, L.L.C.,

Respondents.

Petitioner (“Petitioner”) Fresh Air for the Eastside, Inc. (“FAFE”) for its Verified Petition (“Petition”), by its attorneys, Knauf Shaw LLP, alleges as follows:

INTRODUCTION

1. Petitioner brings this CPLR Article 78 proceeding pursuant to CPLR Article 78, the Town of Perinton (the “Town”) Town Code (“Town Code”), the State Environmental Quality Review Act (“SEQRA,” Environmental Conservation Law (“ECL”) Art. 8), Article 7 of the Public Officers Law, the Open Meetings Law (“OML”), General Municipal Law (“GML”) § 239-m, and/or otherwise for an Order and Judgment: (1) vacating, annulling, or declaring illegal, unconstitutional, invalid, arbitrary, capricious, null and/or void the decision and approval (the “Approval”), annexed as **Exhibit A**, by the Town Zoning Board of Appeals (“ZBA”) of the application (“Application”) submitted by Respondent Waste Management of New York, L.L.C. (“WMNY”) for a Solid Waste Facility Permit, pursuant to the Town Code § 208-21 (“Landfill Permit”); (2) vacating, annulling, or declaring illegal, unconstitutional, invalid, null and/or void the determination under SEQRA made by the ZBA that the Approval was a SEQRA Type II action and not subject to environmental review under SEQRA; and (3) granting such other further relief

as this Court deems just and proper, including Petitioner's costs, reasonable attorney's fees, and disbursements.

PARTIES

2. Respondent WMNY is a Delaware limited liability company authorized to do business in New York, with offices located at 425 Perinton Parkway, Perinton, New York.

3. WMNY is the owner and operator of the High Acres Landfill & Recycling Center (the "Landfill") located at 425 Perinton Parkway, Perinton, New York, and is the applicant for the Landfill Permit.

4. Petitioner is a New York not-for-profit corporation with offices located in Monroe County in the State of New York. Petitioner was organized exclusively to carry on the activities of a charitable or educational organization as specified in Section 501(c)(3) of the Internal Revenue Code.

5. Petitioner was formally formed in 2018 to, among other things, preserve and protect the environment for the benefit of residents living in proximity to the Landfill by performing activities such as working with elected officials and the public on environmental issues related to the Landfill and ensuring compliance of the Landfill with land use, solid waste management, and air pollution permits, zoning laws, and environmental laws, codes, and regulations.

6. Petitioner has more than 200 members who own property or reside in close proximity to the Landfill whose lives and properties have been and continue to be adversely impacted by persistent, noxious, and offensive odors of garbage and landfill gas (the "Odors") emitted from the Landfill over at least the past five years.

7. Members of Petitioner are uniquely injured by the operations of the Landfill in numerous ways including adverse impacts related to aesthetics, property values, environmental

harm, noise, dust, fumes, odors, traffic, air pollution, vectors, tremors caused when the gas plant malfunctions, etc. (“Impacts”).

8. The Impacts are experienced differently between FAFE members, and are unique from the public at large, for example, the Odors and Impacts interfere with the use and quiet enjoyment of the individual member’s properties.

9. Specific members of Petitioner impacted by the Landfill include Justin and Kaitlyn Foley, residing at 24 Tea Olive Lane, Fairport, NY 14502, Gary and Jennifer McNeil, residing at 11 Golden Bell Court, Fairport, NY 14450, and Michael and Heather Merlo, residing at 7 Tea Olive Lane Fairport NY 14450.

10. Heather and Michael Merlo reside about 0.6 miles north of the Landfill, and regularly experience adverse Impacts caused by the Odors and Landfill. Due to the Odors and other Impacts, the Merlos limit use of their yard, and routinely check weather reports and wind direction and speed before planning any outdoor activities for themselves or their children. The Odors and Impacts have unduly interfered with the quiet enjoyment of their property.

11. Gary and Jennifer McNeil reside about 0.8 miles north of the Landfill, and regularly experience adverse Impacts caused by the Odors and Landfill. Due to the Odors and other Impacts, the McNeils have refrained from making property improvements and have seriously considered selling their home. Due to Odors, Plaintiffs McNeils’ children were not able to play outside on numerous occasions. The Odors and Impacts have unduly interfered with the quiet enjoyment of their property.

12. Justin and Kaitlyn Foley reside approximately 0.8 miles north of the Landfill, and regularly experience adverse Impacts caused by the Odors and Landfill. Due to the Odors and other Impacts, the Foleys have refrained from holding any large events at their home in fear that

their guests would experience the Odors. They often refrain from using their backyard when Odors are present and constantly keep their windows closed in fear that the Odors will enter their home. The Foleys' daily activities are often interrupted by Odors. The Odors and Impacts have unduly interfered with the quiet enjoyment of their property.

13. Both SEQRA, and Chapter 208 of the Town Code, were enacted to protect citizens from the type of adverse environmental impacts being experienced by the Members. By granting the Approval in a manner inconsistent with the requirements of the Town Code and SEQRA, the Town is continuing to permit the Landfill to operate in a manner that adversely impacts the members of the Petitioner without imposing proper mitigation measures to eliminate or mitigate these impacts.

14. Respondent Town is a municipal corporation with offices at 1350 Turk Hill Road, Fairport, New York 14450 in Monroe County.

15. Respondent ZBA is a zoning board of appeals existing pursuant to Town Law § 267, with offices located at 1350 Turk Hill Road, Fairport, New York 14450 in Monroe County.

THE TOWN CODE

16. Chapter 208 of the Town Code governs "Zoning" in the Town.

17. Town Code § 208-21 regulates the filling of land and dumping of waste material in the Town, and specifically prohibits any dumping of waste, except as expressly provided for in that Section.

18. Town Code § 208-21(C) permits the dumping of waste in the Town only in an Industrial Zone, and then only if a Landfill Permit is issued by the ZBA following a public hearing.

19. Town Code § 208-21(C) requires that a Landfill Permit applicant submit a copy of its Landfill Permit application to the Town of Perinton Conservation Board ("Conservation

Board”) for comment.

20. Town Code § 208-21(C) requires that a Landfill Permit applicant secure the appropriate permits and permission from the New York State Department of Environmental Conservation (“NYSDEC”) to operate a solid waste facility in the Town.

21. Town Code § 208-21(D)(1) requires that a Landfill Permit applicant set forth “the waste materials which shall be dumped on the site.”

22. Town Code § 208-21(D)(2) further states that:

Before issuing a solid waste facility permit thereunder, the Zoning Board of Appeals shall find the following facts based on the evidence produced at the public hearing or submitted to the Board or upon personal observation by the members of said Board that:

(a) The granting of such permit is in the public interest to establish environmentally sound facilities to dispose of and treat solid waste.

(b) Adequate plans have been presented to show that the solid waste facility does not create a public hazard; that the solid waste facility does not unduly interfere with the quiet enjoyment of adjacent properties; and that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance; and that when the operation is completed, the fill material or disturbed area will be covered with at least six inches of clean nondeleterious topsoil within a reasonable time thereafter and seeded with a permanent pasture mixture or other fast-growing surface vegetation and that such reseeded is continued until growth has been established.

(c) Any excavation permitted under this section shall not occur unless all required Department of Environmental Conservation (DEC) permits or other DEC authorizations have been obtained, all operations are in compliance with all DEC regulations, the requirements of § 122-13 are satisfied and a bond is posted to ensure compliance with § 122-13. The standards for restoration set forth in § 122-13 of the Excavation Law of the Town of Perinton, as may be amended from time to time, are incorporated herein by reference and shall apply to all properties under the jurisdiction of this section.

(Internal citations omitted).

23. Town Code § 208-21(D)(3) states that the ZBA shall require an applicant to file a surety company bond with the Town as a condition to any Landfill Permit, to ensure compliance with § 208-21.

24. Town Code § 208-21(D)(4) states that any Landfill Permit shall expire no later than the fifth anniversary date following the issuance.

25. Town Code § 208-21(D)(4) further states that any application for a Landfill Permit “may be renewed under the same procedures required for the original permit.”

26. Town Code § 208-21(D)(5) requires that an applicant “enter into a contract with the Town Board for the operation of a solid waste facility” prior to the issuance of a Landfill Permit. This contract is referred to as a “Host Community Agreement,” and is further detailed below.

27. Town Code § 208-21(D)(6) permits the Town to revoke the Landfill Permit should any condition in § 208-21 not be complied with.

28. Town Code § 208-21(D)(7) requires all uses permitted under a Landfill Permit to “conform to bulk and setback restrictions as prescribed by the Zoning Board of Appeals, but in no event shall such restrictions be less restrictive than those described in § 208-40A(4).”

29. Town Code § 208-40(A)(4) allows for a solid waste facility to operate in an Industrial District upon obtaining a Landfill Permit from the ZBA provided that the following criteria are met:

- (a) The parcel is greater than 100 acres in size.
- (b) The facility and related improvements are set back greater than 100 feet from any property line.
- (c) Appropriate measures are taken to minimize the visual impact of any operational activities and equipment, and dropoff facilities are provided along adjacent public roads.

THE LANDFILL HISTORY

30. The Landfill is located in the Industrial Zoning District.

31. The Landfill is governed by numerous permits.

State Solid Waste Management Facility Permit

32. The Landfill is currently operating under a Solid Waste Management Facility Permit issued by NYSDEC, Permit Number 8-9908-00162/00032 (“State Permit”), which allows WMNY to construct and operate a municipal solid waste (“MSW”) Landfill with an approved design capacity of 3,500 tons per day pursuant to ECL Article 27, Title 7 and 6 N.Y.C.R.R. Part 360.

33. The State Permit was last modified on October 4, 2013 and expires on July 8, 2023.

34. Upon information and belief, operations at the original Landfill commenced around 1972 under permits issued by the Town of Perinton and the Monroe County Health Department.

35. Upon information and belief, the original Landfill, occupying 72 acres, was closed in 1995.

36. In 1993, the Landfill was issued its first State Permit by NYSDEC in conjunction with the approval of the Western Expansion of the Landfill (“WEX”), which consists of Cells 1 through 9.

37. An environmental impact statement (“EIS”) was prepared for the approval of the State Permit for the WEX pursuant to SEQRA in 1993.

38. In 2001, the State Permit was modified to include the Parkway Expansion Phase I (“Phase I Expansion”), which consists of Cells 6V-Olm 7V-OL and 8V/9V-OL.

39. A Supplemental EIS was prepared for the approval of the State Permit for the Phase I Expansion pursuant to SEQRA in 2001.

40. In 2003, the State Permit was modified to include the Parkway Phase II Expansion (“Phase II Expansion”), which consists of Cells 10 and 11.

41. A Supplemental EIS was prepared for the approval of the State Permit for the Phase II Expansion pursuant to SEQRA in 2003.

42. The WEX, Phase I Expansion, and Phase II Expansion are all located in Perinton.

43. In 2008, NYSDEC approved a modification to State Permit, to include the Parkway Expansion Phase III and Vertical Expansion. The Phase III Expansion area includes Cells 12, 13, 13-OL, 14, 15, 16 and 17.

44. A Supplemental EIS was prepared for the approval of the State Permit for the Phase III Expansion and Vertical Expansion pursuant to SEQRA in 2008.

45. In 2011, the State Permit was further modified pursuant to *Preserve Scenic Perinton Alliance, Inc. v. Porter*, 32 Misc.3d 1216(A), 934 N.Y.S.2d 36 (Sup. Ct. Monroe Co. 2010, Hon. John J. Ark, J.S.C.), which required the Landfill to eliminate a 100-foot vertical expansion in the Town of Perinton since the NYSDEC illegally permitted this vertical expansion many years into the future beyond their ten-year permit authority.

46. In 2013, the State Permit was modified to allow WMNY to construct and operate a rail siding to bring waste to the Landfill via intermodal rail from New York City (“NYC”). WMNY and NYC entered into a \$3.3 billion contract to transport NYC waste (“NYC Garbage”) to the Landfill.

47. In 2015, large amounts of MSW, including NYC Garbage, began arriving at the Landfill via intermodal rail, which is significantly more odorous than other waste streams.

48. In 2016, in conjunction with the modification of the Title V Clean Air Act Permit (the “Air Permit”) for the Landfill for the Phase III Expansion, another Supplemental EIS was

prepared for the Landfill.

Town Landfill Permit

49. According to the Application, and upon information and belief, WMNY received a Landfill Permit from the Town for WEX and Phase I Expansion in 2001.

50. Upon information and belief, Landfill Permits have been issued to WMNY for the WEX, Phase, Phase II, and Phase III at various times.

51. WMNY was issued a Town Landfill Permit for the entire Landfill on July 25, 2016, which expired on August 22, 2021 (the “2016 Landfill Permit”).

52. Upon information and belief, WMNY did not prepare an EIS or Supplemental EIS in conjunction with issuance of the 2016 Landfill Permit received from the Town.

THE LANDFILL IS A CONTINUING NUISANCE

53. The Landfill is causing a nuisance in the community.

54. WMNY’s operation of the Landfill results in the Odors and other Impacts which invade the community including public places, like schools, baseball fields, etc., and the private properties and homes of Town residents, including members of Petitioner.

55. WMNY’s State Permit, Air Permit, and the Town Code require that odors from the Landfill be controlled so that they do not constitute a nuisance, regardless of the existence of specific air quality standards or emission limits.

56. In addition, NYSDEC’s regulations require that WMNY “must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by [NYSDEC] [6 N.Y.C.R.R. § 360.19(i)].” The odors must be effectively controlled so that they do not constitute nuisances or hazards to health, safety or property. *See* 6 N.Y.C.R.R. § 360-1.14(m).

57. The nuisance Odors have been well-documented since late 2017, subsequent to the

approval of the 2016 Landfill Permit, when numerous residents complained of the Odors to the Town and NYSDEC.

58. In fact, Petitioner was created in direct response to Odors and as a result of the failure by the Town and NYSDEC to respond to the Odors and other impacts from the Landfill.

59. The Odors continue to this day at nuisance levels.

60. WMNY fully admits and acknowledges in the Application that it causes nuisance Odors to infiltrate the community.

61. WMNY implemented several operational changes in response to the nuisance Odors, and since the issuance of the 2016 Landfill Permit.

62. WMNY has publicly stated that it received approximately 100 complaints a year from 1970-2017.

63. Since 2017, there have been numerous *days* when over 100 odor complaints were filed.

64. Below is a breakdown of odor complaints noted from November 2017 to June 15, 2021, through the FAFE on-line odor complaint application (the “FAFE App.”), which is trending to be the same as in 2021 as in 2020, when there were over 4600 complaints, **46 times more than a “normal” odor occurrence year according to WM.**

Row Labels	Count of 6/15/2021
2017	945
Qtr4	945
2018	10725
Qtr1	6838
Qtr2	1526
Qtr3	1428
Qtr4	933
2019	2942
Qtr1	514
Qtr2	442

Qtr3	946
Qtr4	1040
2020	4604
Qtr1	1017
Qtr2	568
Qtr3	1446
Qtr4	1573
2021	1778
Qtr1	1086
Qtr2	692
Grand Total	20994

65. The FAFE App is a publicly available electronic application that can be downloaded onto one’s phone or computer and provides a platform for real-time odor complaints. The FAFE App geocodes the address of the complainant based on their location at the time they are impacted by Odors, and allows the complainant to provide a description of the Odor Impacts, the intensity on a scale of 1 to 10, and any comments the complainants wishes to add, and automatically documents data like the wind direction and speed, weather conditions, barometric pressure.

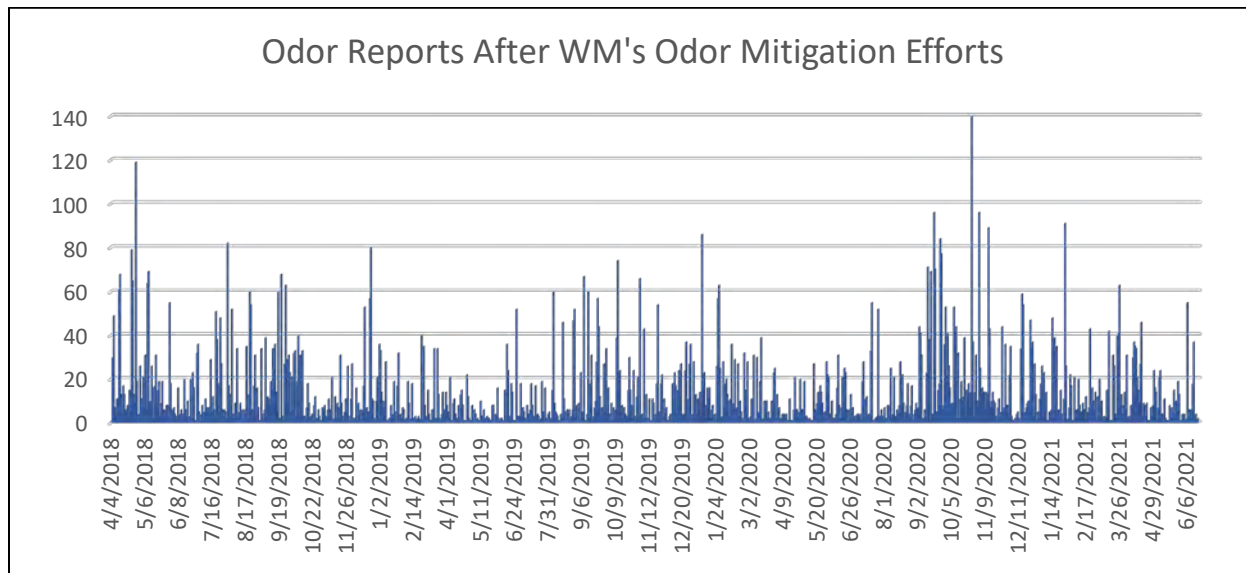
66. Complainants have the option to send an email with their Odor report, which is immediately sent to various recipients, including government officials in the Town of Perinton, Town of Macedon, NYSDEC, and the State Assembly and Senate.

67. In its Application (page 4 of 6), WMNY fully admits that it caused a public nuisance from late 2017 through early 2018, which it referred to the public hearing as “the 2017/2018 Odor Event.”

68. WMNY claims it is of the opinion that it is no longer causing a nuisance in the community. WMNY publicly declared on May 3, 2018, that it had completed mitigation activities and that “[t]he mitigation efforts proposed by WMNY in the December 20, 2017 letter to NYSDEC as well as those required by [NYSDEC] in the [February 2018 Notice of Violation] have been

completed and ongoing monitoring and maintenance activities are being performed.”

69. However, the nuisance Odors continue to this day. Below is a chart of the odor complaints received *per day* by the FAFE App just since May 3, 2018:



70. The Landfill is continuing to cause nuisance Odors on a regular basis. Petitioner maintains that WMNY’s Odor problem should be referred to as the “Never-ending Odor Event.”

THE LANDFILL HAS CHANGED ITS OPERATIONS AND PERMITTED ACTIVITIES AUTHORIZED BY ITS 2016 LANDFILL PERMIT

71. There have been numerous operational changes to the Landfill since the issuance of the 2016 Landfill Permit, and the EIS and Supplemental EISs were performed as described in this Petition.

72. No environmental review has been performed pursuant to SEQRA to address the Odors experienced by the community since 2016, the substantial increase of NYC Garbage and resulting Odors, or the flawed design of Landfill Cells 10 and 11, which flawed design WMNY freely admits to.

73. Throughout the Application, WMNY notes numerous operational changes including: “In late 2017 and early 2018, High Acres landfill experienced a first of its kind odor

event associated with two disposal cells, 10 and 11. Cells 10 and 11 experienced a reduced capacity to collect landfill gas.”

74. Since the issuance of the 2016 Landfill Permit, WMNY admits that it caused the “2017/2018 Odor Event.”

75. As detailed in numerous public letters submitted by WMNY to NYSDEC or the Town, which the Town has been aware of or a recipient to, including a December 20, 2017 letter to NYSDEC, a February 16, 2018 letter to NYSDEC, a September 12, 2018 letter to the Town, and an October 20, 2020 letter to NYSDEC, WMNY admits that it has made numerous major changes to the scope of the permitted activities of the Landfill Permit, and major operational changes at the Landfill since the issuance of the 2016 Landfill Permit, including:

- a) design, approval, and installation of an approximately 10,000 lineal feet of retroactively installed horizontal collection piping in cells 10 and 11;
- b) design, approval, and installation of additional 24 and 18-inch vacuum header from the flare/gas to energy plant in cell 11;
- c) identification, abandonment and replacement of an approximate 1100 lineal foot sub header in cell 11;
- d) design, approval and installation of 9 acres of exposed temporary geomembrane cover along the north and east slopes of cell 11;
- e) hiring additional, permanent staff to support the infrastructure construction, increase monitoring and maintenance of landfill gas collection and conveyance system;
- f) placement and compaction of additional daily and intermediate cover soils;
- g) evaluating the characteristics of soils types used for cover;
- h) limiting the acceptance of odorous materials;
- i) incorporating additional odor neutralizing distribution systems and products at the working face and at the facility perimeter;
- j) installed 60 mil HDPE liner in the drainage swale for swale for Cell 11;
- k) incorporating a daily odor patrol around the adjacent residential areas;
- l) sampling for hydrogen sulfide at the Landfill;
- m) installation and use of vibration prevention measures;
- n) installation of an enhanced permanent mist barrier system and an enhanced

- perimeter mist barrier system;
- o) replaced 8” and 12” sub-headers in cell 11 and installation of approximately 800 feet of sub-header in cell 5;
 - p) upgraded the gas dewatering system to include over 100 wells focusing on cells 10/11 area;
 - q) installed over 18 acres of geo-synthetic cover;
 - r) committed to the placement of two-foot-thick interim soil cover on top of the plateau of cells 10 and 11;
 - s) installed automated valves and well monitors to enhance monitoring and control of the gas collection system in various portions of the facility;
 - t) installed automated flare reverberation control measures to monitor and control the facility gas blowers;
 - u) use of a portable NCM odor control cannon and strategically placed “misting sticks” to control odors;
 - v) use of the mobile misting system known as the Odor Boss Directional Vapor Canon system;
 - w) employment of several permanent and mobile odor control systems at the Landfill as redundancies and backups in the event that the other odor controls are not operational;
 - x) installation of a new landfill gas blower unit for the Zink flare;
 - y) addition of vertical and horizontal wells to enhance the gas collection and control measures;
 - z) installation of a dewatering compressor;
 - aa) installation of nine (9) drainage pads around vertical slipform wells to assist with lateral collection of potential perched liquid within the landfill and the vertical wells that have drainage pads are hydraulically connected to the leachate collection system to further enhance landfill gas collection; etc.

76. Additionally, NYC Garbage, which is received by rail from waste transfer stations in NYC, became (and continues to be) the primary source of MSW disposed at the Landfill beginning in 2016 (*see* chart below, which is derived from WMNY’s annual reports to NYSDEC for the Landfill).

	2014	2015	2016	2017	2018	2019	2020
Rail NYC Garbage tons per year (“tpy”)	-	284,392	559,214	567,711	724,744	613,837	646,744
Total MSW (tpy)	211,317	475,316	750,084	796,065	838,850	686,848	717,891
Rail NYC Garbage as a percent of MSW	0%	60%	75%	71%	86%	89%	90%

77. WMNY closed and covered Landfill Cells 10 and 11 as a direct result of the Odors, and since the issuance of its 2016 Landfill Permit.

78. No environmental review pursuant to SEQRA has been completed for the reopening of those Cells, which WMNY, upon information and belief, seeks to reopen within the five-year term of its Landfill Permit.

79. Other permitted activity and operational changes are detailed in FAFE’s comment letter objecting to the Application, which is incorporated by reference. *See Exhibit B*, Letter to ZBA, dated July 23, 2021.

80. None of these operational changes, or the reasons these changes had to be made during the last five years, have been analyzed in an EIS in compliance with SEQRA.

81. Operational changes WMNY must make to address the Odor issue continue to this day. As recently as August 25, 2021, NYSDEC required WMNY to undertake numerous operational changes to the Landfill to address the Odors. *See Exhibit C*, Letter from NYSDEC, dated August 25, 2021.

THE HOST COMMUNITY AGREEMENT

82. Landfill operators across the country typically enter into an agreement with the community that hosts the landfill. These agreements are typically referred to as a “host community agreements.”

83. WMNY and the Town entered into a Host Community Agreement, which was

approved by the Town Board on December 30, 2013 (“2013 HCA”).

84. The 2013 HCA expired on December 31, 2018, but by its terms, continues on a “month-to-month basis until the parties enter into a new agreement.”

85. The 2013 HCA, which is still the only HCA in place, lacks any property value protection measures for the citizens of the Town, despite this being a standard provision in host community agreements across the country.

86. WMNY and the Town, have allegedly been negotiating a new HCA. The Town published a draft on the Town’s website, which can be found here: <https://perinton.org/departments/public-works/high-acres-landfill/new-host-community-agreement/>, with the stated intent to solicit meaningful comments from the community (“Draft HCA”). This Draft HCA is dated April 2021, so presumably the Town and WMNY started negotiating after the expiration of the 2013 HCA, and only months before the 2016 Landfill Permit expired.

87. Upon information and belief, the Town and WMNY have not finalized the Draft HCA.

88. The Draft HCA is devoid of all substantive and key provisions, such that it is impossible for the community to provide meaningful comments and fully understand what the Town is negotiating on their behalf. Petitioner submitted numerous comments objecting to and suggesting improvements to the provisions contained in the Draft HCA.

89. Town Code § 208-21(D)(5) requires that an applicant “enter into a contract with the Town Board for the operation of a solid waste facility” prior to the issuance of a Landfill Permit. This did not occur.

90. The Perinton Town Board’s position is that the 2013 HCA is the “contract” required

for the issuance of the Landfill Permit, pursuant to Town Code § 208-21(D)(5).

91. However, this position is inconsistent with the Town Code because, assuming the alleged negotiations are successful, the 2013 HCA will not be the active HCA during the five-year term of WMNY's newly issued Landfill Permit because it expired in 2018, and thus, the 2013 HCA cannot serve to satisfy the requirements of Town Code § 208-21(D)(5).

92. The intent of the Town Code clearly is for the HCA and the Landfill Permit to be issued and executed in unison so that the review of the Landfill Permit application can assess the enforcement mechanisms in the HCA.

93. In fact, during a Town-hosted public presentation in April of 2021, the Town stated, regarding the HCA and Landfill Permit “[t]ogether, these two essential documents **compliment each other** by allowing the landfill to operate as a business while also securing protections and benefits for residents in the Town of Perinton.” [emphasis in the original].

94. Regardless, the ZBA issued the Landfill Permit without a proper HCA in place.

95. The ZBA, however, did accept the Conservation Board's recommendations that the Landfill Permit “would be nullified if the draft Host Community Agreement (HCA) is not executed prior to January 1st, 2022.”

96. But unfortunately, the Town has lost negotiating leverage contemplated by its Code.

WMNY'S LANDFILL PERMIT APPLICATION

97. On May 28, 2021, WMNY submitted its Application to the Town, less than three months before its 2016 Landfill Permit expired on August 22, 2021.

98. WMNY's deficient Application to operate the Landfill for another five years failed to comply with the application requirements of Town Code § 208-21 as follows:

- a. WMNY failed to submit a copy of its Application to the Conservation Board for comment, as required by Town Code § 208-21(C).
- b. WMNY's ability to secure all appropriate permits from NYSDEC to operate the Landfill for the duration of the Town Landfill Permit, as required by Town Code § 208-21(C).
- c. WMNY failed to provide a list of materials to be disposed of at the Landfill as required by Town Code § 208-21(D)(1).
- d. WMNY did not provide adequate plans describing how the Landfill does not "unduly interfere with the quiet enjoyment of adjacent properties," is not a "public hazard," and is in the "public interest," as required by Town Code § 208-21(D)(2).
- e. WMNY did not provide adequate plans documenting that the Landfill maintains proper cover as required by Town Code § 208-21(D)(2)(b).
- f. WMNY did not provide a surety bond as required by Town Code Section 208-21(D)(3).
- g. WMNY did not enter into a Host Community Agreement with the Town, as required by Town Code § 208-21(D)(5).
- h. WMNY did not demonstrate that it complied with, or obtained a variance from, Town Code § 208-40(A)(4) which requires that the Landfill "facility and related improvements [must] be set back greater than 100 feet from any property line."

99. The Application also contained a completed Long Environmental Assessment Form ("EAF"). Part 1 of the EAF contained numerous errors and inaccurate responses to the various questions, claiming the Landfill causes no negative environmental impacts of any kind.

100. WMNY also completed draft Parts 2 and 3 of the EAF. In Part 2 of the EAF, WMNY answered "NO" to every impact in the section despite obvious impacts from the Landfill.

101. In Part 3 of the EAF, WMNY inaccurately responded that there will be no significant adverse impacts on the environment and therefore, no EIS will be required.

THE APPROVAL

102. On July 23, 2021, Petitioner submitted detailed objections to the Application to the ZBA, which are annexed as **Exhibit B**.

103. The Application was heard by the ZBA on July 26, 2021. The ZBA did not make a decision or deliberate in any way on the Application at this public meeting, rather only accepted public comments.

104. The ZBA received more than fifteen letters and/or emails objecting to the Application. At the meeting, at least fifteen members of the community made comments in opposition to the Application.

105. Chairwomen Ezell noted that the comments that received from the community were “eye opening” in regard to the effects of the Landfill.

106. Upon information and belief, no letters/emails were submitted in support of the Application.

107. No public comments were made in support of the Application.

108. The ZBA referred the Application to the Conservation Board and deferred its decision on the Application until August 19, 2021.

109. The ZBA closed the public hearing at the conclusion of its July 26, 2021 meeting.

110. The Conservation Board held a public meeting on August 3, 2021. No public comments were accepted.

111. Petitioner submitted comments to the Conservation Board, by a letter dated August 3, 2021 and annexed as **Exhibit D**, further objecting to the Application.

112. Petitioner’s objections included specific requests to the Conservation Board to include measures that would help address the Odors, such as covering the side slopes which are a major source of Odors according to FAFE’s expert. *See Exhibit A.*

113. The Conservation Board requested more information from WMNY at the August 3, 2021 meeting, and upon information and belief, WMNY provided additional Application documents to the Conservation Board after that meeting.

114. On August 17, 2021, the Conservation Board submitted comments and recommendations to the ZBA, which failed to include any recommendations by FAFE.

115. Based on its review of the Application and its findings, the Conservation Board recommended that numerous conditions be placed on the Landfill Permit as part of any approval, including:

- (1) This renewed [Landfill Permit] renewal would be nullified if the draft Host Community Agreement (HCA) is not executed prior to January 1st, 2022.
- (2) That the new draft HCA include, but not be limited to the following odor related monitoring requirements, protections and waste restrictions:
 - A. Continuous H₂S monitoring at the Northside/Dudley Elementary School as well as at locations on the perimeter of the property (north of the landfill, near NYS Rte 31F and at a location south of the Landfill).
 - B. Application of the ASTM standard E-544-10 for charactering odor intensity utilizing N-Butanol, the deployment of certified responders to verify frequency and duration of odor complaints, and the reporting of actionable odor event causes.
 - C. Quarterly Landfill Surface Scanning & Monitoring with variances and mitigation measures reported for fugitive methane emissions at an actionable threshold of 200 ppm.
 - D. Conduct gas well monitoring & complete necessary follow-on well tuning 2-times per month (twice the regulatory standard).
 - E. That MSW waste received at HALRC by rail from the NYC five (5) Boroughs must not be greater than seven (7) days aged (as defined from a transfer station to the working face at High Acres). Any rail MSW from the NYC five (5) Boroughs that is older than seven (7) days will not be accepted at the facility. WMNY shall provide an "exception" Deferred Waste Report, which is to be sent to the Town of Perinton on a monthly basis.
- (3) That a separate engineering study & plan, received and approved by the Town of Perinton, independent of NYSDEC operating permit requirements or approvals be completed and prepared prior to the removal of the enhanced cover systems on top of Cells 10 & 11 and prior to the placement of additional waste in these cells.
- (4) That WMNY modify the facilities current Operation and Maintenance Plan to include, but not be limited to H₂S monitoring requirements & protocols, surface scanning requirements & protocols, gas tuning well requirements, and waste characterization.
- (5) All previous [Landfill Permit] Conditions remain in effect and include the following:

- A. Annual updates to PCB that including Monitoring variances, emissions, acoustical, regulatory compliance update
- B. Summary of Odor complaints
- C. Projecting filling sequence update
- D. Wetland monitoring reports for HANA
- E. Vehicular storage impinging on site view measures
- F. Public outreach/education
- G. Closure / post-closure estimates
- H. Phase II closure cover specifications

116. On August 19, 2021, the ZBA held another meeting regarding the Application, and reviewed new information submitted by WMNY, and recommendations from other Town boards and departments, like the Conservation Board. No public comments were accepted.

117. The ZBA concluded its Approval was a SEQRA Type II Action, and was thus exempt from SEQRA review.

118. The ZBA approved the Application on a unanimous vote, and adopted the Conservation Board's recommendations.

119. No resolutions or meeting minutes from the August 19, 2021 meeting have been posted on the Town's website.

120. Upon information and belief, the Town rushed to issue the Approval and did not require a complete Application from WMNY in accordance with the Town Code because WMNY provides financial benefits to the Town and the nature of the relationship causes financial and political pressures the Town.

PROCEDURAL ISSUES

- 121. Petitioner has exhausted its administrative remedies.
- 122. Petitioner has made no previous application for the relief sought in this Petition.
- 123. Petitioner has no adequate remedy at law.

**AS AND FOR A FIRST CAUSE OF ACTION FOR ARBITRARY,
CAPRICIOUS, AND ILLEGAL ACTION IN VIOLATION OF
THE TOWN OF PERINTON TOWN CODE,
PETITIONER ALLEGES AS FOLLOWS:**

124. Petitioner repeats and realleges the allegations of paragraphs “1” through “123” of this Petition, as set forth in this paragraph at length.

125. The Application failed to comply with the requirements embodied Town Code § 208-21 and was deficient on its face. Specifically, WMNY failed to comply with the following provisions contained in Town Code § 208-21:

- a) § 208-21(C) because WMNY did not submit a copy of its Application to the Conservation Board;
- b) § 208-21(C) because some of the permits issued to WMNY by NYSDEC expire during within the next five years, for example, the Air Permit expires December 1, 2021, and the State Permit expires on July 8, 2023. There is no guarantee these permits will be renewed;
- c) § 208-21(D)(1) because WMNY failed to provide a list of the materials to be disposed of at the Landfill and obviated the ZBA’s opportunity to analyze whether the Landfill would create or continue a public hazard;
- d) § 208-21(D)(2) because WMNY cannot show that the Landfill operations do not interfere with its neighbors and is not creating a public nuisance. WMNY’s Application fails to address the continuing nuisance Odors, which are well-documented. The ZBA failed to consider the evidence submitted by FAFE in opposition to the Application, as detailed in this Petition;
- e) § 208-21(D)(2) because WMNY failed to show that the Landfill Permit is in the public interest and the Landfill is environmental sound. The public is not benefitting

from nuisance Odors. The Landfill has shown it is not environmentally sound by causing continuous nuisance Odors and the “2017/2018 Odor Event” and provided no mitigation measures or a contingency plan that another Odor Event will not occur in the future;

f) § 208-21(D)(2) because the “2017/2018 Odor Event” alone demonstrates the WMNY cannot operate its Landfill without creating a public hazard. The continuous nuisance Odors means WMNY is creating a public hazard to this day;

g) § 208-21(D)(2)(b) because the Landfill is not properly covered, especially the side slopes, and the improper cover is causing Odors, meaning WMNY cannot satisfy the requirement that “the solid waste facility does not create a public hazard, the solid waste facility does not unduly interfere with the quiet enjoyment of adjacent properties; and that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance”;

h) § 208-21(D)(3) because WMNY’s Application is completely devoid of any evidence that the required surety bond exists with the Town;

i) § 208-21(D)(3) because the HCA was not finalized with the Town prior to the Approval. The 2013 HCA expired in 2018, and is only operating on a month-to-month basis until the new HCA is finalized. The HCA is required to be executed prior to granting the Application and issuing the Approval; and

j) § 208-40(A)(4) because WMNY’s Landfill and its accessory structures are not set back greater than 100 feet from any property line and a variance was not requested.

126. Thus, WMNY’s Application is so devoid of sufficient detail that the ZBA could not reasonably issue a Landfill Permit based upon it.

127. The ZBA also failed to comply with the procedural requirements embodied in

Town Code § 208-21.

128. Town Code § 208-21(D)(2) requires that the ZBA make findings of fact based on evidence produced “at a public hearing.” The ZBA’s decision to close the public hearing on July 26, 2021, but then review additional evidence and information submitted by WMNY and other Town departments after that date, at its meeting on August 19, 2021, was arbitrary and capricious.

129. The Approval was arbitrary and capricious, lacked legal justification, and was motivated by political and/or financial pressures.

130. The Approval was based on WMNY’s woefully deficient Application, and thus the Approval and the Landfill Permit were illegal, arbitrary and capricious, and must be annulled and voided.

**AS AND FOR A SECOND CAUSE OF ACTION FOR ARBITRARY,
CAPRICIOUS, AND ILLEGAL ACTION IN VIOLATION OF
SEQRA, PETITIONER ALLEGES AS FOLLOWS:**

131. Petitioner repeats and realleges the allegations of paragraphs “1” through “130” of this Petition, as set forth in this paragraph at length.

132. Under SEQRA, a lead agency is required to review an EAF and make a determination of significance, pursuant to 6 N.Y.C.R.R. § 617.7, and require an EIS if the Application might have at least one significant adverse impact to the environment, prior to granting any approvals. *See* 6 N.Y.C.R.R. § 617.3.

133. If there is one potentially significant adverse environmental impact, then an EIS must be prepared. ECL § 8-0109(2); 6 N.Y.C.R.R. § 617.7(a)(1).

134. If there is *no* potential for a significant adverse environmental impact, the lead agency must make a negative declaration, declaring that the action will not have a significant adverse environmental impact. 6 N.Y.C.R.R. §617.7(b)(2).

135. The Approval violates SEQRA in numerous respects.

136. The Approval is not a Type II as the ZBA concluded.

137. An action is only a Type II for “license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities.” *See* 6 N.Y.C.R.R. § 617.5(c)(32).

138. There have been both material changes in the Landfill Permit conditions, and the scope of the permitted activities.

139. The Conservation Board recommended numerous new material conditions on the Landfill Permit, as detailed above, which were accepted by the ZBA, and thus, the Approval was improperly designated as a Type II action.

140. The Application was actually a Type I action pursuant to SEQRA because it is a non-residential project that involves the physical alteration of more than 10 acres. *See* 6 N.Y.C.R.R. § 617.4(b)(6);

141. As a Type I action, a coordinated SEQRA review with all involved agencies was required to be conducted before any actions were taken, including the designation of a lead agency and a determination of significance after submission of an EAF. *See* 6 N.Y.C.R.R. § 617.6.

142. Even if the Application could have been considered an unlisted action pursuant to SEQRA, an EAF was required to list all involved agencies, and a determination of significance was required. *See* 6 N.Y.C.R.R. § 617.6.

143. Because the Approval was not a Type II Action , the ZBA was required to take the necessary “hard look.”

144. The ZBA could not complete a proper environmental review when the Application failed to comply with the Town Code § 208-21 requirements, and lacked vital information to

enable the ZBA to make a rational decision.

145. WMNY submitted its Application less than three months before the expiration of its 2016 Landfill Permit, which was an insufficient amount of time for the ZBA to complete its required review.

146. WMNY should have listed NYSDEC as an involved agency, because Town Code §208-21(C) requires an applicant to secure all permits with NYSDEC as a condition precedent to issuing and Landfill Permit. WMNY's Air Permit will expire at the end of 2021 and will need to be renewed within the five-year Landfill Permit period, as well as its State Permit, set to expire on July 8, 2023. At a minimum, the Town's Permit should have been contingent upon WMNY securing its required State permits during its five-year duration.

147. The Town of Perinton Town Board should also have been included as an involved agency because Town Code § 208-21(D)(5) requires an HCA prior to the issuance of a Landfill Permit. The Town Board would need to approve the Draft HCA whenever and if ever it is finalized.

148. The SEQRA review should have considered all potential environmental impacts of the Application, including but not limited to impacts related to aesthetics, property values, environmental harm, noise, dust, fumes, odors, traffic, air pollution, vectors, tremors caused when the gas plant malfunctions, etc.

149. The SEQRA review must also consider climate related impacts of methane generation from the Landfill. *See* 6 N.Y.C.R.R. § 617.9(b)(5)(iii)(i). The SEQRA regulations were updated after the issuance of the 2016 Landfill Permit to require review of climate related impacts.

150. Because a compliant SEQRA review of the Application would have identified at

least one significant adverse impact on the environment resulting from the Approval, an EIS should have been required to have been prepared prior to the decision whether to issue the Landfill Permit. *See* 6 N.Y.C.R.R. § 617.4(a).

151. Accordingly, because the Approval should not have been designated a Type II Action, and the necessary SEQRA review was not conducted, this Court should annul and void the Approval and the Landfill Permit due to the failure to comply with SEQRA.

**AS AND FOR A THIRD CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS, AND ILLEGAL ACTION IN
VIOLATION OF THE OPEN MEETINGS LAW,
PETITIONER ALLEGES AS FOLLOWS:**

152. Petitioner repeats and realleges the allegations of paragraphs “1” though “151” of this Petition, as set forth in this paragraph at length.

153. OML § 103(e) states that “Agency records available to the public pursuant to [the Freedom of Information Law], as well as any proposed resolution, law, rule, regulation, policy or any amendment thereto, that is scheduled to be the subject of discussion by a public body during an open meeting shall be made available, upon request therefor, to the extent practicable as determined by the agency or the department, prior to or at the meeting during which the records will be discussed.”

154. Petitioner’s attorneys submitted a Freedom of Information Law request to the Town on August 12, 2021, seeking the documents pertaining to the Application, scheduled to be discussed on August 19, 2021. Petitioner still has not received all documents it requested, and thus, the Town violated the OML.

155. OML § 103(e) further requires agency records available to the public through the Freedom of Information Law that are “scheduled to be the subject of discussion by a public body during an open meeting,” to “be posted on the website to the extent practicable as determined by

the agency or the department, prior to the meeting,” if the “agency in which a public body functions maintains a regularly and routinely updated website and utilizes a high speed internet connection.”

156. The Town utilizes a high-speed internet connection and maintains a website, which can be accessed here: <https://perinton.org/>. The internet connection has been utilized by the Town to host various public meetings, including the meeting on July 26, 2021, August 3, 2021, and August 19, 2021. The Town also regularly updates its website with information about the Landfill, like monitoring reports. In addition, the website is regularly updated with meeting information and agendas.

157. However, the Town failed to post the Application on its website prior to the ZBA public hearing on July 26, 2021. The Town also failed to post additional Application materials submitted by WMNY after the July 26, 2021, and any recommendations by the Conservation Board and other Town departments.

158. The Town still has not posted the meeting minutes from the Conservation Board’s meeting on August 3, 2021, or the ZBA’s meeting on August 19, 2021.

159. There is no reason that posting the Application or other materials considered by the ZBA when issuing the Approval was not practicable.

160. Additionally, it was improper for the ZBA to close the public hearing prior to obtaining the recommendations by the Conservation Board and prior to receiving additional Application materials from WMNY.

161. The ZBA deprived the public an opportunity to comment on the full Application before it made its Approval.

162. However, Town Code § 208-21 required the ZBA to hold a public hearing on the Application.

163. Thus, the ZBA violated the OML, and this Court should, upon the good cause demonstrated, annul and declare void the Approval and the Landfill Permit, and award attorneys' fees to Petitioner, pursuant to Public Officers Law § 107.

**AS AND FOR A FOURTH CAUSE OF ACTION FOR
ARBITRARY, CAPRICIOUS, AND ILLEGAL ACTION
IN VIOLATION OF GENERAL MUNICIPAL LAW § 239-M,
PETITIONER ALLEGES AS FOLLOWS:**

164. Petitioner repeats and realleges the allegations of paragraphs "1" though "163" of this Petition, as set forth in this paragraph at length.

165. Pursuant to GML § 239-m(3)(a), the issuance of a special use permit requires a referral to the county planning agency.

166. The proposed action must be referred to the county planning agency prior to the local entity taking final action on the proposed action.

167. Pursuant to GML § 239-m(3)(b), any proposed action within a county located within five hundred feet of the boundary of any city, village, or town is subject to referral requirements created under § 239-m.

168. The Landfill Permit is effectively a special use permit subject to GML § 239-m.

169. WMNY concedes it is a special use permit in its Application, as did the ZBA in its Approval.

170. The Approval is for property located within 500 feet of Wayne County and the Town of Macedon.

171. Upon information and belief, the Town failed to refer to the proposed action to the Monroe County Planning Department.

172. Thus, the ZBA violated GML § 239-m, and the Approval should be annulled and voided.

**AS AND FOR A FIFTH CAUSE OF ACTION
FOR ARBITRARY, CAPRICIOUS, AND ILLEGAL ACTION,
PETITIONER ALLEGES AS FOLLOWS:**

173. Petitioner repeats and realleges the allegations of paragraphs “1” through “172” of this Petition, as set forth in this paragraph as length.

174. Upon information and belief, and/or as may be further determined upon filing of the record of proceedings, the Approval may otherwise be in violation of other laws, regulations, and procedures.

WHEREFORE, Petitioner respectfully requests that this Court grant an Order and Judgment, pursuant to CPLR Article 78, the Town Code, SEQRA, the OML, GML, and/or otherwise: (1) vacating, annulling, or declaring illegal, unconstitutional, invalid, arbitrary, capricious, null and/or void the Approval by the ZBA of WMNY’s Application for a Landfill Permit, pursuant to the Town Code § 208-21, and the Landfill Permit; (2) vacating, annulling, or declaring illegal, unconstitutional, invalid, null and/or void the determination under SEQRA made by the ZBA that its Approval was a Type II action; and (3) granting such other further relief as this Court deems just and proper, including Petitioner’s costs, reasonable attorney’s fees, and disbursements.

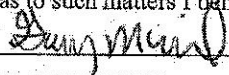
Dated: Rochester, New York
September 15, 2021

/s/ Linda R. Shaw
KNAUF SHAW LLP
Attorneys for Petitioner
Linda R. Shaw, Esq.,
Dwight Kanyuck, Esq., and
Melissa Valle, Esq., of Counsel
1400 Crossroads Building
2 State Street
Rochester, New York 14614
Tel: (585) 546-8430

VERIFICATION

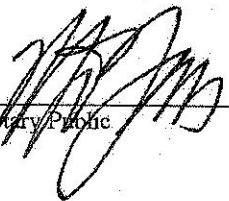
STATE OF NEW YORK)
COUNTY OF MONROE) s.s.:

GARY MCNEIL, being duly sworn, deposes and says that I am the President of the Board of Petitioner ~~Plaintiff~~ Fresh Air for the Eastside, Inc., and have read the annexed Petition ~~and Complaint~~, and knows its contents. It is true to my own knowledge, except as to the matters stated to be alleged upon information and belief, and as to such matters I believe them to be true.



GARY MCNEIL

Sworn to before me this
15th day of September, 2021



Notary Public

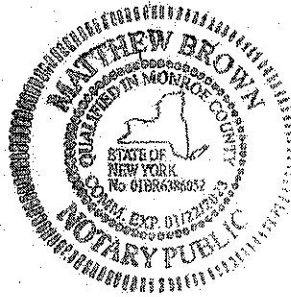


EXHIBIT A



TOWN OF PERINTON

1350 TURK HILL ROAD ■ FAIRPORT, NEW YORK 14450-8796
(585) 223-0770 ■ Fax: (585) 223-3629 ■ www.perinton.org

TOWN OF PERINTON

ZONING BOARD OF APPEALS
Meeting Date: August 19, 2021
SPECIAL PERMIT

AUG 26 2021 AM 10:05

Jeff Richardson, Senior District Manager
Waste Management of New York, LLC
425 Perinton Parkway
Fairport, NY 14450

Dear Mr. Richardson:

Please be advised that the Town of Perinton Zoning Board of Appeals took the following action regarding the application for:

Waste Management of New York, LLC (WMNY), as owner of property located at 425 Perinton Parkway, (tax id# 167.01-1-2.2), (High Acres Landfill & Recycling Center) , requesting a renewal of Special Permit under 208-21 for the existing Western Expansion, located in both the Towns of Perinton and Macedon, New York. This project includes the permitted Western Expansion, Phase 1, Phase II and Phase III Parkway Expansions. Said property being located in an Industrial District.

The Zoning Board of Appeals made a motion that the Zoning Board of Appeals considers this a Type 2 Action under SEQR, as defined in Part 617.5 and that no further agency review under the SEQR regulations are required for this renewal.

Motion carries 7 – 0, by verified roll call.

The Zoning Board of Appeals made a motion to adopt the recommendation, findings and conditions of the Perinton Conservation Board document submitted to the Town on 8/17/21, a copy of which is a part of the record, and attached hereto, and made a part hereof, and grants renewal of Special Permit under 208-21 for the existing Western Expansion, located in both the Towns of Perinton and Macedon, New York, which includes the permitted Western Expansion, Phase 1, Phase II and Phase III Parkway Expansions, with permit to run from 8/22/2021 – 8/22/2026, for application received by the Town on 5/28/2021, and addendum/clarification document received by the Town on 7/22/21, based on the following findings:



1. The Zoning Board of Appeals has considered all of the written and verbal comments made by the public, and the applicant.
2. Waste Management has a current Benefits Agreement with the Town, which was entered into on December 31, 2013.
3. The Benefits Agreement with the Town limits the type of waste which may be accepted at the landfill.
4. The Conservation Board supports this application by memo to the Zoning Board of Appeals received by the Town on 8/17/21.
5. Granting such permit is in the public interest to establish environmentally sound facilities to dispose of and treat solid waste.
6. Adequate plans have been presented to show that the landfill does not create a public hazard and that the landfill does not unduly interfere with the quiet enjoyment of adjacent properties; and that sufficient precautions have been taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance. Temporary cover is provided at the end of each day and revegetation has been appropriately provided.
7. Building & Codes Department and the DPW have no concerns.
8. There have been no changes in the operating conditions, hours of operation or the footprint.
9. High Acres Landfill & Recycling Center has all necessary enforceable permits in place.

Motion carries 7 – 0, by verified roll call.

If you no longer wish to have this permit on the property, please notify the Town in writing that you have discontinued the use, and we will mark it null & void.

Dated: August 26, 2021



Lori L. Stid

Secretary, Planning Board & Zoning Board of Appeals

RECOMMENDATION
PERINTON ZBA

TOWN OF PERINTON CONSERVATION BOARD

August 19th, 2021

RECEIVED

AUG 17 2021

TOWN OF PERINTON

New Application: The Perinton Conservation Board (PCB) was asked by the Perinton Zoning Board of Appeals (ZBA) at its July 26th, 2021 meeting to make a recommendation concerning the following application.

Waste Management of New York, LLC (WMNY), as owner of property located at 425 Perinton Parkway, (tax id# 167.01-1-2.2), (High Acres Landfill & Recycling Center), requesting a renewal of Special Permit under 208-21 for the existing Western Expansion, located in both the Towns of Perinton and Macedon, New York. This project includes the permitted Western Expansion, Phase 1, Phase II and Phase III Parkway Expansions. Said property being located in an Industrial District. SEQR Type II action.

The PCB has reviewed the following information:

- Perinton Town Code
- WMNY submission to ZBA and responses to PCB questions:
 - Technical data August 3, 2021 (Presentation Information);
 - Environmental Assessment Form submission dated May 27, 2021 & received by the Town on May 28, 2021
- ZBA public comments, both written and oral
- Written public comment received by the PCB
- Other Consulted Documents:
 - NYSDEC Permit Review Report (12/5/16), renewal No. 2, Permit ID 8-9908-00162/00043
 - NYSDEC FSEIS, January, 2007.
 - PCB FSEIS *Findings and Recommendations* (January, 2007).
 - PCB letter to NYSDEC, February 20, 2018 – surface emissions monitoring protocol comments
 - MEH Consulting. Letter (May 8th, 2018) to Town of Perinton. Monitoring March 6, 2018 to April 10, 2018; 5 weeks)
 - USEPA. Biosolids and Residuals Management Fact Sheet. Odor Control in Biosolids Management.
 - Odor Intensity Scales for Enforcement, Monitoring, and Testing. McGinley Associates, P.A. (2000).
 - NYSDEC Response to the Petition of Fresh Air for the Eastside, Inc. et.al., Requesting Modification of Permits held by Waste Management of NY for HARLC.
 - NYSDEC Daily Solid Waste Management Facility Inspection Reports (on file from 1/3/2008 to the present)¹
 - Comprehensive Landfill Odor Control Plan (WM / GHD)
 - Town of Perinton odor complaint database
 - Waste Characterization Study
 - WMNY comment response to Zoning Board of Appeals (08/13/2021)
 - WMNY comment response to Conservation Board (08/13/2021)

¹ Reviewed by Town Staff upon receipt, which generally occurs 3 to 4 times per week.

(1) **State Environmental Quality Review Act (SEQRA):**

The PCB concurs with Town Staff and the Town Attorney that the proposed action be advanced as Type II Action. The New York State Environmental Conservation Law Part 617.5(c) (32) states that "license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities" are considered Type II Actions where no further environmental review is warranted.

Rationale: The proposed SUP application before ZBA is a renewal of an existing permit. Additionally, guidance from the NYSDEC SEQR Handbook provides examples of a "material change". For example, allowing a permit holder to change the allowable depth or height of a mine facility or redesign access points to a shopping mall so that shoppers would enter a highway at a different location is considered material changes to a previously approved project. In this particular case, there is no change in scope to permitted activities associated with this application; including the type of waste being accepted, the permitted volume of waste being accepted, method by which waste is being delivered to the facility, the method by which the waste is being landfilled, or the size/footprint of the landfill.

(2) **Town Code Review Findings:**

It is the determination of the PCB that based on the review of the above stated technical documents, including Waste Management's presentation of 8/3/21 to the PCB that the application meets the criteria of § 208-21D based on the following:

- (A) **Continued Need:** Perinton Town Code §208-21 (Solid Waste Facility Permitting) subsection D(2) states that the granting of a solid waste facility permit (SUP) "must be in the public interest to establish environmentally sound facilities to dispose of and treat solid waste."

Based upon the review of the previously completed and approved FSEIS (2007), the NYSDEC and the PCB found that HARLC meets the criteria of an economic and environmentally sound waste disposal facility.

Rationale: From the perspective of the Town of Perinton, this "public interest" means accepting the importation of solid waste from other areas of the region and state. Objections have been raised by residents to the effect that Perinton should have to only manage its own waste, and waste originating from Monroe County. As noted in the FSEIS current regulations recognize that protection against contamination of soil, air, or water requires construction of a highly engineered landfill as well as the implementation of sophisticated environmental monitoring programs that cannot be provided on the same scale that would be necessary to support a landfill used solely for the disposal of local solid waste.

Furthermore, both the Monroe County and the Western Finger Lakes Solid Waste Management Plans state that the incremental environmental impacts of expanding an existing landfill are preferable to building a new facility (FSEIS 2007).

(B) Adequate Plans: Special Use Permit regulations in the Town of Perinton Zoning Code (§208-54), the Solid Waste Facilities section of the Industrial District regulations (§208-40A), and Section (§208-21 (D) (2b) state that “adequate plans have been presented to show that the solid waste facility does not create a public hazard”.

The PCB finds that WM has produced adequate plans to show that the facility can operate without creating a public hazard.

Rationale: PCB recognizes that WM has produced a variety of detailed engineering plans and scientific studies that include, but are not limited to the following: (1) fill progression plans, (2) landfill gas collection and control system plans, (3) odor control plan, (4) waste characterization studies, (5) operation and maintenance plan, (6) surface emissions / methane monitoring protocol, and (6) H2S emission monitoring ambient monitoring work plan.

In addition, and as a result of the 2017-2018 odor event, both town-proposed and NYSDEC-mandated mitigation / monitoring measures have supplemented the above stated plans with the following:

- Enhanced perimeter odor misting system plan
- Gas collection system modifications to conform to 6 NYCRR Part 363 requirements.
- Enhanced soil cover added to Cells 10, 11 – no subsequent filling until specific authority granted by NYSDEC.
- Addition of geo-membrane covering (Cells 10 & 11 side-slopes)
- Commencement of an Air Monitoring Plan in concert with Fairport Public Schools to detect H2S.
- Establishment of a new action level of 200ppm methane while conducting landfill surface scanning .
- Mitigation and monitoring for flare reverberations (sound waves).
- Provided stand-by electric generation capability in the event of a gas plant power loss.
- Landfill gas analysis to understand gas composition.
- Modification of facility O&M Plan as directed by the Town and approved by the NYSDEC.

Similarly, the Special Use Permit regulations in the Town of Perinton Zoning Code (§208-21 (d) (2b) address short-term and temporary impacts and that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance.

The PCB finds that WMNY has demonstrated that it is working to reduce odors and odor impacts that have, or can impact nearby resident communities through, but not limited to, the following initiatives:

- Rapid implementation of new Part 360 regulations regarding gas collection
- H₂S and lower methane monitoring protocols
- Incorporation of a temporary geomembrane cover system
- Incorporation of EPI enviromembrane cover system
- Odor mist system installation
- Waste Characterization Study
- Installation of additional flaring and backup power generation
- Continued operation of existing electric generation facilities

Rationale: Town of Perinton and NYSDEC-mandated measures designed to address off site odor from landfill gas caused by issues with the collection and control system in Cells 10 & 11 have proven effective. From November 2017 through September 2018, landfill gas collection and control increased by approximately twenty-six percent, and continues to improve².

Also, monitoring for the presence of H₂S (H₂S being a surrogate for methane (which is odorless and other landfill gases, with sampling at a nearby school and at the landfill property boundary has shown results typically below the limits of detection. Infrequent detections of H₂S have not exceeded the associated Ambient Air Quality Standard (6 NYCRR Subpart 257-10). Independent environmental professionals have reviewed those sampling results, and indicated that landfill gas is not present off-site in quantities that would constitute a health concern.³

Lastly, the utilization of an ASTM standard for characterizing odor using N-Butanol as an reference odorant defines the degree of strength and magnitude of that odor observed in ambient air. Odor intensity quantification can be accomplished using the interrelationship of factors which include "Odor Character", "Odor Intensity", "Episode Duration", and "Episode Frequency"⁴.

Perinton Town Code 208-21 (d) (2) (b) also speaks to applying at least 6-inches of non-deleterious topsoil and seed to the disturbed area of a landfill after the operation of landfilling is **complete**.

The PCB finds that WMNY is compliant with this section of code.

Rationale: This portion of the code also requires that all necessary and appropriate NYSDEC permits /authorizations are obtained in order to operate a solid waste facility in the Town of Perinton. By making this reference, Town Code requires that any daily, intermediate, and final cover types and material specifications follow the most current standards and permit requirements set-forth in 6 NYCRR Part 360: Solid Waste Management, which are as follows:

² NYSDEC Response to the Petition of Fresh Air for the Eastside, Inc. et.al., Requesting Modification of Permits held by Waste Management of NY for HARLC

³ MEH Consulting. Letter (May 8, 2018) to Town of Perinton. Monitoring March 6, 2018 to April 10, 2018; 5 weeks); CPF Associates Inc. "Evaluation of Ambient Air Monitoring Data Collected in Vicinity of High Acres Landfill" (May 29, 2018).

⁴ Odor intensity referencing compares the odor in the ambient air (or the odor of an air sample from a bag) to the odor intensity of a series of concentrations of a reference odorant. A common reference odorant is n-butanol as described in ASTM E544-99. Standard Practice for Referencing Suprathreshold Odor Intensity.

***Daily cover requirements** in 6 NYCRR Part 360 is 6-inches of soil material or other plastic membrane materials, which must be applied to the waste area prior to the end of the working day.*

***Intermediate cover requirements** in 6 NYCRR Part 360 is 12-inches of soil material that must be applied to areas of the landfill that have received waste but will be inactive for a period of longer than 180 days.*

***Final cover requirements** in 6 NYCRR Part 360 is a 60-inch thick cover system that includes a gas venting layer, clay layer, plastic geo-membrane layer, soil barrier protection layer, and a final layer of 6-inches of topsoil and seed (see 208-21 (d) (2) (b) above).*

- (C) Outside Agency Authorization:** Town Code (§208-21C) addresses any excavation permitted under this section shall not occur unless all required Department of Environmental Conservation (DEC) permits or other DEC authorizations have been obtained, all operations are in compliance with all DEC regulations, the requirements of § 122-13 are satisfied and a bond is posted to ensure compliance with § 122-13. The standards for restoration set forth in § 122-13 of the Excavation Law of the Town of Perinton, as may be amended from time to time, are incorporated herein by reference and shall apply to all properties under the jurisdiction of this section.

The PCB finds that WMNY has demonstrated that it is in full compliance with this portion of the Town Code.

***Rationale:** WMNY currently maintains and is in compliance with the regulatory standards under the following active permits:*

- 6 NYCRR Part 360 –Solid Waste Management Facilities (NYSDEC)*
- 6 NYCRR Part 200 –Prevention and Control of Air Contamination and Air Pollution (NYSDEC)*
- 6 NYCRR Part 612, 613, 614 –Petroleum Storage and Handling (NYSDEC)*
- 40 CFR Part 61 –National Emissions Standards for Hazardous Air Pollutants (NYSDEC)*
- Town of Perinton Special Use Permit*
- Town of Macedon Special Use Permit*
- State Pollutant Discharge Elimination System Permit (SPDES) (NYSDEC)*
- Sewer Use Permit (Monroe County Department of Environmental Services –Division of Pure Waters)*
- Air Permits 6 NYCRR Part 201 and USEPA Title V*
- Freshwater Wetlands Permit and 401 Water Quality Certification (NYSDEC)*
- Section 404 Wetland Permit (U.S. Army Corps of Engineers)*
- NYSDEC daily inspection report submitted to the Town*

(3) **Area of additional Public Concern:** Rail waste acceptance began in April, 2015. The HALRC rail facility is located wholly in the Town of Macedon. NYSDEC reviewed this mode of transportation and operation at HALRC in March of 2019 as it relates to citizen odor complaints and offered the following⁵:

- (1) *"The Department also assessed citizen complaints in relationship to rail waste acceptance and found no causal connection. More specifically, to evaluate the relationship between waste hauled by truck and waste hauled by rail, and the claim that the odor issue is primarily related to NYC rail waste, DEC separated the notifications received by time of day, and for comparison purposes, the total notifications minus the early (pre- 9:30 a.m.) notifications. Rail waste constituted most of the total MSW deposited at HA prior to and during the Evaluation Period and is consistently deposited at the landfill's working faces throughout the operating portion of the day, almost every day the facility operates. However, despite the continued deposition of rail waste throughout the day, on many days the notifications from residents ceased or dramatically fell off by mid-morning."*
- (2) *"If rail waste was a distinct and primary reason for odor generation, then there should be a clear correlation between hours of the day when rail waste was being deposited and the number of odor detections reported. Instead, there was a mixed result..."*

The PCB supports the findings of the NYSDEC Response to Petition.

Further, the PCB, with the support of the NYSDEC, compelled WMNY to complete an analysis of waste brought to HALRC by both truck and rail. This analysis, entitled Waste Characterization Study, found that there is a range of collection, transportation, and storage times of MSW. In general, the range is between 5 to 11 days and specifically identified that for local waste, its approximately 8 days, for regional waste, its 8 to 9 days and for rail waste, it is 5 to 11 days. Other Waste Characterization Study findings include:

1. There was no significant visual or analytical differences in the make-up of MSW based on the on geographic region of origin; transportation mode or whether the MSW was routed through a transfer station.
2. Odor intensity of the MSW was influenced by individual waste loads and did not directly correlate with the geographic region of origin or the mode of transportation.
3. Time matters.

The PCB supports the findings of the *Waste Characterization Study*.

⁵ NYSDEC Response to the Petition of Fresh Air for the Eastside, Inc. et.al., Requesting Modification of Permits held by Waste Management of NY for HARLC.

(4) Recommendation

Based on the findings and determinations stated above, the PCB recommends granting WMNY a 5-year renewal of its Special Permit under Town Code (§208-21[A],[B],&[C]) for the existing Western Expansion at High Acres Landfill located in both the Towns of Perinton and Macedon, New York. This project includes the permitted Western Expansion, Phase 1, Phase II and Phase III Parkway Expansions, with permit to run from 8/22/21 – 8/22/2026, for application received by the Town on 5/28/21 and addendum received by the Town on 7/22/21 subject to the following conditions:

Condition 1: This renewed SUP would be nullified if the draft Host Community Agreement (HCA) is not executed prior to January 1st, 2022.

Rationale: Both the HCA and the SUP are linked. This SUP is the enforcement authority to specific enhanced protections and community benefits set forth and enumerated in the draft HCA.

Condition 2: That the new draft HCA include, but not be limited to, the following odor related monitoring requirements, protections, & waste restrictions:

A. Continuous H₂S monitoring at the Northside/ Dudley Elementary School as well as at locations on the perimeter of the property (north of the landfill, near NYS Rte 31F and at a location south of the Landfill).

Rationale: The Town of Perinton retained an Environmental Industrial Hygienist to review H₂S data collected from various points around the landfill to determine impacts to human health associated with landfill gas emissions. The results of this review concluded that “those sampling results indicated that gas [H₂S] is not present off site in quantities that would constitute a health concern⁶.” Further, there is a ambient air quality standard for H₂S in New York State. According to the NYSDEC, “in any one-hour period, the average concentration of H₂S shall not exceed 0.010 parts per million (ppm).” The PCB recognizes that H₂S is a surrogate for methane in landfill gas and feels that continued and enhanced ambient air monitoring for H₂S will provide the Town with real-time ambient air monitoring data that can be evaluated against established air quality standards.

B. Application of the ASTM standard E-544-10 for characterizing odor intensity utilizing N-Butanol, the deployment of certified responders to verify frequency and duration of odor complaints, and the reporting of actionable odor event causes.

Rationale: Confirming and characterizing fugitive odors using the ASTM-D standard will quantify odor intensity, frequency, and duration parameters and allow for an a definable application of Town Code standards, which require Solid Waste Permit holders to “prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance.”

⁶ MEH Consulting, Letter (May 8, 2018) to Town of Perinton, Monitoring March 6, 2018 to April 10, 2018; 5 weeks)

- C. Quarterly Landfill Surface Scanning & Monitoring with variances and mitigation measures reported for fugitive methane emissions at an actionable threshold of 200 ppm.

Rationale: Purpose of surface emissions monitoring program is to evaluate the effectiveness of the gas collection and the landfill cover systems and provide ongoing corrective action. Current data reported to the PCB points to a significant reduction in methane exceedances of greater than 200ppm, from a high of 45 exceedances to a low of 5, thus a reduced amount of methane gas escape into the atmosphere.

- D. Conduct gas well monitoring & complete necessary follow-on well tuning 2-times per month (twice the regulatory standard).

Rationale: Purpose is to ensure that gas wells are operating effectively and efficiently by measuring and reporting oxygen levels, temperature, gas flow, methane and vacuum.

- E. That MSW waste received at HALRC by rail from the NYC five (5) Boroughs must not be greater than seven (7) days aged (as defined from a transfer station to the working face at High Acres). Any rail MSW from the NYC five (5) Boroughs that is older than seven (7) days will not be accepted at the facility. WMNY shall provide an "exception" Deferred Waste Report, which is to be sent to the Town of Perinton on a monthly basis.

Rationale: Data collected in the Waste Characterization Study points to a realistic "normalized" transportation window of 5-7 days. WMNY has the capability of monitoring the location and elapsed time of EVERY rail car movement. Additionally, the exception report will provide all parties with a granular understanding of the frequency "rejected" loads exceeding 7 days.

- Condition 3:** That a separate engineering study & plan, reviewed and approved by the Town of Perinton, independent of NYSDEC operating permit requirements or approvals be completed and prepared prior to the removal of the enhanced cover system on top of Cells 10 & 11 and prior to the placement of additional waste in these cells.

Rationale: Cells 10 & 11 were the source of significant odor releases that impacted Perinton residents. The PCB is aware of many factors that have contributed to odor releases. These factors were discussed at the August 3, 2021 PCB meeting with WMNY. The NYSDEC also cited factors and circumstances.⁷ The Town must be satisfied that any and all proposed cover removal procedures, and subsequent waste placement is technically feasible and will not create undue odor impacts to Town residents.

⁷ NYSDEC Response to the Petition of Fresh Air for the Eastside, Inc. et al., Requesting Modification of Permits held by Waste Management of NY for HARLC.

Condition 4: That WMNY modify the facilities current Operation and Maintenance Plan to include, but not be limited to, H2S monitoring requirements & protocols, surface scanning requirements & protocols, gas well tuning requirements, and waste characterization.

Condition 5: All previous SUP Conditions remain in effect and include the following :

- A. Annual updates to PCB that include Monitoring variances, emissions, acoustical, regulatory compliance update
- B. Summary of Odor complaints
- C. Projected filling sequence update
- D. Wetland monitoring reports for HANA
- E. Vehicular storage impinging on site view measures
- F. Public outreach / education
- G. Closure / post-closure estimates
- H. Phase III closure cover specifications

For the Perinton Conservation Board,



Kenneth G. Rainis
Chairman

EXHIBIT B



July 23, 2021

VIA HAND-DELIVERY
& ELECTRONIC MAIL
lstid@perinton.org

Ms. Robin Ezell, Chair
Town of Perinton Zoning Board of Appeals
1350 Turk Hill Road
Fairport, New York 14450

RE: High Acres Landfill Permit Pursuant to §208-21.

Dear Ms. Ezell:

Our firm represents Fresh Air for the Eastside, Inc. (“FAFE”), which includes a large group of residents who live in close proximity to the Waste Management (“WM”) High Acres Landfill (“Landfill”). This group was formed to take action and protect the community against the public nuisance odors and uncontrolled fugitive gas emissions from the Landfill. We wholeheartedly object to the granting of WM’s Solid Waste Facility Permit, pursuant to Town Code (the “Code”) § 208-21 (“Landfill Permit”), for the reasons stated below, and request that the Zoning Board of Appeals (“ZBA”) deny WM’s Application, dated May 28, 2021 (“Application”). This Board must require that WM complete an Environmental Impact Statement (“EIS”) and submit a proper Application that meets all the requirements of the Code.

A. THE TOWN VIOLATED THE OPEN MEETINGS LAW.

Initially, we object to the format and location of the public hearing to be held on July 26, 2021, given the Town’s decision to impose social distancing. The Board has illegally restricted public access in violation of the Open Meetings Law (“OML”). *See* NY Pub. Off. Law § 103. The OML requires that “[e]very meeting of a public body shall be open to the general public[.]” *Id.* at (a). Reasonable effort must be made by public bodies to “ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.” *Id.* at (d). The Board has failed to make reasonable efforts to ensure access to the upcoming public hearing by utilizing an appropriately large location in which to have this upcoming hearing, and thus have violated the OML.

Members of the community want to share their concerns related to WM’s Landfill Permit request, but the Town’s attendance restrictions will force them out of *the room where it happens*. Instead of preparing an “appropriate facility” for the public hearing, the Town has pre-restricted in-person attendance to “30 members of the public – including members of the public presenting to the board[.]” *See* Town of Perinton Instagram post attached as **Exhibit A**. The ZBA Agenda echoes the same improper restriction of in-person attendance by claiming that space is “extremely limited.” This Board is well-aware that the public hearing on WM’s Landfill Permit is guaranteed to draw a large crowd because WM continues to cause nuisances in the community to this day. This Board cannot simply offer a virtual forum in lieu of in-person attendance when the Law requires in-person attendance.



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The Town’s claims that these restrictions have been implemented in order to allow for social distancing do not subvert the requirements of the OML. By Executive Order No. 210 (June 24, 2021), Governor Cuomo ended the State of Emergency in New York that was created in response to COVID-19 and rescinded Executive Orders 202 through 202.111 and 205 through 205.3, effective June 25, 2021. Thus, COVID-19 no longer obviates the need for this Board to comply fully with the OML. While CDC guidance recommends social distancing for unvaccinated people, this Board still has to comply with the OML and provide sufficiently sized facility to accommodate the expected attendance at the public hearing, despite any applied social distancing guidelines. There are numerous other facilities in the Town that the Board could use to host the public hearing, like the larger spaces in the Community Center, or nearby school buildings, which it is our understanding that this Board has failed to seek permission to use.

Thus, by limiting the in-person attendance at the public hearing, the Board has violated the OML, and if it decides to grant WM’s request for a Landfill Permit on the 26th, its approval will be null and void.

B. TIMING IS TOO SHORT FOR AN ADEQUATE SEQRA REVIEW

WM and the Town appear to have jointly pushed the timing of the Permit to the eleventh hour in order to avoid a proper environmental review of this important Permit and before a Host Community Agreement is in place. The ZBA cannot possibly have a proper review of this Permit application, which was only just submitted a short time ago, and it leaves no time for a follow up hearing since the 2016 Permit terminates on August 22, 2021. This is a classic abuse of the SEQRA process. It appears the ZBA has predetermined the outcome of the hearing before it has even occurred by leaving itself no time to hold another hearing before the Permit expires.

C. WM HAS NOT MET THE REQUIREMENTS FOR AN ISSUANCE OF A LANDFILL PERMIT.

The Code requires that WM obtain a Landfill Permit, pursuant to Section 208-21, after a public hearing. WM has failed to comply with *any* of the requirements in the Code necessary to obtain a Landfill Permit. WM’s Application is so devoid of sufficient detail that this Board cannot reasonably issue a Landfill Permit based upon WM’s Application submission. Importantly, while WM seeks to underplay its Application by referring to it as a “renewal application,” the Code requires that WM follow the identical procedure when its Permit expires after five years, as was required for the original Landfill Permit. *See* Code § 208-21(D)(4).

i. The Landfill Unduly Interferes With Quiet Enjoyment of Adjacent Properties and Sufficient Precautions Have Not Been Taken to Prevent Nuisances.

The Code requires that this Board must find that the Landfill does not unduly interfere with its neighbors and is not creating a nuisance. *See* Code § 208-21(D)(2)(b). WM’s Application and its operational history for the last five years does not support that determination. WM has, and continues to, undoubtedly create a public nuisance. WM has publicly stated that it received approximately 100 complaints a year from 1970-2017. Since 2017, there have been numerous *days* when over 100 odor complaints were filed. Below is a breakdown of odor complaints noted from November 2017 to June 15, 2021, through the FAFE on-line odor complaint application (the



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“FAFE App.”), which is trending to be the same as in 2020 with over 4600 complaints, **46 times more than a “normal” odor occurrence year according to WM.**

Row Labels	Count of 6/15/2021
2017	945
Qtr4	945
2018	10725
Qtr1	6838
Qtr2	1526
Qtr3	1428
Qtr4	933
2019	2942
Qtr1	514
Qtr2	442
Qtr3	946
Qtr4	1040
2020	4604
Qtr1	1017
Qtr2	568
Qtr3	1446
Qtr4	1573
2021	1778
Qtr1	1086
Qtr2	692
Grand Total	20994

WM has criticized the FAFE App., which was created by a web designer and documents real time odor complaints as they are happening. It is ludicrous to even consider that residents are using the FAFE App. at times other than when odors are occurring. There is more documented evidence both from this FAFE App. data and the other odor notification reports than in any other case in the country. This Town must stop avoiding this very significant reality that this Landfill stinks.

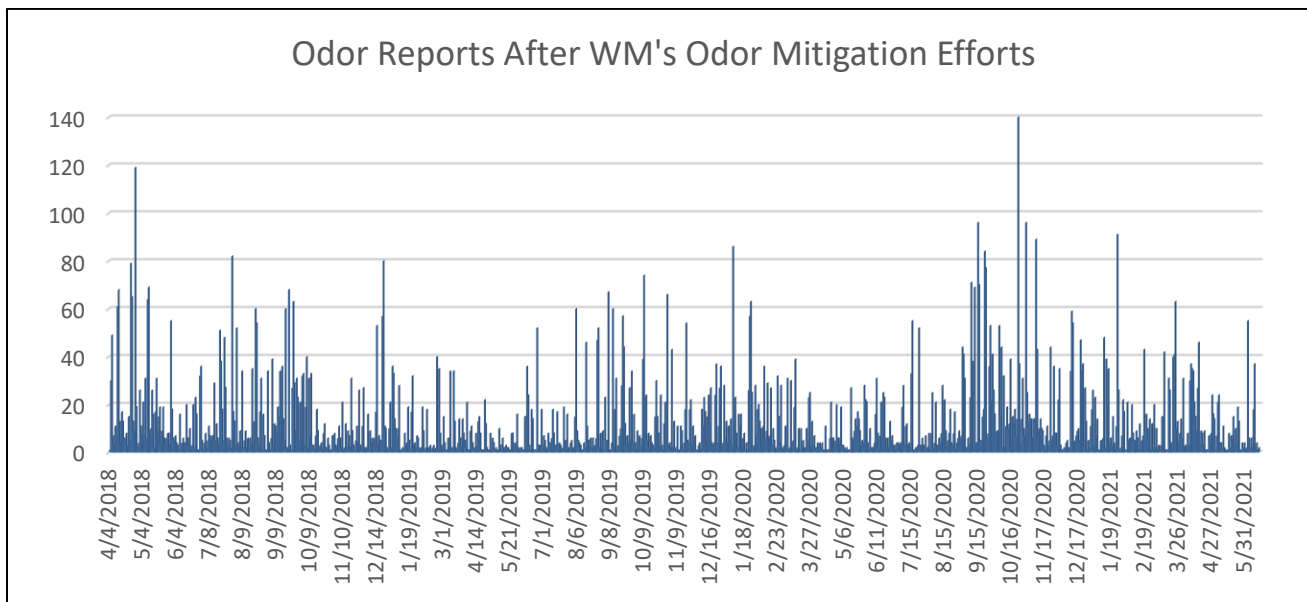
While WM’s Application provides a NYSDEC Notice of Completion letter, dated August 6, 2019, that apparently said WM’s actions related to its February 12, 2018, Notice of Violation (“NOV”) were completed, the problems associated with the landfill have not ceased. A warning letter was issued by the NYSDEC on September 25, 2020, and it states that odor complaints were rising to unacceptable levels and threatened legal action. *See Exhibit B.* To the best of our knowledge, NYSDEC has not issued another letter to WM indicating that the odor issues are now resolved. To the contrary, high level officials at the NYSDEC met with our firm and our landfill expert on April 26, 2021, due to their continued concern over the ongoing odor issues at the landfill. At this meeting, our expert advised NYSDEC that the cause of the odor issues is clearly the result of a lack of commitment to performing the daily work of preventing off-site odor impacts and because none of side slopes on the Perinton side of the Landfill, which are not even monitored for leakage because they are “too dangerous,” have been permanently closed,. We contend that



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the only reason WM includes, on page 5 of 6 of the Application, potential “installation of temporary geomembrane liner on intermediate outside slopes” is because our expert advised NYSDEC that this uncovered Landfill is literally a gas belching machine without permanent geomembrane liners on the side slopes.

Since WM admits on page 4 of 6 of its Application that it caused public nuisance odor events from late 2017 through early 2018, below is a chart of the odor complaints received by the FAFE App just since May 3, 2018:



It is important to note that the highest peak on the chart above, in September 2020, corresponds with the NYSDEC’s September 25, 2020 warning letter to WM. As further indicated in the above chart, the Landfill routinely continues to elicit scores of odor complaints on many days. It is also notable that these complaints cannot be attributed only to the FAFE members that are participating in the lawsuit against WM; many of the complaints are from residents who are not participating in the lawsuit. Further, there are many days when few odor complaints are reported (probably because of wind direction) so the complaints when they come in in large numbers on the same day cannot simply be written off as yet another stinky day in Perinton being caused by the Landfill.

ii. WM Must Provide the Board a List of Waste Materials to be Disposed of at the Landfill.

Section 208-21(D)(1) states that this Board must, in the Landfill Permit, list all the waste materials to be disposed of at the Landfill. WM has not submitted a proposed list for review by this Board in its Application, and therefore the Application is incomplete and cannot be accepted by this Board.

iii. WM Has Not Shown that the Landfill Permit is in the Public Interest.

Section 208-21(D)(2)(a) states that the Landfill Permit must be in the public interest and the facility must be environmental sound. For the reasons stated above, WM is still causing a



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nuisance in the community. WM's propaganda on page 3 of the Application regarding its minimal "Community Assets" fails to overcome the damage its causes to the Community. WM has failed to meet this requirement of the Landfill Permit, and this Board should require that WM provide more evidence how its operation of the Landfill is in the public interest.

iv. WM Has Not Shown that the Landfill Does Not Create a Public Hazard.

Section 208-21(D)(2)(b) of the Code requires that this Board find that WM is not creating a public hazard in its operation of the Landfill. The 2017/2018 odor events demonstrate that WM is more than capable of creating a public hazard, which continues today, and that an EIS is needed, as discussed more in Section C. WM also fails to even make a commitment to prevent off-site odors in its Application on page 4 of 6 when it states: "some intermittent and fleeting offsite odors are the byproduct of even a well-operated solid waste management facility." This statement is a blanket acknowledgement that this company plans to continue to violate their Solid Waste Permit, which prohibits the creation of public nuisance off-site odors, by failing to manage the facility in a manner to prevent such off-site impacts.

v. WM Has Not Maintained Landfill Proper Landfill Cover

Section 208-21(D)(2)(b) of the Code requires that WM include in the Application adequate plans showing that the Landfill will not create a nuisance or unduly interfere with the quiet enjoyment of adjacent properties. As detailed in the attached letter from FAFE's consulting engineer James Daigler, P.E., based on WMNY's lack of an adequate construction and maintenance plan for monitoring and ensuring the integrity the Landfill cover systems, insufficient final cover on side slopes, and the ongoing issues of nuisance odors impacting adjacent properties, the ZBA cannot approve the Application because it cannot rationally make the required finding of Town Code §208-21(D)(2)(b) that the Landfill does not unduly interfere with the quiet enjoyment of adjacent properties, and that sufficient precautions are being taken to prevent odors. *See Exhibit C.*

vi. WM Needs all Permits from NYSDEC.

Section 208-21(C) of the Code requires that WM must secure the appropriate permits from NYSDEC to operate the Landfill. WM's Title V air permit expires December 1, 2021, so WM may not be able to meet this requirement.

vii. WM Has Not Provided the Required Surety Bond.

Section 208-21(D)(3) requires that WM file with the Town a surety company bond. WM's Application is devoid of any details that this Bond requirement has been satisfied, and there is no indication that WM has ever filed this Bond with the Town. The Code states that the Bond is to be conditioned on WM's compliance with its Town Landfill Permit and is enforceable by the Town until the Landfill is fully restored. This Board cannot grant the Application when it lacks such vital details.

viii. WM Has Not Entered Into A Contract with the Town.

Section 208-21(D)(3) of the Code requires that a contract be entered into with the Town Board for the operation of the Landfill. This Board should be aware that the Town Board and WM have not finalized its proposed Host Community Agreement ("HCA"), as detailed here:



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<https://perinton.org/departments/public-works/high-acres-landfill/new-host-community-agreement/>. This Board cannot grant WM's Application until the HCA is finalized. FAFE submitted numerous comments objecting to the draft HCA, which are attached as **Exhibit D**. The public has a right to see the final HCA before this permit is issued, which was promised to Perinton residents by Town Supervisor Hanna at a press conference held on or about April 12, 2021. If the ZBA issues this permit without the HCA in place, the Town loses all leverage over the negotiation of favorable terms for the community. The draft HCA lacked detail on the 8-point plan provided by Supervisor Hanna in his April 12, 2021 press release, including the key property value protection section. *See Exhibit E*. Moreover, since the new HCA has not been finalized, the increased "community value of High Acres Landfill" as stated in the press release, including the continued popular Residential Drop-Off Program, the creation of a new Citizens Advisory Group, establishment of a Property Value Protection Program, and increased royalties to benefit taxpayers, may never come to fruition because the Town will no longer have any leverage if this Permit is issued without the HCA being in place. After Supervisor Hanna's press conference, at which he bragged about the importance of the HCA to the community, it is dubious why the HCA still has not been finalized. Failure to do so prevents the approval of the Permit.

ix. WM Cannot Comply With § 208-40(A)(4).

Section 208-21(D)(3) of the Code requires that the Landfill conform to setback restrictions, and in no event shall be less restrictive than those described in the Code's Industrial District requirements. Section § 208-40(A)(4) states that the Landfill "facility and related improvements [must] be set back greater than 100 feet from any property line." WM is already in violation of that Code provision, as illustrated in the screen shots attached as **Exhibit F**, which clearly shows that WM's facility and other improvements, including the Landfill itself, are not set back 100 feet from the Property line. WM's Application fails to state how WM will comply with Sections 208-21(D)(3) and 208-40(A)(4) of the Code given that it is already in non-compliance.

x. WM Failed to Submit a Copy of the Application to the Conservation Board.

Upon information and belief, WM failed to properly submit a copy of its Landfill Permit Application to the Conservation Board for comment, as required by § 208-21(c). In fact, the Conservation Board has cancelled every one of its scheduled meetings since the Application was submitted. *See* <https://perinton.org/government/boards/volunteer-boards/conservation-board/meeting-agendas/#49-207-wpfd-2021-1608755063>. Such a failure requires that this Board deny the Application and reschedule this hearing until after the Conservation Board has reviewed and commented on the Application.

D. APPROVAL OF THE LANDFILL PERMIT IS A NOT A TYPE II ACTION PURSUANT TO SEQRA.

To satisfy the New York State Environmental Quality Review Act ("SEQRA"), this Board must require an EIS or Supplemental EIS¹ prior to granting the Application. WM's delay in submitting its Application and the upcoming deadline of its expiring Permit, cannot be a basis for

¹ It is our understanding that an EIS has been completed for WM's permits with the NYSDEC, so only a Supplemental Environmental Impact Statement may be necessary, but for purposes of this letter we will refer to the required environmental review as an "EIS."



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this Board to hastily grant it again given what has happened over the last five years. An EIS is essential here because of the significant environmental impacts the Landfill has caused over the last five years and because significant new environmental impacts, including the climate related impacts of methane generation from this facility, are required to be analyzed by the recently updated SEQRA regulations, which were adopted between 2018 and 2019. *See generally* 6 N.Y.C.R.R. §617.9(b)(5)(iii)(i). These impacts were not evaluated when the previous permit was issued, but they are now required to be evaluated. *See* Letter of James Daigler, P.E., attached as **Exhibit C**.

The SEQRA process requires that a lead agency make a “determination of significance” by reviewing the EAF and deciding whether the action “may include the potential for at least one significant adverse environmental impact.” 6 N.Y.C.R.R. §617.7(a)(1). If so, a draft, and then a final EIS must be prepared. ECL §8-0109(2); 6 N.Y.C.R.R. §617.7(a)(1). If there is *no* potential for a significant adverse environmental impact, the lead agency must make a negative declaration, declaring that the action will not have a significant adverse environmental impact. 6 N.Y.C.R.R. §617.7(b)(2). If a proposed action “may have a significant effect on the environment,” ECL §8-0109(2) mandates that a positive declaration and an EIS be prepared. “It is well settled that because the operative word triggering the requirement of an EIS is ‘may,’ there is a relatively low threshold for impact statements.” *Farrington Close Condominium Bd. of Managers v. Incorporated Village of Southampton*, 205 A.D.2d 623 (2d Dep’t 1994); *see also H. O. M. E. S. v. New York State Urban Development Corp.*, 69 A.D.2d 222, 232 (4th Dep’t 1979). Furthermore, “[a] lead agency under SEQRA may not delegate its responsibilities to any other agency.” *Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd.*, 253 A.D.2d 342, 350, 688 N.Y.S.2d 848, 854 (4th Dep’t 1999) (lead agency improperly deferred analysis of environmental contamination to the Department of Environmental Conservation).

While it is true that the regulations state that a Type II action includes permit renewals when there is “no material change in permit conditions or the scope of the permitted activities,” it is equally true that the Landfill and its operation have materially changed since the last Landfill Permit was issued in 2016. *See* 6 NYCRR § 617.5(c)(32). Moreover, this Town, specifically the Conservation Board, has already materially changed its requirements for the operations of the Landfill and according to the Town’s own April 12th press release, intended to require additional changes not discussed in WM’s Application. Regardless, a Type II action cannot, “in no case, have a significant adverse impact on the environment.” *See* § 617.5(b)(1). WM cannot meet this burden, and thus an EIS is required.

The Town’s issuance of the Compliance Order, dated March 8, 2018, alone, is sufficient to trigger an EIS. The Compliance Order detailed that WM violated the conditions of its Landfill Permit, and that “[WM] is unduly interfering with the quiet enjoyment of adjacent properties, and has not sufficient guarded against the creation of odor, fumes, or noises liable to become a nuisance.”

It is also well-documented that WM’s operation of the Landfill has materially changed, as detailed below, which just includes a few of the changes:

- WM’s own Application admits there have been operational changes since the last Landfill Permit was issued in 2016. *See* WM Application page 4 of 6 (“In late 2017 and early 2018, High Acres landfill experienced a first of its kind odor event associated with two disposal cells, 10 and



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11. Cells 10 and 11 experienced a reduced capacity to collect landfill gas.”); page 5 of 6 (“unprecedented site enhancements...”);

- New York City garbage (“NYC Garbage”), which is received by rail from waste transfer stations in New York City, became (and continues to be) the primary source of MSW disposed at the Landfill beginning in 2016 (*see* chart below, which is derived from the annual reports to NYSDEC for the Landfill). The incidence of nuisance garbage odors (verses landfill gas odors) impacting the community has increased dramatically since that time. In addition, because the NYC Garbage is received by rail, the occurrence of noise related to the operation of the rail siding facility, especially at night, has impacted residents.

	2014	2015	2016	2017	2018	2019	2020
Rail NYC Garbage tons per year (“tpy”)	-	284,392	559,214	567,711	724,744	613,837	646,744
Total MSW (tpy)	211,317	475,316	750,084	796,065	838,850	686,848	717,891
NYC Garbage as a percent of MSW	0%	60%	75%	71%	86%	89%	90%

- WM’s District Manager Jeffrey Richardson admitted at the public meeting on January 16, 2018 (“January Meeting”) that WMNY did not install the Horizontal Gas Collectors in Cell 11 despite the fact that these collectors were listed as the primary means of odor control in its system. He stated “Cell 11 is the only cell at High Acres that does not have horizontal collection ...”; yet the long term ramifications related to the permanent lack of these Collectors in Cells 11 and 12 and the planned removal of the temporary cover on Cells 11 and 12 in two years, which even WM admits was the only remedy for that admitted public nuisance odor event that spanned months in duration, is not even addressed in its Application;²

- WM’s Area Director of Disposal Operations, Steve Poggi, also admitted at the January Meeting that the “[Landfill has] a history of a strong operating record, and obviously, things have changed. And what has changed is in Cell 10 and 11. The gas system that was installed was changed. We went to a different system. And it was not effective enough to capture the gas. So, we are going back to what we have used in the past and supplementing that with additional collector cells. So, it is not the entire site. It is just these two recent areas that we have made a *change to the operation.*”;

- WM’s Senior Project Manager, Don Gentilcore admitted at the January Meeting that “the primary cause of increased odors relate[s] to the effectiveness of the gas collection system in cell 11. This effectiveness was compromised by the sole reliance on the vertical gas wells ...”;

² It is important to note that the horizontal collectors were described as the *primary odor mitigation measure* in WM’s own EIS documents to NYSDEC dated 2003 Phase II Final Supplemental EIS, as well as the 2007 Phase III FSEIS, and the 2016 SEIS, yet the Cell 11 collectors were removed in 2014 and 2015 without a NYSDEC Permit modification or a Town Permit modification. Nothing in the current Application prevents WM or even makes a commitment by WM not to make such a significant Landfill design and operational change without a FORMAL Permit amendment at both the Town and State level, both of which would involve a public process.



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- In a December 20, 2017 letter (“2017 Letter”) to NYSDEC, WM admitted its “[r]eliance solely on vertical gas wells and previous generation slip form well technology (Figures 1 and 2) in cell 11 for operational landfill gas collection resulted in reduced collection, given 2017’s wet weather conditions.”;
- The Conservation Board has concluded that “We believe that the use of the slip form well design without horizontal gas collectors resulted in an ineffective gas collection system in Cell 11, causing increased gas emissions from the landfill surface and therefore increased odor complaints during 2017”;
- On February 2, 2018, NYSDEC issued the NOV concluding that WM was in violation of state solid waste and air pollution control regulations and had caused a public nuisance, stating that “[s]ince approximately September 2017, on numerous occasions continuing to date, the Landfill has emitted odors in a manner that unreasonably interferes with the Community’s comfortable enjoyment of life and property.”;
- In a letter from NYSDEC to WM dated September 24, 2018, NYSDEC determined that as an “interim operational measure,” WM was not to dump NYC Garbage and any other waste delivered via rail on any operating day prior to 10:15 a.m., and was required to process all rail cars of NYC Garbage on the business day following delivery;
- In a letter from NYSDEC to WM dated September 25, 2020, NYSDEC threatened legal action because of ongoing odor events. *see Exhibit B.*

In sum, there have been many changes and the impact of those changes, in particular the fact that the operation of Cells 11 and 12 have been permanently compromised due to a faulty design that cannot be retroactively fixed, that a new detailed environmental review is mandated. There is not even a statement in this Application indicating that another long duration odor event similar to what was experienced in 2017 and 2018 cannot occur or what WM will do if it does occur, which is highly possible when the cover now on Cells 11 and 12 are removed.

E. THIS BOARD CANNOT REASONABLY RELY ON WM’S EAF, WHICH IS RIDDLED WITH INACCURACIES AND LACKS ANY CONCRETE COMMITMENT HOW CONTINUED OPERATIONS OVER THE NEXT 5 YEARS WILL NOT CAUSE A PUBLIC NUISANCE.

WM failed to properly complete the Long Environmental Assessment Form, dated May 28, 2021 (“EAF”), which contains numerous errors and inaccurate responses to the various questions. Equally disturbing is the fact that WM submitted a pre-completed Part 2 and 3, which is supposed to be completed by the Lead Agency.

Initially, WM failed to properly list all involved agencies. *See* 6 NYCRR Part 617.7. The New York State Department of Environmental Conservation (“NYSDEC”) must be an involved agency because the Landfill Permit requires that WM obtain and maintain a NYSDEC Part 360 permit. WM’s Part 360 Permit expires on July 8, 2023, during the duration of its 5-year Town Landfill Permit, and thus, NYSDEC must be an involved agency. Further, Monroe County must be an involved agency. WM’s Application fails to include that a General Municipal Law 239-m review is required because, at a minimum, the action is related to property within 500-feet of



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Wayne County and the Town of Macedon. *See* § 239-m(3)(b). Also, the Landfill needs a County License to operate a solid waste facility. *See* Monroe County Code § 347-17(B). The acceptance of waste from facilities outside of Monroe County must also be approved when the License is issued. *See* § 347-9(A). Finally, the Town of Perinton Town Board must be an involved agency because “a contract with the Town Board” is required in order for the Landfill Permit to be granted by this Board. *See* § 208-21(D)(5).

Detailed below is a list of errors made by WM in its EAF Part 1, and in Parts 2 and 3 improperly completed for this Board. WM continuously submits incomplete documents so that no one, including this Board, can understand what is actually going on with the Landfill.

- **EAF Part 1**

- **Section C.2-** WM failed to acknowledge the draft 2021 Comprehensive Plan, which addresses the Landfill and the odor issues. A goal of the plan is to mitigate Town-wide impacts of the Landfill through exploration of waste diversion techniques and other options.
- **Section C.3-** WM answered “YES” but fails to provide details about the zoning classification of the area.
- **Section C.4-** WM fails to list a fire protection service.
- **Section D.1.e-** WM indicates that proposed action will take place over “multiple phases” but declines to list anticipated completion date, number of phases, or what the relationship is between these phases and failed to submit a legible fill plan showing the height of the Landfill in three dimensions.
- **Section D.1.g-** WM answers “NO” to the question about whether the proposed action includes non-residential construction (including expansion) when the answer should be “YES” with details on the height width, length, dimensions, etc. of the expansion. No details are provided, and the fill plan is illegible.
- **Section D.1.h-** WM answers “NO” when the answer should be “YES” to the question. WM failed to acknowledge how surface water and groundwater are being handled despite acknowledging in Section D.2.d that 5,000-10,000 gallons of liquid waste will be generated each day. There are leachate collection and storm water ponds that should have been disclosed with the details of the volume of water being handled.
- **Section D.2.a-** WM answers “NO” when the answer should be “YES” in relation to the question as to whether any excavation will occur. Excavation was required when already landfilled garbage had to be excavated in Cell 11 during the 2017-2018 Odor Incident and the cover system eventually placed on Cell 11 will have to be excavated to be removed. Therefore, this detailed section in the EAF must be filled out to explain when such excavation activities will be required.
- **Section D.2.e-** WM notes that “more than one acre” will be disturbed and that new stormwater runoff is created but claims that “nothing new” is proposed as part of the plan and fails to describe the new sources, the area of the impervious or other surfaces creating the runoff, or what water bodies or adjacent properties will be impacted. WM simply states that “a Stormwater Pollution Prevention Plan exists for the site and has been implemented” yet discloses that there are 7 acres of surface water features on this site in EAF Section E.1.b.



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- **Section D.2.g-** WM answers in the affirmative regarding whether the Site will generate air emissions but simply references their Title V air permit and fails to answer whether the area is a nonattainment area under the NAAQS or what, if any, additional emissions the Site will generate on top of those in their Title V Air Permit. A reference to an existing Permit does not answer the questions asked in this section.
- **Section D.2.h-** WM notes that “the site continues to generate or emit methane, no increase is expected to be associated with this renewal,” but WM completely fails to show this Board how no increase is “*expected*.” This Board cannot rely on WM’s expectation without taking its own review of the issue. Moreover, the new SEQRA regulations require an analysis of an action’s impact on climate change, including methane emissions, which was not provided by WM in its previous application or in this application. *See generally* 6 N.Y.C.R.R. §617.9(b)(5)(iii)(i).
- **Section D.2.j-** WM indicates that there will not be an increase in traffic without providing any detail, yet recently there has been a decrease in NYC waste coming by rail which likely means there has been a recent increase in truck traffic since disposal levels are roughly the same.
- **Section D.2.m-** WM answers that nothing during the next five years will produce noise that will exceed the ambient noise levels, yet there have been numerous noise complaints from residents as a result of both daily Landfill operations and the rail facility that continue unaddressed with no mitigation measures.
- **Section D.2.o-** Interestingly, here WM admits that the landfill may produce odors *for more than one hour per day* but fails to describe the possible sources, potential frequency and duration of the odor emissions and proximity to the nearest occupied structure as required by this section of the EAF. The company just blatantly says “The site is an active solid waste landfill, which may produce odors”, however, their Permits mandate that odors not create an off-site nuisance.
- **Section D.2.r.ii-** When asked here if this waste company is doing anything to minimize, recycle or reuse any of the solid waste it is receiving, it answers “NA”, which appears to be inconsistent with one of the benefits the Town residents are allegedly receiving in the form of recycling. Is all of the garbage we are continuing to separate just going straight into the Landfill?
- **Section D.2.s.ii-** WM fails to fill in details on the anticipated rate of disposal and processing including tons per month.
- **Section E.1.c-** WM answers in the affirmative that the site is used by members of the public for public recreation but fails to explain how the site is used or acknowledge the many days that members of the public cannot use the recreational area or any outdoor property in proximity to the Landfill due to the stench emanating from it.
- **Section E.1.g-** WM clearly knows that hazardous waste HAS been disposed at this Site since it was a listed Superfund site. Frankly, it still should be listed as a Superfund site since cyanide was dumped at the Landfill BEFORE IT WAS LINED by a company called Brainerd. This answer must be “YES” and the hazardous waste at the bottom of this Landfill should be listed in this EAF. *See* <https://www.dec.ny.gov/cfm/xtapps/derexternal/haz/details.cfm?ProgNo=828033>
- **Section E.h.iv-** Based on NYSDEC records, there was never “remediation” of the Brainerd waste, and it is still under this Landfill. Therefore, WM’s response that “remediation has been complete” is incorrect. Allegedly, the leachate system handles



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- this issue but there has never been an off-site investigation to prove off-site properties were not impacted.
- **Section E.2.f-** WM's response that only 0-10% of 100% of the site has slopes makes no sense in relation to its position that the side slopes are too dangerous to monitor.
 - **EAF Part 2 WM answered "NO" to every impact in this section of the EAF, which is supposed to be filled out by the lead agency. One would think this facility is more of a rose garden than a landfill based on this EAF.**
 - **Impact on Land-** This Board (Not WM) must answer "Yes" because continued landfilling will clearly "involve construction on or physical alteration of the land surface of the proposed site." Moreover, the Landfill may involve the construction of slopes of 15% or greater, and construction in multiple phases, which may increase erosion. Since the side slopes are not even covered, the steeper this landfill gets, the more likely it is that side slope failures will occur and the more difficult it will be to cover the side slopes. All of this should have been analyzed but instead WM answers "NO" and merely includes a passing statement in its 6 page Application that it may install a temporary geomembrane liner on intermediate outside slopes. This odor mitigation measure must be mandated now before the Landfill gets even larger. Also, given the violation of the 100-foot set back requirements already, it is unclear what WM means when they refer to "intermediate outside slopes". It is unclear how the side slopes can get any larger given the current setback violation, and WM failed to provide a legible filling plan (*see* Application Attachment 3), which should be three dimensional as opposed to a flat drawing for the ZBA to be able to analyze multiple impacts of height, size, etc. on the land.
 - **Impact on Surface Water-** The Application does not describe whether additional wastewater treatment facilities will be required for the continued operation of the Landfill or whether additional outfalls are needed, so this Board should answer "Yes." [NOTE: PFAS contaminants in Landfill leachate were found yet there is no explanation as to how the Landfill is preventing off-site migration of leachate from its borders given that portions of the Landfill are unlined].
 - **Impact on groundwater-** The Application admits this Landfill is over a primary and principal aquifer and answers "No" in relation to whether there is a "potential to introduce contaminants to ground water or an aquifer". It is not possible that there is no potential impact given that portions of this Landfill are unlined, and the higher it gets, the more likely the liners at the bottom to the extent they exit are failing. This Board should answer "Yes" and require an area-wide groundwater investigation.
 - **Impact on Flooding-** WM admits the Landfill is within a 100-year floodplain, but then here answers that there is no development of lands subject to flooding. This Board must answer "Yes" based on the acknowledgement in Part 1 of the EAF that the Site is in a 100-year floodplain.
 - **Impacts on Air-** It is impossible for this Board to answer this question in the negative, without being arbitrary and capricious. It is well-documented that the Landfill annually emits tons of methane, carbon dioxide and other non-methane organic compounds, which include volatile organic chemicals, hazardous air pollutants, and odorous compounds such as reduced sulfur compounds into the Community. This will continue in the next five years. WM's Title V Air Permit notes that it has the potential to emit



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- 171.1 tons per year (“tpy”) of Oxides of Nitrogen, including nitrous oxide (N₂O). In addition, there is potential for the site to emit greater than 75,000 tpy of carbon dioxide (CO₂). These potential emissions surpass the thresholds that require analysis in the EAF.
- **Impact on Plants and Animals-** WM’s Application does not provide enough detail for the Board to answer this question in the negative. WM admits that there is an endangered or threatened species called the Pied-billed Grebe on the Site but does not analyze the impact of continued landfilling on this species.
 - **Impact on Agricultural Resources-** EAF Part 1 notes that the Landfill occurs on or near Agricultural land, so this Board must answer “Yes” to this question.
 - **Impact on Aesthetic Resources-** The Landfill is bordered by the Erie Canal, and thus can be seen from an official aesthetic resource, so this Board must answer “Yes” to this impact section. Plus, WM intends to increase the height of the Landfill during the next 5 years, so the aesthetics of the community will be significantly diminished. Again, Application Attachment 3 is a completely deficient flat, as opposed to three-dimensional, drawing and fails to adequately show the aesthetic impact of the planned increased mountain of garbage that will surpass the height of all other drumlins in the area as more waste is allowed to be landfilled in Perinton.
 - **Impact on Historic and Archeological Resources-** Again, the Landfill and its height increase will diminish the aesthetics from the Erie Canal, so this Board must answer “Yes.”
 - **Impact on Transportation-** WM admits that it has changed the mode of transportation of waste to the Landfill, from via truck to via rail, in recent years. These changes must be analyzed for their environmental impacts, so this Board must answer “Yes.”
 - **Impact on Energy** – it is not clear if all of this additional landfilling will require the gas plant to expand or not.
 - **Impact on Noise, Odor, and Light-** WM admits in its own Application that continued operation of the Landfill will cause noise and odors, therefore, for the reasons stated above, this Board must answer “Yes.”
 - **Impact on Human Health-** WM’s Application fails to provide enough documentation on how its emissions and operations will not negatively impact human health. WM makes cursory conclusions without any evidence to support their self-serving conclusion that this Landfill is not impacting public health while at the same time admitting that there may be more than one hour of odor every day. The odors are derived from gas emissions from the Landfill and we know from WM’s Air Permit that emissions from the facility contain hazardous substances. Regardless, WM cannot deny that the Landfill Permit “involves construction or modification of a solid waste management facility,” which it did in Section 16.h, so this Board must answer “Yes” to this question.
 - **Consistency with Community Plans-** This Board must answer “Yes” because of the proposed updates to the Town’s Comprehensive Plan.
 - **Consistency with Community Character-** The Landfill is inconsistent with the character of the community and has interfered with the public’s use of community resources, as detailed above, so this Board must answer “Yes.”
 - **EAF Part 3** – here the lead agency must make findings whether another five-year permit, that will allow for the disposal of up to 3,500 tons per day every day, may have any significant



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adverse impacts and make a determination of significance. It is hard to imagine how any Board could conclude that this five-year permit will not have significant adverse impacts on Perinton. WM states that its past SEQRA EIS documents address the impacts. However, as noted above in footnote 2, WM changed the Landfill design analyzed in those very documents, which led to the 2017-2018 odor disaster.

The question is not whether there are any proposed changes to the current permit, but whether there are any actions to be taken that *may* have a significant adverse environmental impact. This answer is clearly in the affirmative for all of the reasons stated above. WM must complete an EIS before this Board can grant its Landfill Permit. Five years ago, the ZBA approved WM's request for a Town Solid Waste Facility Permit because the Landfill had allegedly not caused a public nuisance. The ZBA cannot reach this same finding in relation to the pending Application. Given WM's own admission that it at least caused a public nuisance in 2017 and 2018, and there will continue to be odor issues, coupled with the complaint data proving that the public nuisance is ongoing, it is completely unclear how the ZBA will be in a position on July 26, 2021, to validly act on this completely deficient Application.

In conclusion, we trust that this Board will require a full EIS and require that WM re-submit its Application that complies with the Code and requirements for a Town Landfill Permit.

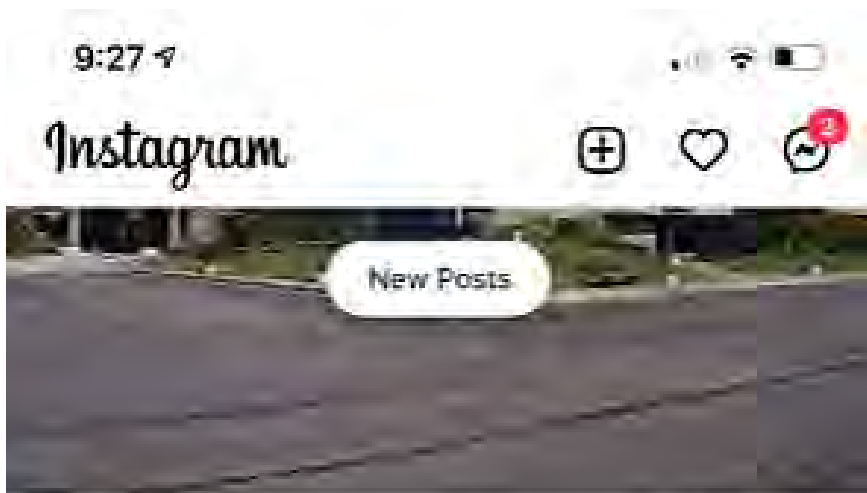
Respectfully,

KNAUF SHAW LLP

LINDA R. SHAW

cc: Leslie M. Connolly, Esq.

EXHIBIT A



5 likes

townofperinton AN UPDATE ON IN-PERSON PUBLIC MEETING ATTENDANCE:

Updated New York State guidelines now permit in-person attendance for public meetings. We have adapted our Town Board Room to allow as many members of the public as possible while also following social distancing requirements. However, this has resulted in extremely limited in-person attendance. To keep everyone at a safe distance, 30 members of the public – including members of the board – can be in the meeting room during public meetings.

Therefore, we ask that you please consider participating in public meetings virtually via our Starleaf meeting system. We have utilized this system throughout the pandemic and outfitted our Town Board Room with AV equipment to optimize virtual meetings. Starleaf – which can be used on a computer or a phone – allows you to view, listen and comment in the meeting live via video or audio. To join a meeting virtually, please look for the web-conferencing information at the top of each meeting agenda.

For instructions on how to join a Starleaf meeting, visit <https://perinton.org/government/boards/town-board/how-to-join-a-board-meeting-virtually/>

EXHIBIT B

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-8545 | F: (518) 402-8541
www.dec.ny.gov

September 25, 2020

Mr. Jeffrey G. Richardson
Sr. District Manager
Waste Management of New York, LLC
425 Perinton Parkway
Fairport, New York 14450

Dear Mr. Richardson:

The New York State Department of Environmental Conservation (DEC) has received a large number of odor complaints from citizens that are attributable to operations at the High Acres Landfill. These complaints have increased markedly in the last two months, and in particular during the month of September to date, DEC has already received approximately 511 odor complaints: 447 from a mobile application system and 64 via the dedicated High Acres Landfill odor complaint hotline.

As part of our rigorous oversight of this facility, DEC staff routinely follow up on specific complaints and make field visits to verify conditions in the areas around the landfill. Many of these complaints and the presence of odors in offsite areas have been confirmed by DEC staff and/or third parties. This situation is wholly unacceptable to us and must be investigated thoroughly and actions taken to address these offsite odors.

Our investigations have noted that certain operational issues associated with maintaining and repairing landfill equipment and systems are believed to be contributing to the generation of odors leading to complaints. For example, DEC staff have noted that mobile misting systems have not always been deployed in appropriate locations downwind from the working face as required in Section 5.6 of High Acre's Odor Control Plan, Appendix A to the Operations and Maintenance Manual. We also see concentrations of complaints relating to management of waste at peak times of days, suggesting that scheduling and operational changes may be necessary.

Waste Management (WM) must take immediate and concrete steps to adjust its operations and optimize its odor control processes at the High Acres Landfill to address and eliminate these odors to the maximum extent practicable. WM must submit an evaluation of the recent increase in complaints and propose a plan to mitigate odors in the surrounding community. I expect this plan to be submitted to the Division of Materials Management program in our Region 8 office by no later than 30 days from receipt of this letter.

2.

Please be advised that if Waste Management is unable or unwilling to operate this facility in accordance with best practices and in compliance with its permit, DEC will pursue all available legal remedies to ensure that these odor issues are properly addressed.

As noted above, please respond to the DEC by no later than October 28, 2020 with your plan. I look forward to your prompt response and renewed efforts to address these repeat occurrences of offsite odors.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Seggos', with a long horizontal line extending to the right.

Basil Seggos
Commissioner

EXHIBIT C



2620 Grand Island Blvd. Grand Island, New York 14072

phone (315) 651-0475

www.daiglerengineering.com

July 23, 2021

Ms. Robin Ezell, Chair
Town of Perinton Zoning Board of Appeals
1350 Turk Hill Road
Fairport, New York 14450

Re: High Acres Landfill Special Use Permit Renewal Application

Dear Ms. Ezell:

I am the President of Daigler Engineering, P.C. and a licensed Professional Engineer with an emphasis in geo-environmental engineering and extensive experience in the design, permitting, construction, and operation of municipal solid waste (“MSW”) landfills. My resume is attached as Exhibit A. I submit these comments on behalf of the members of Fresh Air for the East Side, Inc. (“FAFE”) in opposition to the straight renewal of the special use permit (the “Permit”) for the High Acres Landfill (“Landfill”) requested by Waste Management of NY, LLC (“WMNY”).

In my professional opinion, a positive declaration must be made pursuant to the State Environmental Quality Review Act (“SEQRA”) establishing the need for an environmental impact statement to assess potential significant adverse impacts associated with the renewal of the Permit because of ongoing issues associated with the operation of the Landfill. In addition, in my professional opinion, the Landfill does not comply with the solid waste facility permit requirements of Section 208-21(D) of the Town Code because, based on the operational history of the Landfill since the prior renewal of the Permit and WMNY’s landfill gas management practices at the Landfill, among other reasons, the Zoning Board of

Appeals (“ZBA”) cannot reasonably find that the Landfill does not unduly interfere with the quiet enjoyment of adjacent property in compliance with Town Code §208-21(D)(2)(b).¹

Basis for Opinion

I have reviewed the NYSDEC solid waste management facility and air permits for the Landfill and related design plans, odor control studies, operations and maintenance plans, compliance reports, and as-built construction plans.² Based on my review of those documents, it is clear WMNY's design, monitoring, reporting and operation of the Landfill are insufficient to implement effective nuisance controls at this exceptionally large MSW landfill, or meet the requirements of the Town Code.

Non-Compliance with Town Code §208-21(D)(2)(b)

To issue the Permit, Town Code §208-21(D)(2)(b) requires that the ZBA must make a factual finding based on evidence that WMNY has produced:

“Adequate plans...to show that the solid waste facility does not create a public hazard, the solid waste facility does not unduly interfere with the quiet enjoyment of adjacent properties; and that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance”

Based on my review of WMNY's landfill design, operations and monitoring programs as well as NYSDEC reporting for this facility, the persistent occurrences of odors reported in the surrounding community, and my professional judgment, the ZBA cannot reasonably find

¹ The final cover requirement of Town Code § 208-21(D)(2)(b) for when “the operation is completed,” which would limit the requirements for final cover to six inches of topsoil planted with grass, would not meet NYSDEC solid waste management regulatory requirements for intermediate or final cover. The Town Code should be updated so that the cover system requirements at least meet the minimum NYSDEC requirements.

² It appears WMNY has presented none of these materials to the ZBA as part of its Application. Because of the paucity of materials presented in the Application, it is difficult to conceive how the necessary factual determinations necessary to approve the Application, as required by Town Code §208-21(D)(2), can be made.

that the Landfill does not create a nuisance, unduly interfere with the quiet enjoyment of adjacent properties, or meet the cover requirements of the Town Code.

WMNY's landfill cover management and monitoring practices appear to contribute significantly to the persistent nuisance odors of landfill gas emanating from the Landfill and are not compliant with the cover requirements of the Town Code. Landfill gas, consisting of methane, carbon dioxide, non-methane organic compounds, and odorous reduced sulfur compounds, is emitted from the Landfill as the deposited waste decomposes.

WMNY is required to operate an active landfill gas collection system that controls off-site migration of landfill gas in all areas of the landfill where landfill gas is generated. As part of the collection system, WMNY is supposed to collect and pipe landfill gas to pollution control equipment that burns the landfill gas by utilizing two flares and eight internal combustion engines. However, not all of the landfill gas is captured by the collection system so that it can be treated by the air pollution control system, instead a substantial portion leaks out as "fugitive emissions" to the surrounding environment through the landfill cover.

In accordance with Town Code §208-21(D)(2)(b) WMNY must provide an adequate plan, including an interim and final cover material management plan prepared in accordance with New York state's solid waste management facility regulations, that will help control fugitive odor. An effectively constructed and maintained geosynthetic final cover system is essential to minimizing fugitive emissions and is a critical part of controlling odor from any landfill. Effective final cover and landfill gas collection systems, those installed in areas where a landfill has reached its final elevation and will no longer be filled, can reduce fugitive landfill gas emissions to virtually zero.

Despite ongoing odor complaints, it appears large portions of the Landfill that have reached final elevation do not contain a geosynthetic based final cover system and the Landfill cover monitoring and repair procedures intended to ensure cover integrity are woefully inadequate to minimize odors. While WMNY trumpets its "quarterly Surface Emission Monitoring scans of the *entire* Facility to identify any landfill gas/methane readings [emphasis added]." This statement is misleading because substantial portions of the Landfill surface are

excluded from the surface emission monitoring scans, including areas most prone to leakage of fugitives emissions of landfill gas, such as:

- Steeper sloped areas of the Landfill, with slopes greater than 3:1: These slopes are prone to leakage because it is more difficult to maintain effective cover, yet they are unmonitored because WMNY claims they are too dangerous to monitor.
- Areas of the Landfill with snow or ice cover: Fugitive landfill gas emissions are easily spotted due to snowmelt, but remain unmonitored during winter months.
- Areas with heavy vegetation: Fugitive landfill gas emissions are more readily detectable in heavily vegetated areas where leakage may be more prominent and persistent winds will not quickly disperse fugitive gas during monitoring events, yet WMNY largely ignores them.
- Areas of the Landfill undergoing construction or final cover activities: these activities go on for months at a time and have the potential for substantial fugitive emissions but will go on unmonitored for extended periods.

As a result, WMNY does not monitor the facility in the most odor prone portions of the Landfill, and has not proposed to use other technically feasible alternatives to manual surface scanning, such as remote and optical scanning for methane leaks in these areas.

The failure of WMNY to monitor substantial portions of the Landfill, including those portions most likely to emit substantial fugitive emissions of landfill gas, is likely a significant contributor to the ongoing nuisance odors impacting adjacent properties. In addition, even for those areas that are monitored, infrequent quarterly monitoring is wholly insufficient to timely repair breaches causing the off-site odors as evidenced by each monitoring event routinely identifying excessive emissions requiring corrective action, often by several orders of magnitude above the allowable threshold. For a robust monitoring program, WMNY must monitor the landfill surface more frequently, and then integrate and analyze the monitoring data to timely complete repairs in areas prone to landfill gas breaches.

In addition, it appears WMNY has made no commitment or submitted a phasing plan to construct either intermediate or final cover on the (unmonitored) steep side slopes of the Landfill to control landfill gas emissions. The steep-sloped northern, western, and southern perimeter of the Landfill appear to have largely reached their final elevation years ago, yet the cover system on these side slopes do not comply with NYSDEC requirements for intermediate or final cover such as the installation of a geomembrane liner for the final cover system. As a result, it is likely, in my professional opinion, that these unmonitored, non-compliant side slope areas are a significant source of ongoing nuisance odors impacting adjacent properties. While WMNY, almost as an aside and not as an actual commitment, casually mentions in the Application that it will “remain committed to the continued evaluation and deployment of additional mitigation and control measures, including installation of temporary geomembrane liner on intermediate outside slopes,” it makes no concrete promises to do so to any particular extent, and certainly not to the full extent necessary to control fugitive emissions to eliminate the off-site odors that continue to occur.

Conclusion

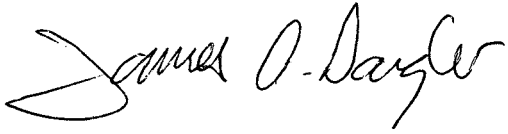
In my professional opinion, based on WMNY’s lack of an adequate construction and maintenance plan for monitoring and ensuring the integrity of the Landfill cover systems, insufficient final cover on side slopes, and the ongoing issues of nuisance odors impacting adjacent properties, the ZBA cannot approve the Application because it cannot rationally make the required finding of Town Code §208-21(D)(2)(b) that the Landfill does not unduly interfere with the quiet enjoyment of adjacent properties, and that sufficient precautions are being taken to prevent odors.

It is further my professional opinion as a professional engineer with extensive experience related to the processing of applications under SEQRA and environmental analyses associated with MSW landfills, the substantial ongoing nuisance odors related to the Landfill represent changes regarding issues of significant and substantive environmental concern occurring subsequent to the prior approval of the Permit in 2016, and as a minimum warrant a positive declaration and public scoping of a DEIS pursuant to SEQRA.

If the ZBA has any questions or comments regarding the above, please do not hesitate to contact me.

Sincerely,

DAIGLER ENGINEERING, P.C.



James A. Daigler, P.E.
President

Enc.

EXHIBIT A

James A. Daigler, P.E.
Chief Engineer

Summary of Experience

- Solid Waste Management Facility Design, Construction and Operation
- Management/Design, Permit Consultant
- Construction Management/Supervision
- Construction Quality Assurance

Education

B. S. Civil Engineering

Tri- State University – Angola, Indiana
 Area of Emphasis: Geo-environmental Engineering
 Related Areas of Study: Construction Management
 Degree Granted: 1980

A.A.S. – Civil Technology

Erie Community College
 Area of Emphasis: Civil Technology
 Related Areas of Study: concrete design, hydraulics and surveying
 Degree Granted: 1977

Professional Experience

2002 - present

President - Daigler Engineering, P.C. - Grand Island, New York

Professional consultant in geo-environmental and civil engineering, with focus on land disposal engineering and construction quality assurance. Areas of expertise includes site investigation and planning, hydrogeologic investigations, geotechnical engineering studies, landfill design, environmental and municipal permitting, construction specifications/bid document preparation, construction inspection and certification, waste site remediation, excavation support system design, de-watering, foundations and wastewater management.

1994 - 2002

Engineering Services Manager - Seneca Meadows, Inc., Seneca Falls, New York

Development, staffing and leadership of the *SMI Engineering Group* for the purpose of in-house environmental permitting, facility design, construction management and construction quality control.

Project Manager for a comprehensive solid waste management facility expansion application complying with local zoning/ordinances, 6NYCRR Part 360 (solid waste), Part 201 (air quality), Part 757 (storm water/surface water), Part 663 (freshwater wetlands), Part 608 (use and protection of waters) Part 621 (uniform procedures) and Part 617 (SEQR).

Principal/Certifying design engineer for a 126-acre solid waste management facility, including landfill design and operation, environmental monitoring, storm water, wastewater and landfill gas management systems. Authored Engineering Reports, Operation Manuals and Environmental Monitoring Plans.

Planning, economic analysis, design and permitting for waste tire facility development.

Project Manager for initial/supplemental remedial investigations at an Inactive Hazardous Waste site.

In-house operations consultant relative to requirements for optimizing disposal practices, environmental compliance and construction quality

Preparation of detailed Contract Documents including technical specifications, contract drawings and agreements used to procure and manage engineering and construction services.

James A. Daigler, P.E.
Chief Engineer

Professional Experience
 (Continued)

1990 - 1994

Associate – Wehran Engineering, Grand Island, New York

Managed the day-to-day activities of a staff of 20 engineers, scientists and technicians
 Coordination of marketing-technical activities, review and development of technical and cost proposals, preparation of project plans.
 Coordinated staffing of main/branch offices to increase employee productivity and Company profitability.

1984-1990

Senior Engineer– Wehran Engineering, Grand Island, New York

Technical Services Manager responsible for the planning, design, construction quality assurance and operational planning for numerous solid waste management facility designs completed by the Branch Office.
 Project Manager and principal engineer for the preparation of permit applications and construction documents including site characterization studies, data assessment, engineering design and coordination with residents, negotiated approvals from multiple federal, state and local agencies.
 Expert testimony in landfill construction quality control and assurance programs.
 Company specialist in geosynthetic materials/design applications, including participation in ASTM D35 committee on geosynthetics.

1980-1984

Staff Engineer – Wehran Construction

On-site engineering design for civil projects including site grading and drainage, hydraulic structures, earthworks, subsurface drainage and environmental containment systems.
 Construction management and supervision for remediation of inactive and uncontrolled waste sites.
 Responsible for construction quality control activities related to site remediation and landfill construction projects completed by Wehran Construction.

1973 -1979

Skilled Laborer - Bero Construction Corporation – Depew, New York

Installation of pipe systems including sanitary sewer, water supply, natural gas and communications.
 Heavy/Highway construction including earthwork, drainage infrastructure, bridge deck and pavements.

Professional Affiliations & Registrations

Professional Engineer - New York State License No. 061689
 Intern Engineer - Indiana
 40 hour Hazardous Waste Operations and Emergency Response/Site Health and Safety Supervisor
 Member - New York State Chapter of The Solid Waste Association of North America

EXHIBIT D

FAFE Comments on HCA

Knauf Shaw LLP on behalf of Fresh Air for the Eastside, Inc. (“FAFE”) submits the comments below to the Draft Host Community Agreement, dated April 12, 2021 (“HCA”), between the Town of Perinton (“Town”) and Waste Management of New York, L.L.C. (“WMNY”).

GENERAL COMMENTS ON THE HCA.

As an initial and general comment about the HCA as a whole, we are disheartened and dismayed by the amount of power the Town of Perinton (“Town”) is voluntarily recusing to WMNY. The Town is not exercising the substantial authority it maintains through its Code, namely its Solid Waste Facility Permit section, § 208-21(D), and required Special Use Permit (“Special Permit”). WMNY needs this Special Permit to legally operate within the Town. Importantly and despite the fluff language used in Section I entitled “Purpose” of the HCA, WMNY is required to enter into a contract with the Town as part of its Use Permit. *See* § 208-21(D)(5). This requirement should be acknowledged in the HCA.

Further, it is clear that the Town prefers to pass the buck to the New York State Department of Environmental Conservation (“NYSDEC”), rather than retaining any power and control itself. The law in New York is very favorable towards municipalities seeking to regulate and control solid waste management facilities such as the High Acres Landfill (“Landfill”). *See Jones v. Town of Carroll*, 122 A.D.3d 1234, 996 N.Y.S.2d 804 (4th Dep’t 2014), *lv. to app. den’d*, 25 N.Y.3d 910, 15 N.Y.S.3d 287 (2015) (upholding a law that “generally regulat[es] the operation of [solid waste management] facilities in the interest of public safety and welfare” by completely prohibiting their operation because “[i]t is well established that a municipality has the authority, pursuant to its police powers, to impose conditions of operation . . . upon preexisting nonconforming uses to protect public safety and welfare.”) [internal citations omitted]. We strongly urge the Town to reconsider its position and redraft this agreement to retain all its powers and authorities, as the Town is in the best position to truly protect the communities interests, rather than the NYSDEC or WMNY.

Another initial comment is that material terms in this draft are wholly lacking. It is unconscionable to think that the community can provide substantive comments when the most controversial and arguably important portions of the HCA are blank. The community cannot determine whether this agreement is beneficial to the community without these terms. Further, the majority of exhibits to the HCA are missing. Given the multitude of references to Exhibit B, the “Commitment Letter,” its absence alone is grounds for an additional comment period. We therefore demand that the public, or at least FAFE, be given another opportunity to comment on the HCA once the terms are finalized.

Further, it is not clear whether the Town has or plans to conduct the required review under the State Environmental Quality Review Act (“SEQRA” or “the Act”). The approval of this HCA is subject to SEQRA. *See* 6 NYCRR 617.2, 617.3. Approving an agreement that without a doubt may cause a significant impact on the environment is certainly subject to the Act. *See* Environmental Conservational Law Article 8. An Environmental Impact Statement is required when an action “may include the potential for at least one significant adverse environmental impact.” 6 NYCRR 617.7(a)(1). It cannot be considered a Type II action. *See* 6 NYCRR 617.5. The Town must comply with SEQRA. *See Waterloo Contractors, Inc. v. Town of Seneca Falls Town Bd.*, 2017 NY Slip Op. 31977(U) (Sup. Ct. Seneca Co. 2017) (annulling a decision by a Town to commence an action allowing a Landfill to operate past a certain date without analyzing

FAFE Comments on HCA

the likely environmental impacts of that action). We look forward to participating in the SEQRA process.

Finally, an HCA should be effective and in place regardless of whether the Landfill is open or closed in Perinton. The Town is sending WMNY the wrong message when it suggests that it does not have a seat at the table once the Landfill is closed. The Landfill will be in Perinton forever, will continue to generate landfill gas for decades, and will still be able to create nuisance conditions once closed. The Town needs to make clear in no uncertain terms that an HCA needs to be in existence whether the Landfill is open or closed since the Town will need a fund to monitor and deal with the lingering effects of the Landfill in perpetuity.

In conclusion, the Town waited a very long time to issue this document and the Special Permit application has not even been submitted. Since the Special Permit is also subject to SEQRA, there appears to be too little time to perform a compliant SEQRA review. We look forward to the opportunity to comment on a completed draft of this HCA. The most critical terms were missing in this draft - notably the number of days waste can be in a rail car; the volume of NYC garbage that will be reduced; who is included in the PVPP, the fee to the Town, etc. - and at the same time the Town has negotiated against its citizens in the PVPP limiting the percentage of loss it can recover from WMNY to 15%. The Town almost negotiates the terms of this HCA as if it is not in a position of power which is certainly not the case. Therefore, the final draft provisions should be far more favorable. Failure to do so would be a disservice to the community.

WHEREAS CLAUSE THREE.

Curiously lacking from this WHEREAS clause is any mention of the current Benefits Agreement, dated December 31, 2013, which expired on December 31, 2018 and has been proceeding on a month-to-month basis. This information should be included.

WHEREAS CLAUSE FOUR.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. Further, we suggest that the Town limit the year term to no more than two years, in order to reassess and ensure WMNY is fulfilling its promises. However, preferably the HCA would not extend past August 22, 2021 when WMNY's Special Use Permit expires, or July 8, 2023, the date WMNY's Landfill permit expires with NYSDEC.

Additionally, this clause should include language that indicates that Town Board approval at a public hearing is required in order for the HCA to be effective.

WHEREAS CLAUSE FIVE.

This clause should also include the requirement that Town Board approval is required in order for the HCA to be amended "from time to time." These amendments should not take place behind closed doors and should instead be openly discussed at a public hearing.

SECTION II.B: AGED WASTE.

This definition is highly problematic. Aside from the fact that it lacks essential terms, it is very ambiguous and could be subject to a variety of interpretations and varying timelines. The age of waste should be calculated from the day it is deposited into a garbage receptacle in order to

FAFE Comments on HCA

truly measure and calculate its potential to cause odors. The Town should explain how it intends on calculating this number, and the community should be given an opportunity to comment once it does.

SECTION II.K: GENERATION TIME.

“Railcan” should be “railcar.”

SECTION IV.B: USE.

As the Town is aware, WMNY is only permitted to operate the Landfill within the Town via a Special Permit for a solid waste management facility permit (the “Special Permit”) granted to it by the Zoning Board of Appeals on August 22, 2016. This Special Permit expires on August 22, 2021. The Special Permit is granted under § 208-21 of the Town Code, which states that the “dumping of waste material [] is prohibited in all districts in the Town,” unless a Special Permit is issued. Before it issued the Special Permit, the ZBA found the following facts to be true under Town Code § 208-21:

The granting of such **permit is in the public interest to establish environmentally sound facilities** to dispose of and treat solid waste.

Adequate plans have been presented to show that the solid waste facility **does not create a public hazard; that the solid waste facility does not unduly interfere with the quiet enjoyment of adjacent properties**; and that **sufficient precautions are to be taken** to prevent fires or the creation and spread of smoke, **odor**, dust, fumes or noises **liable to become a nuisance**; and that when the operation is completed, the fill material or disturbed area will be covered with at least six inches of clean nondeleterious topsoil within a reasonable time thereafter and seeded with a permanent pasture mixture or other fast-growing surface vegetation and that such reseeded is continued until growth has been established.

We are very concerned that there is a chance this HCA may extend past the expiration date of the Special Permit. We feel that puts the Town in an unfavorable position if this HCA is executed but it wishes to deny renewal of the Special Permit. Regardless, the terms and code provisions related to the Special Permit should be included within this Section of the HCA.

Regarding Sub Section IV.B.3.a. and Sub Section IV.B.4., the Town should be aware that it appears WMNY has violated the Town’s prohibition of disposal of natural gas and/or petroleum extraction, exploration or production wastes, *see* Town Code § 144-5, when it accepted 60 tons of “Frac Tank Solids” on December 17, 2018. Regardless, the Landfill routinely accepts unique wastes that the Town should be aware of, including petroleum contaminated soils, rotten milk, dead deer, friable asbestos, transformer oil impacted soils, PCB contaminated stones, POTW sludge, moldy drywall, etc. WMNY seeks NYSDEC approval for these “Special Wastes.” The Town should insist that it also be provided copies of all Special Waste requests made to NYSDEC and all approvals.

Subsections IV.B.3.b, 3.c, and 3.e. are missing essential terms, and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized.

FAFE Comments on HCA

While the concept behind Section IV.B.3.e. is sound, the Town should explain exactly how WMNY will determine when waste becomes “aged waste” and must be rejected by WMNY. These details are extremely important and should be detailed in the HCA.

Finally, regarding Section IV.B.7., the Town does in fact have grounds to enforce and restrict WMNY. Town Code § 208-21(D)(6) states that “[a]ny permit issued hereunder may be revoked after a hearing to be held upon 10 days' written notice to the holder of such permit, upon proof presented to the Zoning Board of Appeals that any condition of this section or the approval granted has not been complied with.” Conditions include that the Landfill be an “environmentally sound facilit[y],” that the Landfill “does not unduly interfere with the quiet enjoyment of adjacent properties,” and “that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance.” *See* Town Code § 208-21(D)(2)(b). The Town does not need to commit to going to Arbitration when its own Code provides an adequate remedy.

SECTION V: TERMS AND SEVERABILITY.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. Further, this Section should include that Town Board approval is required before the HCA can be effective.

SECTION VI.C.: NOTIFICATIONS.

The concept behind Subsection 3 is admirable but it is unclear how this will be enforced. The phrase “where undue odors (gas or garbage) may result” is ambiguous. This section should detail how WMNY will determine that.

The Town should create an email listserv to then subsequently alert interested residents of the notifications required in this Section. The Town should also post on its website so that the Community can be aware and prepare for undue odors.

SECTION VI.D.: FACILITY LIASION (SIC).

Is a Citizen Advisory Committee the same as a Citizen Advisory Board? Normally, Citizen Advisory Boards are community organizations comprised of local residents, including those appointed by the municipalities and NYSDEC as the regulator, so it is curious why WMNY is involved in the formation. The Town needs to explain in more detail how this Committee will be formed, how members will be appointed, the expectations with respect to issues and recommendations of the Committee and the required response of the Town and WMNY to them, and the budget and source of funding for the Committee to engage appropriate, independent subject matter experts. We hereby request that at least one FAFE representative be on the Committee.

SECTION VII: NOTIFICATION MANAGEMENT PROGRAM.

This entire section is very concerning and is in need of a total revamp. First, the Town and WMNY should refer to the FAFE odor tracking application (“FAFE App”) data in order to determine whether WMNY is in compliance with the complaint management program. The FAFE data supplied through the FAFE App includes the date and time of each Odor complaint, the name of the complainant as entered into the FAFE App, a geocoded address based on complainant's location at the time of the odor complaint, a description of the odor, its intensity on a scale of 1 to 10, the temperature, wind direction and speed, weather conditions, barometric pressure, any

FAFE Comments on HCA

contemporaneous comments made by the complainant at the time of the report, the latitude and longitude of the complainant at the time the complaint was reported in the FAFE App, the individual odor complaint identification number, the identification of the device used to enter the odor complaint in the FAFE App, and the distance to the Landfill from the location where the complaint was reported in the FAFE App. This data is comprehensive and should not be ignored by the Town or WMNY. FAFE is willing to provide this data in the form of an excel spreadsheet on a frequent basis, and can even include the “responder” to the pre-set email list, so that residents who choose to send an email with their odor complaint can notify the “responder” immediately in real time of odor events.

Second, the HCA does not state who the “responder” will be. FAFE objects to the use of Towpath as the responder since it is a biased company and has proven to be ineffective and unreliable. Its reputation is highly questioned in the community. There is a complete lack of trust with the continued use of this company for odor complaint responses. Further it is unclear whether there will be only one responder or multiple. During certain odor events, there may be numerous complaints across a large geographical area, so it may be impossible for a single responder to arrive within 30 minutes.

Third, the Town should not have to request the complaint log, rather it should be provided to the Town on a weekly basis. WMNY should also geocode all of the complaints, or provide the information to the Town in the most effective and easy to understand manner, in order to properly identify which residents are most impacted and where the problem areas are on the Landfill. Additionally, the HCA should include what details are to be recorded on the log.

SECTION VIII: PROPERTY VALUE PROTECTION PROGRAM/ EXHIBIT C.

Below are numerous comments on specific provisions of the Program, however, generally, this program is ineffective to properly protect Perinton residents against lost value of their homes because it excludes all residents who choose to remain in their homes and not move away. These residents should not be punished for wanting to remain in their homes and the community they love. These residents still maintain a decrease in value of their property which has real financial impacts, but have been completely left out of this Program. The Program should be revamped to include payment for residents who choose to remain in their homes and endure the impacts from the Landfill.

Scope of Program. It is impossible for the community to determine whether this Program is advantageous for the community when Schedule A has not been provided. The Town must detail the portions of the community it intends to include in the Program prior to the finalization of this HCA. We suggest that the Program include no less than a four mile radius from the Landfill. Further, the scope of the program does not clearly state the duration. It should be clarified to state that the Program will be available to all Eligible Properties for the entire duration of time waste is accepted at the Facility, including when waste disposal ceases in the Town of Perinton. Finally, the definition of “Program Lands” is confusing. It describes owners as those who “previously opted, in writing, to participate in the Program,” yet does not provide details on how an owner would do that and contradicts Section III.. This confusing language should be removed from this section.

Eligible Properties. This section should include “and first subsequent owner who purchases a Program Land from an original Eligible Property Owner (“Owners”),” as the section on Eligible Property Owners does. Otherwise the two sections cannot be read together. Further, the language which completely excludes all FAFE Plaintiffs is arbitrary, inappropriate, and must be removed. The

FAFE Comments on HCA

Plaintiffs in the *FAFE v. WMNY* lawsuit are some of the most impacted residents and do not deserve to be excluded from the Program. The Town must explain its justification for this. The prohibitory language is so broad that even if a FAFE Plaintiff dismisses its claims against WMNY, they still could not participate in the Program because they “participated in a legal action” against WMNY. This language is arbitrary and capricious and should be completely stricken from the HCA.

Listing of Property for Sale. The requirement that an Owner must list for three months between February and October is unfair. A resident who suddenly has to move out of the area for a job or otherwise and is forced to sell during the winter months, should not be punished and ineligible for the Program. Further, as written it appears that an Owner has to wait a full three months before reducing the asking price at all. This is highly unusual and goes against real estate norms. This language should be removed. Finally, the 15% compensation limit placed on the Program wrecks of bad faith. The entire purpose of the Program is to protect the residents who are most impacted by the Landfill. The Town should not agree to this Program that will blatantly allow WMNY to cause such financial harm to its residents.

Sale of Property/Compensation from WMNY. The term “Fair Market Value” should be explicitly defined to be “the most probable monetary price the property will bring in a competitive open market place with the assumption that the Landfill does not impact the market value...” Otherwise, the appraisal would already account for the impacts of the Landfill on property values and depress the appraised value used to determine the Program benefit. The requirement that a Program participant must give fifteen days advanced written notice seems unreasonable, and like an easy loophole for WMNY to get out of paying compensation. We suggest a shorter notification period, like five days. Further, the requirement that WMNY must receive all written offers received by the Owner is completely unnecessary. The Program already requires an affidavit from a broker listing all offers and counter offers on the property and marketing efforts taken. WMNY does not need to receive the actual offers. WMNY is not qualified to second guess a Broker, and should not be afforded an opportunity to overanalyze the offers received. Finally, the required Affidavit of Compliance should be included in the HCA so a resident can thoughtfully decide whether it wishes to participate in the Program.

Release of WMNY. Any release agreement WMNY seeks from Program participants should be included in the HCA so that a resident can thoughtfully decide whether it wishes to participate in the Program, and perhaps seek legal counsel.

Remedies. Again, the language here seems to give WMNY an easy loophole to deny an Owner compensation under the Program. For example, if an Owner only gives fourteen days advanced written notice prior to the closing, this provision as written allows WMNY to disqualify that Owner from the Program. This language is predatory and should be removed. Or, at the very least, the sentence should read, “Except where specifically excused herein, failure of Owner to **materially** adhere to the terms, conditions, steps and procedures as set forth in this HCA, **which resulted in an abuse of the Program...**”

Finally, it is clear that this Program was not uniquely crafted for the Town since it is an almost identical Program to one in the Town of Macedon. It is very disappointing that the Town did not make the effort to protect its residents.

FAFE Comments on HCA

SECTION XI: CURB-SIDE RECYCLING.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized.

SECTION XII: ANNUAL VOLUME.

It is arbitrary for residential waste drop off to not be included in the volume limitations at the Landfill.

SECTION XIII: WASTE DISPOSAL/ COLLECTION SERVICES.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized.

SECTION XIV: BENEFIT AGREEMENT PAYMENTS.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. In Subsection A, the waiver of the requirement for WMNY to pay the *Guaranteed* Minimum Payment if the Perinton side of the Facility receives less than 500 tons per day is illogical. The Guaranteed Minimum Payment should be just that, *guaranteed*, it represents the minimum payment the Town should expect to endure the presence of the Landfill in the community. Further, it is clear from this Section that WMNY intends to cease some payments to the Town once landfilling on the Perinton side has ceased. This is nonsensical. The impacts from this Landfill will continue long past the time when landfill ceases on either the Perinton or Macedon side. The definition of Facility in the HCA includes “[a]ll aggregate elements of the High Acres Solid Waste Landfill and ancillary facilities in the Town of Perinton and in the Town of Macedon.” Payments should be made to the Town as long as the Facility is in operation, and not arbitrarily cease when landfilling is no longer occurring on one side of an imaginary line.

SECTION XV: OFF-SITE IMPACTS.

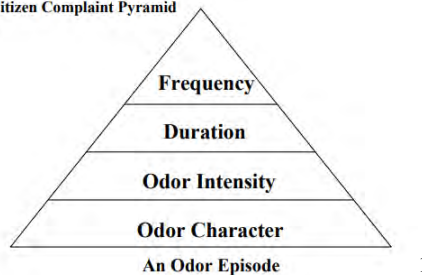
The acknowledgement drastically understates the impacts the Landfill has caused to the community. These impacts have been well-documented. Please reword this section to properly acknowledge that.

We reiterate the same concern as above, that the valuable data from the FAFE App is being ignored. The footnote to the table is unacceptable. First, is it a NYSDEC or WMNY Hotline? The HCA references that WMNY maintain the hotline, not NYSDEC. Second, it is clear that this footnote was specifically written to exclude the valid complaints collected by the FAFE App. For the reasons stated above, the Town should modify this.

More importantly, the proposed chart and steps outlined to make a “categorical determination of an odor” is wrought with issues. An example of common conceptual model for citizen complaints of nuisance odors can be illustrated in a pyramid:

FAFE Comments on HCA

Figure 1. Citizen Complaint Pyramid



There are four building blocks that “create the nuisance experience” including odor character, odor intensity, duration of odor event, and the frequency of odor events. The proposed N-Butanol chart in the HCA (“Chart”) addresses three of the four but neglects to address the **character of the odor—i.e. is the odor pleasant or foul**. Intensity is not a measure in and of itself of a nuisance condition, which is clearly the focus of the Chart. Pleasing odors can be nuisances at a high intensity, and of course foul odors such as landfill gas, rotting waste, and compost are nuisances even at low intensity.

Further, the ASTM E544-18 is not a reliable means of making a determination of an odor by itself. The procedures outlined in the ASTM specifically warn of the olfactory adaptation an assessor may experience that can render the sense of smell less sensitive, making it difficult to detect odor at the lower intensities. Therefore, the Town should require using a tool like the Nasal Ranger© to make up for the shortcomings of the ASTM standard. FAFE’s solid waste management facility consultant can provide additional technical input to the Town to develop an appropriate objective, reliable odor assessment methodology for the Landfill.

Neither the Chart nor text identify among other important criteria, the specific olfactometer that will provide for the eight-point intensity scale. In fact, the chart only includes five “Odor Categories” when the ASTM provides for eight: 1. Not perceptible; 2. Very weak; 3. Weak; 4. Distinct; 5. Strong; 6. Very Strong; 7. Extremely strong; 8. Intolerable. It is unclear why the Chart deviates from the ASTM this way.

Next, if the frequency/ duration functions detailed on the Chart are to be the triggers for WMNY to take action, then a very high number of Town residences will be subjected to nuisance odors for an unacceptable amount of time and duration. These frequency and duration functions should be cut in half, at least. For example, the way the Chart reads, twenty confirmed complaints (not including any complaints made on the FAFE App) of moderate offensive odors must occur for up to two days and two nights before WMNY must act. This is unacceptable. Why would the Town subject its residents to this?

Additionally, the list of steps WMNY will take to address off-site odors is also unacceptable. The community does not want the odors “neutralized” or “misted” away. They want the operational issues at the Landfill to be remedied. Flavor and fragrance agents have already been detected and sampled in the air off-site from the Landfill. The community does not want these chemicals in their air, they want fresh air. Further, it is unclear what is meant by “lower cells,” “minimization of the working face,” and “well/vacuum improvements.” These phrases should be clarified and expanded.

¹ <http://www.fivesenses.com/Documents/Library/28%20%20Odor%20Intensity%20Scales.pdf>

FAFE Comments on HCA

Finally, the proposed follow up procedure for when odors are verified is wholly lacking. WMNY needs to be held accountable. Following the first 10-day mitigation period, WMNY should be held in default of the HCA and in violation of its Special Use Permit. Alternatively, WMNY should pay a fine that can be held in escrow until the odor issues are fully remedied. In other words, these provisions need teeth. Otherwise there will just be an endless cycle of 10-day periods.

SECTION XVI: END USE AND POST CLOSURE OBLIGATIONS.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. Regardless, the timeframes in this Section should be no less than the timeframes required pursuant to the NYSDEC laws and regulations. *See e.g.*, 6 NYCRR 363-9.6, 6 NYCRR 360.22. Thirty years is a fairly common timeframe for post closure obligations. This Landfill's size (second largest in the State) and proximity to residences are likely grounds to have a longer period of time.

SECTION XVII: COMPLIANCE WITH LAWS.

This section should also state that compliance with regulations are necessary.

SECTION XVIII: HOURS OF OPERATION.

This section should include a requirement that the Town will notify the community of operational hour changes via its website or an email listserv of interested residents.

EXHIBIT E



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FOR IMMEDIATE RELEASE: Monday, April 12, 2021
CONTACT: Mitch Pritchard, Communications Manager
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mpritchard@perinton.org

PERINTON RELEASES NEW, REVAMPED HOST COMMUNITY AGREEMENT INCLUDING AN 8-POINT PLAN TO CONTROL ODOR AT HIGH ACRES LANDFILL

New initiatives include an Odor Verification Program, Citizens Advisory Board, Property Protection Value Program, restrictions on rail waste from New York City, and more.

Town Supervisor **Ciaran Hanna** today announced that the draft Host Community Agreement (HCA) for High Acres Landfill is complete and released for public comment. The new HCA not only describes the benefits provided to the Town and its residents for hosting a portion of the High Acres Landfill in the Town of Perinton, but it also outlines an 8-Point Plan to mitigate and control landfill odors. While feedback is collected from residents on the new HCA, the Town of Perinton will begin negotiating with Waste Management to secure these benefits and protections for years to come.

“High Acres Landfill has existed in Perinton for 50 years, and since becoming Town Supervisor in 2018, I’ve looked at every aspect of the current landfill agreement with a fresh take,” said Hanna. “Today, we are delivering a completely revamped Host Community Agreement that will not only secure benefits for our residents but also incorporate new protections and enhanced accountability in ways our community has never seen before. This includes new restrictions on rail waste coming from the 5-boroughs of New York City to High Acres Landfill. These new rail restrictions have never been attempted in the HCA before, but it is a top priority of mine.”

A comprehensive **8-point plan** designed to complement the Town’s existing efforts to ensure the proper operational management of High Acres Landfill is included in the new, draft HCA. The Town has worked to establish several of these practices since the significant odor event of 2017. However, the Town’s plan will also take new action by calling for new restrictions on rail waste arriving from New York City and additional limitations on the amount of highly odorous material landfilled at High Acres. The **8-point plan** includes the following measures:

1. **Improvements to the general operation and maintenance of the landfill.** This will ensure that Waste Management continues to invest in best operating and maintenance practices, including those identified in Waste Management’s September 2018 commitment letter to the Town of Perinton.
2. **Enhanced Monitoring and Reporting.** Making Waste Management responsible to perform the most stringent landfill surface scanning assessment for fugitive gas emissions in all of New York State.
3. **Continued and improved information sharing.** The Town will ensure Waste Management’s participation in routine Tech Team meetings to discuss operational activities, ongoing mitigation, employment of best management practices, and causes of odor concerns. Waste Management will also provide the Town with updates on all regulatory communication with Federal/State Agencies.

4. **Creation of a new Odor Verification Program** utilizing ASTM Standards to evaluate the intensity of odors.
5. **Upgraded Odor Notification Program.** Waste Management will continue to be responsible for maintaining, operating, and funding a local odor notification hot-line accessible 24/7. Trained personnel will respond within 30-minutes to measure odor type, duration, and intensity utilizing a scientific ASTM n-butanol scale.
6. **Odor Event Accountability.** Waste Management will provide written justification to the Town of Perinton for the cause of undue odors, identify mitigative steps that will be taken and associated timeframes to address off-site impacts.
7. **New restrictions on rail operations.** The Town is concerned over the volume of municipal solid waste coming from the 5-boroughs of New York City to High Acres Landfill. Therefore, the Town will work with Waste Management to reduce the volume of municipal solid waste delivered to High Acres Landfill by rail from New York City to pre-2017 levels. The Town is making this request to ensure that Waste Management can reasonably manage incoming waste delivered by rail to High Acres Landfill and responsibly control associated odors.
8. **Additional restrictions on waste in accordance with the Waste Characterization Study.** In 2018, the Town of Perinton and the New York State Department of Environmental Conservation commissioned a Waste Characterization Study, completed by a third-party consultant, which evaluated all types of waste and all types of transport methods, including rail waste coming from New York City.

According to that study, bio-solids were identified as a highly odorous waste stream. Therefore, the Town seized an opportunity to partner with Monroe County and Waste Management to help mitigate odor issues by reducing the total amount of bio-solids coming into High Acres Landfill from Monroe County's VanLare Wastewater Treatment Plant.

Additional restrictions will also be placed on the age of waste brought to High Acres Landfill. The Town will work with Waste Management to restrict when municipal solid waste is considered aged through agreed-upon time limits. This new restriction would also apply to rail waste coming from New York City.

Monroe County Executive Adam Bello said, *"The increase in out of town garbage coming to High Acres over the last several years is well-documented. Under this new Host Community Agreement, trash coming from New York City will be significantly reduced, and there will be greater communication and protections for residents and homeowners of the Perinton community. These efforts are a step in the right direction and will make a difference for those who reside near the landfill. I want to thank all of the Perinton and Fairport residents who have continued to advocate for change at High Acres, putting this issue at the forefront."*

Also included in the new HCA are several opportunities to increase the community value of High Acres Landfill. These include continuing the popular Residential Drop-Off Program, creating a new Citizens Advisory Group, establishing a Property Value Protection Program, and increasing royalties to benefit taxpayers.

Another priority of the new HCA is a renewed focus on environmental sustainability. The Town is looking to partner with Waste Management for a residential organics composting pilot program, which could help divert waste from the landfill. The new HCA also includes Waste Management's continued commitment to recycling residential leaf and yard debris into free wood mulch and compost provided to residents. Other goals include continuing free curbside recycling for all Town and Village residents, as well as the Waste to Energy Program.

Negotiations with Waste Management are set to begin soon; however, for the first time in the development of a new HCA in Perinton, the Town is inviting residents to review the agreement and provide written feedback. Starting today and running through May 3rd, Perinton residents can review the new HCA and submit written comments by visiting www.perinton.org.

“With enhanced accountability, added protections, increased community value, and a renewed focus on environmental sustainability, this new Host Community Agreement is a fresh and innovative take on the benefits provided to our residents. We want your engagement and feedback to ensure this agreement will benefit and protect our residents for years to come,” continued **Hanna**.

Established in 1971, High Acres Landfill is a privately-owned landfill, a division of Waste Management of New York, LLC. It is located on the eastern edge of Monroe County in the Town of Perinton and crosses over the western border of Wayne County in the Town of Macedon. The 1,200-acre property includes a renewable energy plant, nature/trail area, fire department training facility, police range, a compost recycling area, a residential drop-off station, and approximately 360-acres of permitted landfill area.

###

EXHIBIT F

SCREENSHOTS OF MONROE COUNTY PROPERTY VIEWER DISTANCE MEASUREMENTS

The screenshot displays the Monroe County Property Viewer interface. At the top left, the logo for Monroe County, NY, is visible, along with the name of the County Executive, Adam J. Bello. A search bar and a 'Sign in' button are located at the top right. Below the header, there is a 'Snappable Layers' panel on the left, which includes options for 'Parcels' (checked), 'Boundaries', 'Towns and Villages', and 'Zipcodes'. A central pop-up window titled 'I want to...' shows details for a selected parcel: '425 Perinton Pkwy', 'Fairport 14450', and 'Tax ID: 167.01-1-2.2'. The main map area shows an aerial view with a blue line indicating a distance measurement of 83.27 feet from a parcel to the road labeled 'Perinton Pkwy'. A scale bar at the bottom indicates 0, 15, and 30 feet. The bottom status bar shows the current map view as '2018 ima...', the WKID as '4326 Lat/Long', and the coordinates as 'Lat: 43.09° N' and 'Lon: 77.37° W'.

SCREENSHOTS OF MONROE COUNTY PROPERTY VIEWER DISTANCE MEASUREMENTS

MonroeCounty.gov
ADAM J. BELLO - COUNTY EXECUTIVE

Search... Sign in

Click or tap to draw a measurement line. Double-click/tap to finish.

Snappable Layers

- Select All
- Clear All
- Parcels
- Boundaries
- Towns and Villages
- Zipcodes

I want to...

- ☆ 425 Perinton Pkwy
- 425 Perinton Pkwy
- Fairport 14450
- Tax ID: 167.01-1-2.2
- [View Additional Details](#) [Run a Report](#) [Add to Results](#)

Feet (ft) | Feet² (ft²) | Disable Sna... | Select Snap... | Distance

Home | Layers | Snap... | 2018 ima... | WKID: 4326 Lat/Long ▲ | Lat: 43.08° N | Lon: 77.38° W | 0 15 30ft | 13500

Total: 47.65 ft

47.65 ft

SCREENSHOTS OF MONROE COUNTY PROPERTY VIEWER DISTANCE MEASUREMENTS

MonroeCounty.gov
ADAM J. BELLO, COUNTY EXECUTIVE

Search... Sign in

Click or tap to draw a measurement line. Double-click/tap to finish.

Snappable Layers

- Select All Clear All
- Parcels
- Boundaries
 - Towns and Villages
 - Zipcodes

I want to...

- ☆ 425 Perinton Pkwy
 - 425 Perinton Pkwy
 - Fairport 14450
 - Tax ID: 167.01-1-2.2
 - [View Additional Details](#) | [Run a Report](#) | [Add to Results](#)

Feet (ft) Feet² (ft²) Enable Sna... Select Snap... Distance

100.80 ft

Total: 100.80 ft

Home Layers Snap... 2018 ima... WKID: 4326 Lat/Long ▲ Lat: 43.08° N Lon: 77.38° W 0 30 60ft

EXHIBIT C

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-8543 | F: (518) 402-9018
www.dec.ny.gov

August 25, 2021

Linda R. Shaw, Esq.
Knauf Shaw LLP
1400 Crossroads
2 State Street
Rochester, NY 14614

Dear Ms. Shaw:

Thank you for meeting with the Department to discuss your consultant's written comments on the documents governing Waste Management's operation of the High Acres Landfill ("landfill"). The Department remains actively engaged in the careful oversight of the landfill and will continue to work with Waste Management, the Towns of Perinton and Macedon, and the community to ensure that the landfill is being operated properly.

With respect to your consultant's comments, the Department has thoroughly reviewed and considered them and will be requiring Waste Management (WM) to revise certain sections of the Operations and Maintenance (O&M) Manual; Odor Control Plan; Surface Emissions Monitoring (SEM) Plan; and Landfill Gas Collection and Control System Design (GCCSD) Plan as set forth below to better clarify and refine WM's obligations under its Part 360 and Title V permits.

O&M Manual

Section 4.4 – Add a time limit on the storage of rail waste on-site with flexibility to account for weekend storage or shutdowns due to holidays.

Section 7.3 – Clarify the special restrictions on materials which can be used as an alternative daily cover with Department approval.

Section 7.4 – Specify that the crushed C&D debris is wood waste that is crushed at the working face.

Section 10.3 – State that landfill operations are subject to the previous Part 360 regulations except for landfill gas management, which complies with the current Part 360 Series regulations. Please note that WM has voluntarily agreed to comply with the landfill gas management requirements of the current Part 363 regulations. While the O&M Manual only addresses construction generally, subsequent cell construction is also subject to the current regulations.



Department of
Environmental
Conservation

Odor Control Plan

Section 4.0 – Update the statement that odors related to landfill facilities are predominantly related to landfill gas (LFG) generation. While gas odor was more prevalent prior to remedial efforts completed in 2018, the primary source of off-site odor at this time is waste.

SEM Plan

Define weather conditions that are unsafe or impractical to do scans due to limitations of the monitoring equipment in the SEM monitoring plan.

Update the SEM Plan to reflect the additional information that is being provided in the SEM reports. Also, provide more detail when the contractor is unable to scan areas due to dangerous conditions.

GCCSD Plan

Table of Contents – WM should resolve any inconsistencies in headings.

Section 1.1 – Add a reference to the odor management best practices set forth in the O&M Manual. Design requirements which are being implemented are to be included as part of this GCCSD plan (i.e., horizontal collection as waste is placed, etc.).

Section 1.3 and 2.1 – Clarify that horizontal collectors will be installed as fill is placed to comply with current Part 363 requirements. This controls gas at the early stages of waste placement and is more stringent than the Subpart XXX requirement of the 5/2 year rule.

Section 2.1.2 – Relabel this section as Specifications for Active Collection Systems. More details about the materials used in active collection systems or references to design plans submitted to the Department for approval must be included.

Section 2.1.3 – Add analysis of fill settlement impacts or reference design submittals to the Department.

Section 3.1 – Include up-to-date drawings in Appendix B. If gas is being collected from other components of the system and directed to the control equipment, it must be noted.

Section 3.2 – Indicate that federal criteria address the header pipe and not the entire gas collection system; discuss whether flows described in this section are the peak flow rate from the entire landfill; and identify whether some components of the GCCS must handle flow from the Phase III, the Closed Landfill and Cells 1 through 11.

Section 3.4 – Clarify whether the pressure drops computed in the last column of Appendix A4 are reflected in the header pressures identified in column 8.

Section 4.1 – Clarify that any design plan changes must be submitted to the Department for review and approval.

Section 4.1.2 – Add more details or refer to the O&M Manual for the following: cover soil properties; cover soil management as it relates to its impact on GCCS operation, off site odor, and its ability, or not, to control surface emissions; and how the fill progression plan for the landfill optimizes the use of intermediate and final cover to control LFG and odor migration.

Section 6.3 – Add detail on the selection of the pressure limit of 5 inches of water column under a synthetic cover and provide supporting data and calculations/analysis.

Section 7 – Clarify that the Department must be informed of corrective actions taken and any needed approvals.

The Department recognizes that this letter does not address all the written comments made by your consultant but, upon careful consideration, they involve requests or suggestions that are already being implemented or are unnecessary for optimal operation of the landfill. Furthermore, many comments assume that landfill gas is “the primary odor offender”. This no longer appears to be the case after Waste Management implemented corrective measures, as required by the Department in 2018.

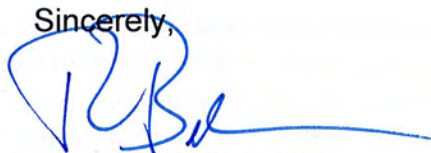
As for your recent request for coordination of lead agency regarding the renewal of WM’s Special Use Permit by the Town of Perinton Zoning Board of Appeals (“ZBA”), coordination was inappropriate under the circumstances. The Department could not have been an involved agency because WM did not request a modification of its Part 360 or Title V permit. Accordingly, DEC did not have discretionary permitting jurisdiction with regard to the renewal of the Special Use Permit and without such jurisdiction DEC could not have been an involved or lead agency (6 NYCRR 617.2[t] (“‘involved agency’ means an agency that has jurisdiction by law to fund, approve or directly undertake an action” and “‘lead’ agency means an involved agency principally responsible for undertaking, funding or approving an action...”). Additionally, in terms of the ZBA’s action, as you are well aware of, the action that was pending before the ZBA was a renewal and renewals are Type II actions, which means that they are not subject to further review under SEQR (6 NYCRR 617.5[c][32]); *see also, Village of Hudson Falls v. New York State Department of Environmental Conservation*, 158 AD.2d 54 [3d Dept. 1990]).

The Department remains committed to strict oversight of the landfill to ensure that Waste Management continues to implement all reasonable and effective measures necessary to minimize the frequency and duration of odor incidents. In this regard, the

Department remains open to further discussions with you and your consultants to identify any additional measures to further reduce odor incidents.

Should you have any questions, please feel free to contact Dudley Loew or myself.

Sincerely,



Thomas S. Berkman
Deputy Commissioner and
General Counsel

cc: Tim Walsh, DEC
Dudley Loew, DEC

EXHIBIT D



RECEIVED

AUG 03 2021

TOWN OF PERINTON

August 3, 2021

VIA HAND-DELIVERY
& ELECTRONIC MAILlstid@perinton.org

Kenneth G. Rainis, Chair
Town of Perinton Conservation Board
1350 Turk Hill Road
Fairport, New York 14450

RE: High Acres Landfill Permit Pursuant to §208-21.

Dear Mr. Rainis:

As you are aware, our firm represents Fresh Air for the Eastside, Inc. ("FAFE"), which includes a large group of residents who live in close proximity to the Waste Management ("WM") High Acres Landfill ("Landfill"). This group was formed to take action and protect the community against the public nuisance odors and uncontrolled fugitive gas emissions from the Landfill, as well as other Landfill nuisances.

We write to you regarding the Application ("Application") submitted by WM for a Solid Waste Facility Permit, pursuant to Town Code (the "Code") § 208-21 ("Landfill Permit"). While we anticipate the Zoning Board of Appeals ("ZBA") will issue the Landfill Permit, this Board does have considerable discretion to recommend permit conditions that can prevent WM from continuing to cause a public nuisance in Perinton. We have already written an extensive comment letter to ZBA, attach and incorporated by reference into this letter (*see Attachment A*) but herein provide further recommendations for permit conditions FAFE contends will help mitigate the ongoing nuisance conditions emanating from the Landfill.

Initially, we do not believe this Board, nor the ZBA, can make a rational decision on the Landfill Permit Application until an Environmental Impact Statement ("EIS") has been completed, for the reasons stated in **Attachment A**. At the very least, this Board should require that WM submit as part of its Application all the documents and information required pursuant to Perinton Code § 208-21, and a revised Environmental Assessment Form, which provides complete answers to the questions. However, if this Board recommends to the ZBA that the Landfill Permit should be granted, it should, at a minimum, require the following Permit conditions:

- **Corrected Side Slope Issues.** The Landfill's side slopes have climbed to extreme heights and yet our Landfill expert, James Daigler has determined that the vast majority of the slide slopes no longer able to be landfilled yet are not permanently covered with a 6 NYCRR Part 360 geomembrane cover system. It was frankly shocking for NYSDEC high level staff to learn that neither the Town nor local NYSDEC Avon staff have required WM to permanently cover the side slopes no longer being landfilled. If this Town waits for WM to cover these slopes until after landfilling in Perinton ceases, this work may never occur. Our expert has concluded based on an extensive document review of relevant WM documents, that the uncovered side slopes, which are largely unmonitored because they are



Kenneth G. Rainis, Chair

August 3, 2021

Page 2

already too steep and “dangerous,” are a contributing cause to the continued public nuisance odor and gas releases, and do not comply with either the Town¹ or NYSDEC cover requirements. *See Attachment A, Exhibit C.* Therefore, we recommend that the Board mandate in this Landfill Permit a permanent Part 360 compliant cover system on all side slopes no longer being landfilling.

- **Limited Daily Disposal Until Compliance is Achieved.** The Landfill’s daily capacity should be reduced until the side slopes are permanently covered and until the nuisance odor conditions cease to add some teeth to the cover requirement or else it may be years before WM complies if at all.
- **Increase Emission Monitoring.** The Landfill should conduct more frequent Landfill surface monitoring events, rather than only quarterly monitoring events. According to our expert, other large landfills in the State monitor the emissions of all non-permanently covered areas of the Landfill, including side slopes, so WM should do so as well. Further, the timeframe for corrective action should be shortened.
- **Enhanced Emission Monitoring.** The Landfill’s emissions must be more accurately monitored. This Board should require enhanced monitoring, possibly with the use of drones or other similar technology, as discussed in this article: <https://pubs.awma.org/flip/EM-June-2020/roos.pdf>.
- **Increased Monitoring of Rail Containers.** WM continues to deny the fact that the waste within the rail containers from New York City are more odorous than waste transported via truck or other methods. The simple fact that there are no time limits on the number of days the waste can “cook” in the sealed rail cars, makes their denials highly suspect. Importantly, the Waste Characterization study did not adequately address this issue. This Board should require an independent study paid for by WM to evaluate this issue. This Board should also consider limiting the number of days waste can be stored in a rail car prior to disposal at the Landfill, and require increased emission monitoring of the rail containers. If the rail cars are too odorous, WM should reject them per their NYSDEC Landfill Permit and plans.
- **Enhanced Odor Monitoring in the Community.** We urge this Board to consider that data from the FAFE App as discussed in **Attachment A** is reliable. It is not reasonable to disregard multiple complaints coming from multiple parties at similar times from numerous devices. By disregarding this data, the Town is suggesting that the residents are lying when they make complaints on their individual electronic devices. Odor complaints noted by Towpath and the WMNY/NYSDEC Hotline are simply ineffective means of understanding the impact to the community by the Landfill. Nevertheless, even if the FAFE App data is not considered, the data collected by Towpath and the Hotline more than adequately demonstrates that nuisance conditions are still occurring in the community. This Board should require that a permanent, third-party, un-biased, full-time, odor responder team be established, so accurate and reliable monitoring of the nuisance conditions emanating from the Landfill can occur. This odor responder team should use state of the art technology, like those found here: <https://www.fivesenses.com/equipment/nasalranger/>. The ASTM E544-18 is not a reliable means of making a determination of an odor by itself, as discussed

¹ As noted in Attachment A, the Town Code requires cover to be placed on portions of the Landfill no longer being filled but the 6-inch soil cover requirement is less stringent than NYSDEC’s Part 360 cover requirements, and therefore is illegal because a municipality cannot impose less stringent obligations on the Landfill operations than the State. As a result a 6 NYCC Part 360 compliant cover system is required.



Kenneth G. Rainis, Chair

August 3, 2021

Page 3

in **Attachment A, Exhibit D**. In addition, Towpath has been determined to be a biased company which reports directly to WM for WM's benefit. WM should be required to pay for an independent third party company that works for the residents not WM.

- **Incorporate the "8-Point Plan."** While not perfect, the 8-Point Plan proposed by the Town in April was a good step in the right direction, and those terms should be incorporated as Landfill Permit conditions. Our comments to the proposed Host Community Agreement are also attached as **Attachment A Exhibit D**, and touch on the 8-Point Plan.
- **Incorporate CB Recommendations dated 1/24/18.** This Board should insist that its recommendations from January 2018 be incorporated as Permit Conditions.
- **Permanent Closure of Cells 10 and 11.** The Landfill Cells 10 and 11 are defective because of the lack of horizontal gas collectors as required by WM's NYSDEC Landfill Permit and plans, which WM has admitted caused the horrific "odor event" spanning 2017 and 2018. These Cells must remain closed for the duration of the new Landfill Permit (if granted) and should be permanently closed. It is our understanding that NYSDEC has required that these cells remain closed through WM's NYSDEC permit duration, or until July 8, 2023. This Board should require these permanently defective Cells to remain closed longer because this Permit Application included absolutely no constructive plans or assurances to show that another odor disaster will not occur if these Cells are ever reopened. In addition, there should be Permit termination provisions if an odor disaster similar to the event in 2017 -2018, ever occurs again.
- **Increased Noise Barriers.** A common complaint from members of the community is the excessive noise emanating from the Landfill and its rail operations. WM should be required to construct a noise barrier to prevent nuisance noise conditions.
- **Increased Vector Controls.** Vectors are also an issue in the community and WM should be required to address these nuisance vectors.
- **Citizen Advisory Board.** It is unclear whether the 8-Point Plan provides or whether the Town intends on creating a Citizen Advisory Board ("CAB"). This is necessary to keep WM accountable. A CAB must be created, and should include FAFE, which would make this a true CAB.
- **Surety Bond.** This Board should obtain from WM the financials required so WM can post the proper Surety Bond, as required in the Town's Code to obtain the Landfill Permit. The Bond is vital to ensure that the Landfill is being managed properly, and that if it is not, the Town has the power and resources to step in to rectify non-compliance conditions. As a result, the Town should also be able to have access rights to the facility.
- **Set back.** The Landfill is violating Code Section § 208-40(A)(4) by not being set back greater than 100 feet from any property line. This Board should require WM to comply with that code provision, or at a minimum to comply with the permanent cover requirements.

In summary, this Board has provided valuable comments to the Town in the past, and we urge it to do so again now at this critically important time. We hope you find our proposed permit conditions helpful, as well as the attachments we provided. We are happy to answer any questions this Board has, and are looking forward to the workshop meeting on August 3rd.

Thank you for your consideration.

Respectfully,



Kenneth G. Rainis, Chair
August 3, 2021
Page 4

KNAUF SHAW LLP

A handwritten signature in black ink that reads "Linda R. Shaw".

LINDA R. SHAW

cc: Leslie M. Connolly, Esq.

Attachment A



July 23, 2021

VIA HAND-DELIVERY
& ELECTRONIC MAIL

lstid@perinton.org

Ms. Robin Ezell, Chair
Town of Perinton Zoning Board of Appeals
1350 Turk Hill Road
Fairport, New York 14450

RE: High Acres Landfill Permit Pursuant to §208-21.

Dear Ms. Ezell:

Our firm represents Fresh Air for the Eastside, Inc. (“FAFE”), which includes a large group of residents who live in close proximity to the Waste Management (“WM”) High Acres Landfill (“Landfill”). This group was formed to take action and protect the community against the public nuisance odors and uncontrolled fugitive gas emissions from the Landfill. We wholeheartedly object to the granting of WM’s Solid Waste Facility Permit, pursuant to Town Code (the “Code”) § 208-21 (“Landfill Permit”), for the reasons stated below, and request that the Zoning Board of Appeals (“ZBA”) deny WM’s Application, dated May 28, 2021 (“Application”). This Board must require that WM complete an Environmental Impact Statement (“EIS”) and submit a proper Application that meets all the requirements of the Code.

A. THE TOWN VIOLATED THE OPEN MEETINGS LAW.

Initially, we object to the format and location of the public hearing to be held on July 26, 2021, given the Town’s decision to impose social distancing. The Board has illegally restricted public access in violation of the Open Meetings Law (“OML”). See NY Pub. Off. Law § 103. The OML requires that “[e]very meeting of a public body shall be open to the general public[.]” *Id.* at (a). Reasonable effort must be made by public bodies to “ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings.” *Id.* at (d). The Board has failed to make reasonable efforts to ensure access to the upcoming public hearing by utilizing an appropriately large location in which to have this upcoming hearing, and thus have violated the OML.

Members of the community want to share their concerns related to WM’s Landfill Permit request, but the Town’s attendance restrictions will force them out of *the room where it happens*. Instead of preparing an “appropriate facility” for the public hearing, the Town has pre-restricted in-person attendance to “30 members of the public – including members of the public presenting to the board[.]” See Town of Perinton Instagram post attached as **Exhibit A**. The ZBA Agenda echoes the same improper restriction of in-person attendance by claiming that space is “extremely limited.” This Board is well-aware that the public hearing on WM’s Landfill Permit is guaranteed to draw a large crowd because WM continues to cause nuisances in the community to this day. This Board cannot simply offer a virtual forum in lieu of in-person attendance when the Law requires in-person attendance.



Robin Ezell, Chair
July 23, 2021
Page 2

The Town's claims that these restrictions have been implemented in order to allow for social distancing do not subvert the requirements of the OML. By Executive Order No. 210 (June 24, 2021), Governor Cuomo ended the State of Emergency in New York that was created in response to COVID-19 and rescinded Executive Orders 202 through 202.111 and 205 through 205.3, effective June 25, 2021. Thus, COVID-19 no longer obviates the need for this Board to comply fully with the OML. While CDC guidance recommends social distancing for unvaccinated people, this Board still has to comply with the OML and provide sufficiently sized facility to accommodate the expected attendance at the public hearing, despite any applied social distancing guidelines. There are numerous other facilities in the Town that the Board could use to host the public hearing, like the larger spaces in the Community Center, or nearby school buildings, which it is our understanding that this Board has failed to seek permission to use.

Thus, by limiting the in-person attendance at the public hearing, the Board has violated the OML, and if it decides to grant WM's request for a Landfill Permit on the 26th, its approval will be null and void.

B. TIMING IS TOO SHORT FOR AN ADEQUATE SEQRA REVIEW

WM and the Town appear to have jointly pushed the timing of the Permit to the eleventh hour in order to avoid a proper environmental review of this important Permit and before a Host Community Agreement is in place. The ZBA cannot possibly have a proper review of this Permit application, which was only just submitted a short time ago, and it leaves no time for a follow up hearing since the 2016 Permit terminates on August 22, 2021. This is a classic abuse of the SEQRA process. It appears the ZBA has predetermined the outcome of the hearing before it has even occurred by leaving itself no time to hold another hearing before the Permit expires.

C. WM HAS NOT MET THE REQUIREMENTS FOR AN ISSUANCE OF A LANDFILL PERMIT.

The Code requires that WM obtain a Landfill Permit, pursuant to Section 208-21, after a public hearing. WM has failed to comply with *any* of the requirements in the Code necessary to obtain a Landfill Permit. WM's Application is so devoid of sufficient detail that this Board cannot reasonably issue a Landfill Permit based upon WM's Application submission. Importantly, while WM seeks to underplay its Application by referring to it as a "renewal application," the Code requires that WM follow the identical procedure when its Permit expires after five years, as was required for the original Landfill Permit. *See* Code § 208-21(D)(4).

i. The Landfill Unduly Interferes With Quiet Enjoyment of Adjacent Properties and Sufficient Precautions Have Not Been Taken to Prevent Nuisances.

The Code requires that this Board must find that the Landfill does not unduly interfere with its neighbors and is not creating a nuisance. *See* Code § 208-21(D)(2)(b). WM's Application and its operational history for the last five years does not support that determination. WM has, and continues to, undoubtedly create a public nuisance. WM has publicly stated that it received approximately 100 complaints a year from 1970-2017. Since 2017, there have been numerous *days* when over 100 odor complaints were filed. Below is a breakdown of odor complaints noted from November 2017 to June 15, 2021, through the FAFE on-line odor complaint application (the



Robin Ezell, Chair
 July 23, 2021
 Page 3

“FAFE App.”), which is trending to be the same as in 2020 with over 4600 complaints, **46 times more than a “normal” odor occurrence year according to WM.**

Row Labels	Count of 6/15/2021
2017	945
Qtr4	945
2018	10725
Qtr1	6838
Qtr2	1526
Qtr3	1428
Qtr4	933
2019	2942
Qtr1	514
Qtr2	442
Qtr3	946
Qtr4	1040
2020	4604
Qtr1	1017
Qtr2	568
Qtr3	1446
Qtr4	1573
2021	1778
Qtr1	1086
Qtr2	692
Grand Total	20994

WM has criticized the FAFE App., which was created by a web designer and documents real time odor complaints as they are happening. It is ludicrous to even consider that residents are using the FAFE App. at times other than when odors are occurring. There is more documented evidence both from this FAFE App. data and the other odor notification reports than in any other case in the country. This Town must stop avoiding this very significant reality that this Landfill stinks.

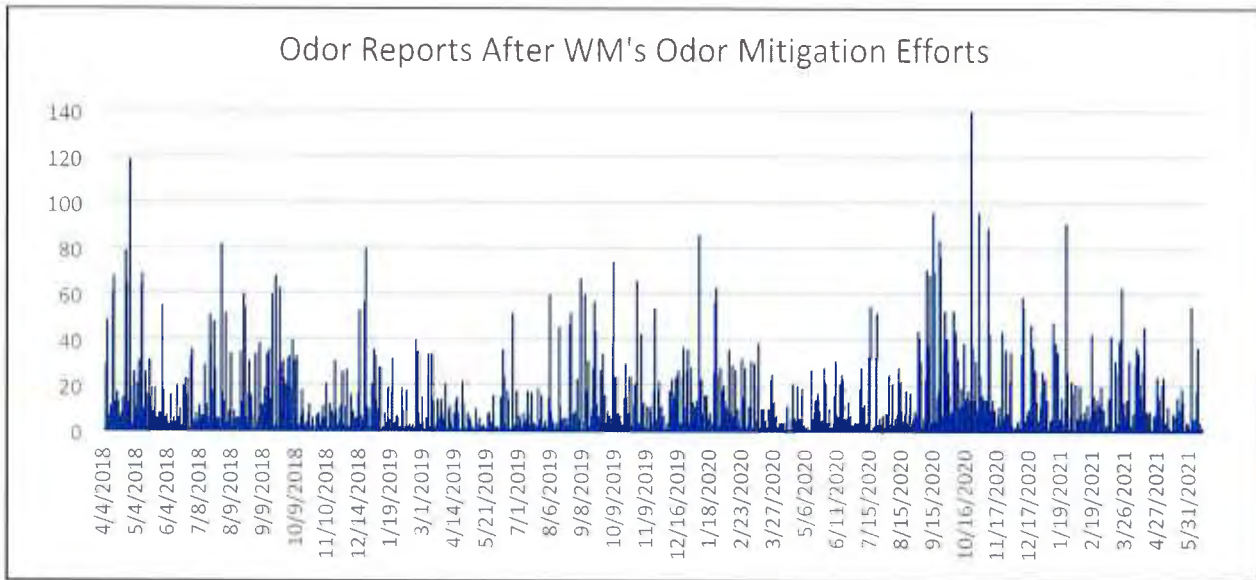
While WM’s Application provides a NYSDEC Notice of Completion letter, dated August 6, 2019, that apparently said WM’s actions related to its February 12, 2018, Notice of Violation (“NOV”) were completed, the problems associated with the landfill have not ceased. A warning letter was issued by the NYSDEC on September 25, 2020, and it states that odor complaints were rising to unacceptable levels and threatened legal action. See **Exhibit B**. To the best of our knowledge, NYSDEC has not issued another letter to WM indicating that the odor issues are now resolved. To the contrary, high level officials at the NYSDEC met with our firm and our landfill expert on April 26, 2021, due to their continued concern over the ongoing odor issues at the landfill. At this meeting, our expert advised NYSDEC that the cause of the odor issues is clearly the result of a lack of commitment to performing the daily work of preventing off-site odor impacts and because none of side slopes on the Perinton side of the Landfill, which are not even monitored for leakage because they are “too dangerous,” have been permanently closed,. We contend that



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the only reason WM includes, on page 5 of 6 of the Application, potential “installation of temporary geomembrane liner on intermediate outside slopes” is because our expert advised NYSDEC that this uncovered Landfill is literally a gas belching machine without permanent geomembrane liners on the side slopes.

Since WM admits on page 4 of 6 of its Application that it caused public nuisance odor events from late 2017 through early 2018, below is a chart of the odor complaints received by the FAFE App just since May 3, 2018:



It is important to note that the highest peak on the chart above, in September 2020, corresponds with the NYSDEC’s September 25, 2020 warning letter to WM. As further indicated in the above chart, the Landfill routinely continues to elicit scores of odor complaints on many days. It is also notable that these complaints cannot be attributed only to the FAFE members that are participating in the lawsuit against WM; many of the complaints are from residents who are not participating in the lawsuit. Further, there are many days when few odor complaints are reported (probably because of wind direction) so the complaints when they come in in large numbers on the same day cannot simply be written off as yet another stinky day in Perinton being caused by the Landfill.

ii. WM Must Provide the Board a List of Waste Materials to be Disposed of at the Landfill.

Section 208-21(D)(1) states that this Board must, in the Landfill Permit, list all the waste materials to be disposed of at the Landfill. WM has not submitted a proposed list for review by this Board in its Application, and therefore the Application is incomplete and cannot be accepted by this Board.

iii. WM Has Not Shown that the Landfill Permit is in the Public Interest.

Section 208-21(D)(2)(a) states that the Landfill Permit must be in the public interest and the facility must be environmental sound. For the reasons stated above, WM is still causing a



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nuisance in the community. WM's propaganda on page 3 of the Application regarding its minimal "Community Assets" fails to overcome the damage its causes to the Community. WM has failed to meet this requirement of the Landfill Permit, and this Board should require that WM provide more evidence how its operation of the Landfill is in the public interest.

iv. WM Has Not Shown that the Landfill Does Not Create a Public Hazard.

Section 208-21(D)(2)(b) of the Code requires that this Board find that WM is not creating a public hazard in its operation of the Landfill. The 2017/2018 odor events demonstrate that WM is more than capable of creating a public hazard, which continues today, and that an EIS is needed, as discussed more in Section C. WM also fails to even make a commitment to prevent off-site odors in its Application on page 4 of 6 when it states: "some intermittent and fleeting offsite odors are the byproduct of even a well-operated solid waste management facility." This statement is a blanket acknowledgement that this company plans to continue to violate their Solid Waste Permit, which prohibits the creation of public nuisance off-site odors, by failing to manage the facility in a manner to prevent such off-site impacts.

v. WM Has Not Maintained Landfill Proper Landfill Cover

Section 208-21(D)(2)(b) of the Code requires that WM include in the Application adequate plans showing that the Landfill will not create a nuisance or unduly interfere with the quiet enjoyment of adjacent properties. As detailed in the attached letter from FAFE's consulting engineer James Daigler, P.E., based on WMNY's lack of an adequate construction and maintenance plan for monitoring and ensuring the integrity the Landfill cover systems, insufficient final cover on side slopes, and the ongoing issues of nuisance odors impacting adjacent properties, the ZBA cannot approve the Application because it cannot rationally make the required finding of Town Code §208-21(D)(2)(b) that the Landfill does not unduly interfere with the quiet enjoyment of adjacent properties, and that sufficient precautions are being taken to prevent odors. *See Exhibit C.*

vi. WM Needs all Permits from NYSDEC.

Section 208-21(C) of the Code requires that WM must secure the appropriate permits from NYSDEC to operate the Landfill. WM's Title V air permit expires December 1, 2021, so WM may not be able to meet this requirement.

vii. WM Has Not Provided the Required Surety Bond.

Section 208-21(D)(3) requires that WM file with the Town a surety company bond. WM's Application is devoid of any details that this Bond requirement has been satisfied, and there is no indication that WM has ever filed this Bond with the Town. The Code states that the Bond is to be conditioned on WM's compliance with its Town Landfill Permit and is enforceable by the Town until the Landfill is fully restored. This Board cannot grant the Application when it lacks such vital details.

viii. WM Has Not Entered Into A Contract with the Town.

Section 208-21(D)(3) of the Code requires that a contract be entered into with the Town Board for the operation of the Landfill. This Board should be aware that the Town Board and WM have not finalized its proposed Host Community Agreement ("HCA"), as detailed here:



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<https://perinton.org/departments/public-works/high-acres-landfill/new-host-community-agreement/>. This Board cannot grant WM's Application until the HCA is finalized. FAFE submitted numerous comments objecting to the draft HCA, which are attached as **Exhibit D**. The public has a right to see the final HCA before this permit is issued, which was promised to Perinton residents by Town Supervisor Hanna at a press conference held on or about April 12, 2021. If the ZBA issues this permit without the HCA in place, the Town loses all leverage over the negotiation of favorable terms for the community. The draft HCA lacked detail on the 8-point plan provided by Supervisor Hanna in his April 12, 2021 press release, including the key property value protection section. *See Exhibit E*. Moreover, since the new HCA has not been finalized, the increased "community value of High Acres Landfill" as stated in the press release, including the continued popular Residential Drop-Off Program, the creation of a new Citizens Advisory Group, establishment of a Property Value Protection Program, and increased royalties to benefit taxpayers, may never come to fruition because the Town will no longer have any leverage if this Permit is issued without the HCA being in place. After Supervisor Hanna's press conference, at which he bragged about the importance of the HCA to the community, it is dubious why the HCA still has not been finalized. Failure to do so prevents the approval of the Permit.

ix. WM Cannot Comply With § 208-40(A)(4).

Section 208-21(D)(3) of the Code requires that the Landfill conform to setback restrictions, and in no event shall be less restrictive than those described in the Code's Industrial District requirements. Section § 208-40(A)(4) states that the Landfill "facility and related improvements [must] be set back greater than 100 feet from any property line." WM is already in violation of that Code provision, as illustrated in the screen shots attached as **Exhibit F**, which clearly shows that WM's facility and other improvements, including the Landfill itself, are not set back 100 feet from the Property line. WM's Application fails to state how WM will comply with Sections 208-21(D)(3) and 208-40(A)(4) of the Code given that it is already in non-compliance.

x. WM Failed to Submit a Copy of the Application to the Conservation Board.

Upon information and belief, WM failed to properly submit a copy of its Landfill Permit Application to the Conservation Board for comment, as required by § 208-21(c). In fact, the Conservation Board has cancelled every one of its scheduled meetings since the Application was submitted. *See* <https://perinton.org/government/boards/volunteer-boards/conservation-board/meeting-agendas/#49-207-wpfd-2021-1608755063>. Such a failure requires that this Board deny the Application and reschedule this hearing until after the Conservation Board has reviewed and commented on the Application.

D. APPROVAL OF THE LANDFILL PERMIT IS A NOT A TYPE II ACTION PURSUANT TO SEQRA.

To satisfy the New York State Environmental Quality Review Act ("SEQRA"), this Board must require an EIS or Supplemental EIS¹ prior to granting the Application. WM's delay in submitting its Application and the upcoming deadline of its expiring Permit, cannot be a basis for

¹ It is our understanding that an EIS has been completed for WM's permits with the NYSDEC, so only a Supplemental Environmental Impact Statement may be necessary, but for purposes of this letter we will refer to the required environmental review as an "EIS."



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this Board to hastily grant it again given what has happened over the last five years. An EIS is essential here because of the significant environmental impacts the Landfill has caused over the last five years and because significant new environmental impacts, including the climate related impacts of methane generation from this facility, are required to be analyzed by the recently updated SEQRA regulations, which were adopted between 2018 and 2019. *See generally* 6 N.Y.C.R.R. §617.9(b)(5)(iii)(i). These impacts were not evaluated when the previous permit was issued, but they are now required to be evaluated. *See* Letter of James Daigler, P.E., attached as **Exhibit C**.

The SEQRA process requires that a lead agency make a “determination of significance” by reviewing the EAF and deciding whether the action “may include the potential for at least one significant adverse environmental impact.” 6 N.Y.C.R.R. §617.7(a)(l). If so, a draft, and then a final EIS must be prepared. ECL §8-0109(2); 6 N.Y.C.R.R. §617.7(a)(l). If there is *no* potential for a significant adverse environmental impact, the lead agency must make a negative declaration, declaring that the action will not have a significant adverse environmental impact. 6 N.Y.C.R.R. §617.7(b)(2). If a proposed action “may have a significant effect on the environment,” ECL §8-0109(2) mandates that a positive declaration and an EIS be prepared. “It is well settled that because the operative word triggering the requirement of an EIS is ‘may,’ there is a relatively low threshold for impact statements.” *Farrington Close Condominium Bd. of Managers v. Incorporated Village of Southampton*, 205 A.D.2d 623 (2d Dep’t 1994); *see also H. O. M. E. S. v. New York State Urban Development Corp.*, 69 A.D.2d 222, 232 (4th Dep’t 1979). Furthermore, “[a] lead agency under SEQRA may not delegate its responsibilities to any other agency.” *Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd.*, 253 A.D.2d 342, 350, 688 N.Y.S.2d 848, 854 (4th Dep’t 1999) (lead agency improperly deferred analysis of environmental contamination to the Department of Environmental Conservation).

While it is true that the regulations state that a Type II action includes permit renewals when there is “no material change in permit conditions or the scope of the permitted activities,” it is equally true that the Landfill and its operation have materially changed since the last Landfill Permit was issued in 2016. *See* 6 NYCRR § 617.5(c)(32). Moreover, this Town, specifically the Conservation Board, has already materially changed its requirements for the operations of the Landfill and according to the Town’s own April 12th press release, intended to require additional changes not discussed in WM’s Application. Regardless, a Type II action cannot, “in no case, have a significant adverse impact on the environment.” *See* § 617.5(b)(1). WM cannot meet this burden, and thus an EIS is required.

The Town’s issuance of the Compliance Order, dated March 8, 2018, alone, is sufficient to trigger an EIS. The Compliance Order detailed that WM violated the conditions of its Landfill Permit, and that “[WM] is unduly interfering with the quiet enjoyment of adjacent properties, and has not sufficient guarded against the creation of odor, fumes, or noises liable to become a nuisance.”

It is also well-documented that WM’s operation of the Landfill has materially changed, as detailed below, which just includes a few of the changes:

- WM’s own Application admits there have been operational changes since the last Landfill Permit was issued in 2016. *See* WM Application page 4 of 6 (“In late 2017 and early 2018, High Acres landfill experienced a first of its kind odor event associated with two disposal cells, 10 and



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11. Cells 10 and 11 experienced a reduced capacity to collect landfill gas.”); page 5 of 6 (“unprecedented site enhancements...”);

- New York City garbage (“NYC Garbage”), which is received by rail from waste transfer stations in New York City, became (and continues to be) the primary source of MSW disposed at the Landfill beginning in 2016 (see chart below, which is derived from the annual reports to NYSDEC for the Landfill). The incidence of nuisance garbage odors (verses landfill gas odors) impacting the community has increased dramatically since that time. In addition, because the NYC Garbage is received by rail, the occurrence of noise related to the operation of the rail siding facility, especially at night, has impacted residents.

	2014	2015	2016	2017	2018	2019	2020
Rail NYC Garbage tons per year (“tpy”)	-	284,392	559,214	567,711	724,744	613,837	646,744
Total MSW (tpy)	211,317	475,316	750,084	796,065	838,850	686,848	717,891
NYC Garbage as a percent of MSW	0%	60%	75%	71%	86%	89%	90%

- WM’s District Manager Jeffrey Richardson admitted at the public meeting on January 16, 2018 (“January Meeting”) that WMNY did not install the Horizontal Gas Collectors in Cell 11 despite the fact that these collectors were listed as the primary means of odor control in its system. He stated “Cell 11 is the only cell at High Acres that does not have horizontal collection ...”; yet the long term ramifications related to the permanent lack of these Collectors in Cells 11 and 12 and the planned removal of the temporary cover on Cells 11 and 12 in two years, which even WM admits was the only remedy for that admitted public nuisance odor event that spanned months in duration, is not even addressed in its Application;²
- WM’s Area Director of Disposal Operations, Steve Poggi, also admitted at the January Meeting that the “[Landfill has] a history of a strong operating record, and obviously, things have changed. And what has changed is in Cell 10 and 11. The gas system that was installed was changed. We went to a different system. And it was not effective enough to capture the gas. So, we are going back to what we have used in the past and supplementing that with additional collector cells. So, it is not the entire site. It is just these two recent areas that we have made a change to the operation.”;
- WM’s Senior Project Manager, Don Gentilcore admitted at the January Meeting that “the primary cause of increased odors relate[s] to the effectiveness of the gas collection system in cell 11. This effectiveness was compromised by the sole reliance on the vertical gas wells ...”;

² It is important to note that the horizontal collectors were described as the *primary odor mitigation measure* in WM’s own EIS documents to NYSDEC dated 2003 Phase II Final Supplemental EIS, as well as the 2007 Phase III FSEIS, and the 2016 SEIS, yet the Cell 11 collectors were removed in 2014 and 2015 without a NYSDEC Permit modification or a Town Permit modification. Nothing in the current Application prevents WM or even makes a commitment by WM not to make such a significant Landfill design and operational change without a FORMAL Permit amendment at both the Town and State level, both of which would involve a public process.



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- In a December 20, 2017 letter (“2017 Letter”) to NYSDEC, WM admitted its “[r]eliance solely on vertical gas wells and previous generation slip form well technology (Figures 1 and 2) in cell 11 for operational landfill gas collection resulted in reduced collection, given 2017’s wet weather conditions.”;
- The Conservation Board has concluded that “We believe that the use of the slip form well design without horizontal gas collectors resulted in an ineffective gas collection system in Cell 11, causing increased gas emissions from the landfill surface and therefore increased odor complaints during 2017”;
- On February 2, 2018, NYSDEC issued the NOV concluding that WM was in violation of state solid waste and air pollution control regulations and had caused a public nuisance, stating that “[s]ince approximately September 2017, on numerous occasions continuing to date, the Landfill has emitted odors in a manner that unreasonably interferes with the Community’s comfortable enjoyment of life and property.”;
- In a letter from NYSDEC to WM dated September 24, 2018, NYSDEC determined that as an “interim operational measure,” WM was not to dump NYC Garbage and any other waste delivered via rail on any operating day prior to 10:15 a.m., and was required to process all rail cars of NYC Garbage on the business day following delivery;
- In a letter from NYSDEC to WM dated September 25, 2020, NYSDEC threatened legal action because of ongoing odor events. *see Exhibit B.*

In sum, there have been many changes and the impact of those changes, in particular the fact that the operation of Cells 11 and 12 have been permanently compromised due to a faulty design that cannot be retroactively fixed, that a new detailed environmental review is mandated. There is not even a statement in this Application indicating that another long duration odor event similar to what was experienced in 2017 and 2018 cannot occur or what WM will do if it does occur, which is highly possible when the cover now on Cells 11 and 12 are removed.

E. THIS BOARD CANNOT REASONABLY RELY ON WM’S EAF, WHICH IS RIDDLED WITH INACCURACIES AND LACKS ANY CONCRETE COMMITMENT HOW CONTINUED OPERATIONS OVER THE NEXT 5 YEARS WILL NOT CAUSE A PUBLIC NUISANCE.

WM failed to properly complete the Long Environmental Assessment Form, dated May 28, 2021 (“EAF”), which contains numerous errors and inaccurate responses to the various questions. Equally disturbing is the fact that WM submitted a pre-completed Part 2 and 3, which is supposed to be completed by the Lead Agency.

Initially, WM failed to properly list all involved agencies. *See* 6 NYCRR Part 617.7. The New York State Department of Environmental Conservation (“NYSDEC”) must be an involved agency because the Landfill Permit requires that WM obtain and maintain a NYSDEC Part 360 permit. WM’s Part 360 Permit expires on July 8, 2023, during the duration of its 5-year Town Landfill Permit, and thus, NYSDEC must be an involved agency. Further, Monroe County must be an involved agency. WM’s Application fails to include that a General Municipal Law 239-m review is required because, at a minimum, the action is related to property within 500-feet of



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Wayne County and the Town of Macedon. *See* § 239-m(3)(b). Also, the Landfill needs a County License to operate a solid waste facility. *See* Monroe County Code § 347-17(B). The acceptance of waste from facilities outside of Monroe County must also be approved when the License is issued. *See* § 347-9(A). Finally, the Town of Perinton Town Board must be an involved agency because “a contract with the Town Board” is required in order for the Landfill Permit to be granted by this Board. *See* § 208-21(D)(5).

Detailed below is a list of errors made by WM in its EAF Part 1, and in Parts 2 and 3 improperly completed for this Board. WM continuously submits incomplete documents so that no one, including this Board, can understand what is actually going on with the Landfill.

- **EAF Part 1**

- **Section C.2-** WM failed to acknowledge the draft 2021 Comprehensive Plan, which addresses the Landfill and the odor issues. A goal of the plan is to mitigate Town-wide impacts of the Landfill through exploration of waste diversion techniques and other options.
- **Section C.3-** WM answered “YES” but fails to provide details about the zoning classification of the area.
- **Section C.4-** WM fails to list a fire protection service.
- **Section D.1.e-** WM indicates that proposed action will take place over “multiple phases” but declines to list anticipated completion date, number of phases, or what the relationship is between these phases and failed to submit a legible fill plan showing the height of the Landfill in three dimensions.
- **Section D.1.g-** WM answers “NO” to the question about whether the proposed action includes non-residential construction (including expansion) when the answer should be “YES” with details on the height width, length, dimensions, etc. of the expansion. No details are provided, and the fill plan is illegible.
- **Section D.1.h-** WM answers “NO” when the answer should be “YES” to the question. WM failed to acknowledge how surface water and groundwater are being handled despite acknowledging in Section D.2.d that 5,000-10,000 gallons of liquid waste will be generated each day. There are leachate collection and storm water ponds that should have been disclosed with the details of the volume of water being handled.
- **Section D.2.a-** WM answers “NO” when the answer should be “YES” in relation to the question as to whether any excavation will occur. Excavation was required when already landfilled garbage had to be excavated in Cell 11 during the 2017-2018 Odor Incident and the cover system eventually placed on Cell 11 will have to be excavated to be removed. Therefore, this detailed section in the EAF must be filled out to explain when such excavation activities will be required.
- **Section D.2.e-** WM notes that “more than one acre” will be disturbed and that new stormwater runoff is created but claims that “nothing new” is proposed as part of the plan and fails to describe the new sources, the area of the impervious or other surfaces creating the runoff, or what water bodies or adjacent properties will be impacted. WM simply states that “a Stormwater Pollution Prevention Plan exists for the site and has been implemented” yet discloses that there are 7 acres of surface water features on this site in EAF Section E.1.b.



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- **Section D.2.g-** WM answers in the affirmative regarding whether the Site will generate air emissions but simply references their Title V air permit and fails to answer whether the area is a nonattainment area under the NAAQS or what, if any, additional emissions the Site will generate on top of those in their Title V Air Permit. A reference to an existing Permit does not answer the questions asked in this section.
- **Section D.2.h-** WM notes that “the site continues to generate or emit methane, no increase is expected to be associated with this renewal,” but WM completely fails to show this Board how no increase is “*expected*.” This Board cannot rely on WM’s expectation without taking its own review of the issue. Moreover, the new SEQRA regulations require an analysis of an action’s impact on climate change, including methane emissions, which was not provided by WM in its previous application or in this application. *See generally* 6 N.Y.C.R.R. §617.9(b)(5)(iii)(i).
- **Section D.2.j-** WM indicates that there will not be an increase in traffic without providing any detail, yet recently there has been a decrease in NYC waste coming by rail which likely means there has been a recent increase in truck traffic since disposal levels are roughly the same.
- **Section D.2.m-** WM answers that nothing during the next five years will produce noise that will exceed the ambient noise levels, yet there have been numerous noise complaints from residents as a result of both daily Landfill operations and the rail facility that continue unaddressed with no mitigation measures.
- **Section D.2.o-** Interestingly, here WM admits that the landfill may produce odors *for more than one hour per day* but fails to describe the possible sources, potential frequency and duration of the odor emissions and proximity to the nearest occupied structure as required by this section of the EAF. The company just blatantly says “The site is an active solid waste landfill, which may produce odors”, however, their Permits mandate that odors not create an off-site nuisance.
- **Section D.2.r.ii-** When asked here if this waste company is doing anything to minimize, recycle or reuse any of the solid waste it is receiving, it answers “NA”, which appears to be inconsistent with one of the benefits the Town residents are allegedly receiving in the form of recycling. Is all of the garbage we are continuing to separate just going straight into the Landfill?
- **Section D.2.s.ii-** WM fails to fill in details on the anticipated rate of disposal and processing including tons per month.
- **Section E.1.c-** WM answers in the affirmative that the site is used by members of the public for public recreation but fails to explain how the site is used or acknowledge the many days that members of the public cannot use the recreational area or any outdoor property in proximity to the Landfill due to the stench emanating from it.
- **Section E.1.g-** WM clearly knows that hazardous waste HAS been disposed at this Site since it was a listed Superfund site. Frankly, it still should be listed as a Superfund site since cyanide was dumped at the Landfill BEFORE IT WAS LINED by a company called Brainerd. This answer must be “YES” and the hazardous waste at the bottom of this Landfill should be listed in this EAF. *See* <https://www.dec.ny.gov/cfm/external/derexternal/haz/details.cfm?ProgNo=828033>
- **Section E.h.iv-** Based on NYSDEC records, there was never “remediation” of the Brainerd waste, and it is still under this Landfill. Therefore, WM’s response that “remediation has been complete” is incorrect. Allegedly, the leachate system handles



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- this issue but there has never been an off-site investigation to prove off-site properties were not impacted.
- **Section E.2.f-** WM's response that only 0-10% of 100% of the site has slopes makes no sense in relation to its position that the side slopes are too dangerous to monitor.
 - **EAF Part 2 WM answered "NO" to every impact in this section of the EAF, which is supposed to be filled out by the lead agency. One would think this facility is more of a rose garden than a landfill based on this EAF.**
 - **Impact on Land-** This Board (Not WM) must answer "Yes" because continued landfilling will clearly "involve construction on or physical alteration of the land surface of the proposed site." Moreover, the Landfill may involve the construction of slopes of 15% or greater, and construction in multiple phases, which may increase erosion. Since the side slopes are not even covered, the steeper this landfill gets, the more likely it is that side slope failures will occur and the more difficult it will be to cover the side slopes. All of this should have been analyzed but instead WM answers "NO" and merely includes a passing statement in its 6 page Application that it may install a temporary geomembrane liner on intermediate outside slopes. This odor mitigation measure must be mandated now before the Landfill gets even larger. Also, given the violation of the 100-foot set back requirements already, it is unclear what WM means when they refer to "intermediate outside slopes". It is unclear how the side slopes can get any larger given the current setback violation, and WM failed to provide a legible filling plan (*see* Application Attachment 3), which should be three dimensional as opposed to a flat drawing for the ZBA to be able to analyze multiple impacts of height, size, etc. on the land.
 - **Impact on Surface Water-** The Application does not describe whether additional wastewater treatment facilities will be required for the continued operation of the Landfill or whether additional outfalls are needed, so this Board should answer "Yes." [NOTE: PFAS contaminants in Landfill leachate were found yet there is no explanation as to how the Landfill is preventing off-site migration of leachate from its borders given that portions of the Landfill are unlined].
 - **Impact on groundwater-** The Application admits this Landfill is over a primary and principal aquifer and answers "No" in relation to whether there is a "potential to introduce contaminants to ground water or an aquifer". It is not possible that there is no potential impact given that portions of this Landfill are unlined, and the higher it gets, the more likely the liners at the bottom to the extent they exit are failing. This Board should answer "Yes" and require an area-wide groundwater investigation.
 - **Impact on Flooding-** WM admits the Landfill is within a 100-year floodplain, but then here answers that there is no development of lands subject to flooding. This Board must answer "Yes" based on the acknowledgement in Part 1 of the EAF that the Site is in a 100-year floodplain.
 - **Impacts on Air-** It is impossible for this Board to answer this question in the negative, without being arbitrary and capricious. It is well-documented that the Landfill annually emits tons of methane, carbon dioxide and other non-methane organic compounds, which include volatile organic chemicals, hazardous air pollutants, and odorous compounds such as reduced sulfur compounds into the Community. This will continue in the next five years. WM's Title V Air Permit notes that it has the potential to emit



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171.1 tons per year (“tpy”) of Oxides of Nitrogen, including nitrous oxide (N₂O). In addition, there is potential for the site to emit greater than 75,000 tpy of carbon dioxide (CO₂). These potential emissions surpass the thresholds that require analysis in the EAF.

- **Impact on Plants and Animals-** WM’s Application does not provide enough detail for the Board to answer this question in the negative. WM admits that there is an endangered or threatened species called the Pied-billed Grebe on the Site but does not analyze the impact of continued landfilling on this species.
- **Impact on Agricultural Resources-** EAF Part 1 notes that the Landfill occurs on or near Agricultural land, so this Board must answer “Yes” to this question.
- **Impact on Aesthetic Resources-** The Landfill is bordered by the Erie Canal, and thus can be seen from an official aesthetic resource, so this Board must answer “Yes” to this impact section. Plus, WM intends to increase the height of the Landfill during the next 5 years, so the aesthetics of the community will be significantly diminished. Again, Application Attachment 3 is a completely deficient flat, as opposed to three-dimensional, drawing and fails to adequately show the aesthetic impact of the planned increased mountain of garbage that will surpass the height of all other drumlins in the area as more waste is allowed to be landfilled in Perinton.
- **Impact on Historic and Archeological Resources-** Again, the Landfill and its height increase will diminish the aesthetics from the Erie Canal, so this Board must answer “Yes.”
- **Impact on Transportation-** WM admits that it has changed the mode of transportation of waste to the Landfill, from via truck to via rail, in recent years. These changes must be analyzed for their environmental impacts, so this Board must answer “Yes.”
- **Impact on Energy** – it is not clear if all of this additional landfilling will require the gas plant to expand or not.
- **Impact on Noise, Odor, and Light-** WM admits in its own Application that continued operation of the Landfill will cause noise and odors, therefore, for the reasons stated above, this Board must answer “Yes.”
- **Impact on Human Health-** WM’s Application fails to provide enough documentation on how its emissions and operations will not negatively impact human health. WM makes cursory conclusions without any evidence to support their self-serving conclusion that this Landfill is not impacting public health while at the same time admitting at there may be more than one hour of odor every day. The odors are derived from gas emissions from the Landfill and we know from WM’s Air Permit that emissions from the facility contain hazardous substances. Regardless, WM cannot deny that the Landfill Permit “involves construction or modification of a solid waste management facility,” which it did in Section 16.h, so this Board must answer “Yes” to this question.
- **Consistency with Community Plans-** This Board must answer “Yes” because of the proposed updates to the Town’s Comprehensive Plan.
- **Consistency with Community Character-** The Landfill is inconsistent with the character of the community and has interfered with the public’s use of community resources, as detailed above, so this Board must answer “Yes.”
- **EAF Part 3** – here the lead agency must make findings whether another five-year permit, that will allow for the disposal of up to 3,500 tons per day every day, may have any significant



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adverse impacts and make a determination of significance. It is hard to imagine how any Board could conclude that this five-year permit will not have significant adverse impacts on Perinton. WM states that its past SEQRA EIS documents address the impacts. However, as noted above in footnote 2, WM changed the Landfill design analyzed in those very documents, which led to the 2017-2018 odor disaster.

The question is not whether there are any proposed changes to the current permit, but whether there are any actions to be taken that *may* have a significant adverse environmental impact. This answer is clearly in the affirmative for all of the reasons stated above. WM must complete an EIS before this Board can grant its Landfill Permit. Five years ago, the ZBA approved WM's request for a Town Solid Waste Facility Permit because the Landfill had allegedly not caused a public nuisance. The ZBA cannot reach this same finding in relation to the pending Application. Given WM's own admission that it at least caused a public nuisance in 2017 and 2018, and there will continue to be odor issues, coupled with the complaint data proving that the public nuisance is ongoing, it is completely unclear how the ZBA will be in a position on July 26, 2021, to validly act on this completely deficient Application.

In conclusion, we trust that this Board will require a full EIS and require that WM re-submit its Application that complies with the Code and requirements for a Town Landfill Permit.

Respectfully,

KNAUF SHAW LLP

A handwritten signature in black ink, appearing to read "Linda R. Shaw", written in a cursive style.

LINDA R. SHAW

cc: Leslie M. Connolly, Esq.

EXHIBIT A

9:27



Instagram



5 likes

townofperinton AN UPDATE ON IN-PERSON PUBLIC MEETING ATTENDANCE:

Updated New York State guidelines now permit in-person attendance for public meetings. We have adapted our Town Board Room to allow as many members of the public as possible while also following social distancing requirements. However, this has resulted in extremely limited in-person attendance. To keep everyone at a safe distance, 30 members of the public - including members of the public presenting to the board - can be in the meeting room during public meetings.

Therefore, we ask that you please consider participating in public meetings virtually via our Starleaf meeting system. We have utilized this system throughout the pandemic and outfitted our Town Board Room with AV equipment to optimize virtual meetings. Starleaf - which can be used on a computer or a phone - allows you to view, listen and comment in the meeting live via video or audio. To join a meeting virtually, please look for the web-conferencing information at the top of each meeting agenda.

For instructions on how to join a Starleaf meeting, visit <https://perinton.org/government/boards/town-board/how-to-join-a-board-meeting-virtually/>

EXHIBIT B

OFFICE OF THE COMMISSIONER

New York State Department of Environmental Conservation
625 Broadway, 14th Floor, Albany, New York 12233-1010
P: (518) 402-8545 | F: (518) 402-8541
www.dec.ny.gov

September 25, 2020

Mr. Jeffrey G. Richardson
Sr. District Manager
Waste Management of New York, LLC
425 Perinton Parkway
Fairport, New York 14450

Dear Mr. Richardson:

The New York State Department of Environmental Conservation (DEC) has received a large number of odor complaints from citizens that are attributable to operations at the High Acres Landfill. These complaints have increased markedly in the last two months, and in particular during the month of September to date, DEC has already received approximately 511 odor complaints: 447 from a mobile application system and 64 *via* the dedicated High Acres Landfill odor complaint hotline.

As part of our rigorous oversight of this facility, DEC staff routinely follow up on specific complaints and make field visits to verify conditions in the areas around the landfill. Many of these complaints and the presence of odors in offsite areas have been confirmed by DEC staff and/or third parties. This situation is wholly unacceptable to us and must be investigated thoroughly and actions taken to address these offsite odors.

Our investigations have noted that certain operational issues associated with maintaining and repairing landfill equipment and systems are believed to be contributing to the generation of odors leading to complaints. For example, DEC staff have noted that mobile misting systems have not always been deployed in appropriate locations downwind from the working face as required in Section 5.6 of High Acres' Odor Control Plan, Appendix A to the Operations and Maintenance Manual. We also see concentrations of complaints relating to management of waste at peak times of days, suggesting that scheduling and operational changes may be necessary.

Waste Management (WM) must take immediate and concrete steps to adjust its operations and optimize its odor control processes at the High Acres Landfill to address and eliminate these odors to the maximum extent practicable. WM must submit an evaluation of the recent increase in complaints and propose a plan to mitigate odors in the surrounding community. I expect this plan to be submitted to the Division of Materials Management program in our Region 8 office by no later than 30 days from receipt of this letter.

2.

Please be advised that if Waste Management is unable or unwilling to operate this facility in accordance with best practices and in compliance with its permit, DEC will pursue all available legal remedies to ensure that these odor issues are properly addressed.

As noted above, please respond to the DEC by no later than October 28, 2020 with your plan. I look forward to your prompt response and renewed efforts to address these repeat occurrences of offsite odors.

Sincerely,

A handwritten signature in black ink, appearing to read "Basil Seggos", with a long horizontal line extending to the right.

Basil Seggos
Commissioner

EXHIBIT C



2620 Grand Island Blvd. Grand Island, New York 14072

phone (315) 651-0475

www.daiglerengineering.com

July 23, 2021

Ms. Robin Ezell, Chair
Town of Perinton Zoning Board of Appeals
1350 Turk Hill Road
Fairport, New York 14450

Re: High Acres Landfill Special Use Permit Renewal Application

Dear Ms. Ezell:

I am the President of Daigler Engineering, P.C. and a licensed Professional Engineer with an emphasis in geo-environmental engineering and extensive experience in the design, permitting, construction, and operation of municipal solid waste ("MSW") landfills. My resume is attached as Exhibit A. I submit these comments on behalf of the members of Fresh Air for the East Side, Inc. ("FAFE") in opposition to the straight renewal of the special use permit (the "Permit") for the High Acres Landfill ("Landfill") requested by Waste Management of NY, LLC ("WMNY").

In my professional opinion, a positive declaration must be made pursuant to the State Environmental Quality Review Act ("SEQRA") establishing the need for an environmental impact statement to assess potential significant adverse impacts associated with the renewal of the Permit because of ongoing issues associated with the operation of the Landfill. In addition, in my professional opinion, the Landfill does not comply with the solid waste facility permit requirements of Section 208-21(D) of the Town Code because, based on the operational history of the Landfill since the prior renewal of the Permit and WMNY's landfill gas management practices at the Landfill, among other reasons, the Zoning Board of

Appeals (“ZBA”) cannot reasonably find that the Landfill does not unduly interfere with the quiet enjoyment of adjacent property in compliance with Town Code §208-21(D)(2)(b).¹

Basis for Opinion

I have reviewed the NYSDEC solid waste management facility and air permits for the Landfill and related design plans, odor control studies, operations and maintenance plans, compliance reports, and as-built construction plans.² Based on my review of those documents, it is clear WMNY's design, monitoring, reporting and operation of the Landfill are insufficient to implement effective nuisance controls at this exceptionally large MSW landfill, or meet the requirements of the Town Code.

Non-Compliance with Town Code §208-21(D)(2)(b)

To issue the Permit, Town Code §208-21(D)(2)(b) requires that the ZBA must make a factual finding based on evidence that WMNY has produced:

“Adequate plans...to show that the solid waste facility does not create a public hazard, the solid waste facility does not unduly interfere with the quiet enjoyment of adjacent properties; and that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance”

Based on my review of WMNY's landfill design, operations and monitoring programs as well as NYSDEC reporting for this facility, the persistent occurrences of odors reported in the surrounding community, and my professional judgment, the ZBA cannot reasonably find

¹ The final cover requirement of Town Code § 208-21(D)(2)(b) for when “the operation is completed,” which would limit the requirements for final cover to six inches of topsoil planted with grass, would not meet NYSDEC solid waste management regulatory requirements for intermediate or final cover. The Town Code should be updated so that the cover system requirements at least meet the minimum NYSDEC requirements.

² It appears WMNY has presented none of these materials to the ZBA as part of its Application. Because of the paucity of materials presented in the Application, it is difficult to conceive how the necessary factual determinations necessary to approve the Application, as required by Town Code §208-21(D)(2), can be made.

that the Landfill does not create a nuisance, unduly interfere with the quiet enjoyment of adjacent properties, or meet the cover requirements of the Town Code.

WMNY's landfill cover management and monitoring practices appear to contribute significantly to the persistent nuisance odors of landfill gas emanating from the Landfill and are not compliant with the cover requirements of the Town Code. Landfill gas, consisting of methane, carbon dioxide, non-methane organic compounds, and odorous reduced sulfur compounds, is emitted from the Landfill as the deposited waste decomposes.

WMNY is required to operate an active landfill gas collection system that controls off-site migration of landfill gas in all areas of the landfill where landfill gas is generated. As part of the collection system, WMNY is supposed to collect and pipe landfill gas to pollution control equipment that burns the landfill gas by utilizing two flares and eight internal combustion engines. However, not all of the landfill gas is captured by the collection system so that it can be treated by the air pollution control system, instead a substantial portion leaks out as "fugitive emissions" to the surrounding environment through the landfill cover.

In accordance with Town Code §208-21(D)(2)(b) WMNY must provide an adequate plan, including an interim and final cover material management plan prepared in accordance with New York state's solid waste management facility regulations, that will help control fugitive odor. An effectively constructed and maintained geosynthetic final cover system is essential to minimizing fugitive emissions and is a critical part of controlling odor from any landfill. Effective final cover and landfill gas collection systems, those installed in areas where a landfill has reached its final elevation and will no longer be filled, can reduce fugitive landfill gas emissions to virtually zero.

Despite ongoing odor complaints, it appears large portions of the Landfill that have reached final elevation do not contain a geosynthetic based final cover system and the Landfill cover monitoring and repair procedures intended to ensure cover integrity are woefully inadequate to minimize odors. While WMNY trumpets its "quarterly Surface Emission Monitoring scans of the *entire* Facility to identify any landfill gas/methane readings [emphasis added]." This statement is misleading because substantial portions of the Landfill surface are

excluded from the surface emission monitoring scans, including areas most prone to leakage of fugitives emissions of landfill gas, such as:

- Steeper sloped areas of the Landfill, with slopes greater than 3:1: These slopes are prone to leakage because it is more difficult to maintain effective cover, yet they are unmonitored because WMNY claims they are too dangerous to monitor.
- Areas of the Landfill with snow or ice cover: Fugitive landfill gas emissions are easily spotted due to snowmelt, but remain unmonitored during winter months.
- Areas with heavy vegetation: Fugitive landfill gas emissions are more readily detectable in heavily vegetated areas where leakage may be more prominent and persistent winds will not quickly disperse fugitive gas during monitoring events, yet WMNY largely ignores them.
- Areas of the Landfill undergoing construction or final cover activities: these activities go on for months at a time and have the potential for substantial fugitive emissions but will go on unmonitored for extended periods.

As a result, WMNY does not monitor the facility in the most odor prone portions of the Landfill, and has not proposed to use other technically feasible alternatives to manual surface scanning, such as remote and optical scanning for methane leaks in these areas.

The failure of WMNY to monitor substantial portions of the Landfill, including those portions most likely to emit substantial fugitive emissions of landfill gas, is likely a significant contributor to the ongoing nuisance odors impacting adjacent properties. In addition, even for those areas that are monitored, infrequent quarterly monitoring is wholly insufficient to timely repair breaches causing the off-site odors as evidenced by each monitoring event routinely identifying excessive emissions requiring corrective action, often by several orders of magnitude above the allowable threshold. For a robust monitoring program, WMNY must monitor the landfill surface more frequently, and then integrate and analyze the monitoring data to timely complete repairs in areas prone to landfill gas breaches.

In addition, it appears WMNY has made no commitment or submitted a phasing plan to construct either intermediate or final cover on the (unmonitored) steep side slopes of the Landfill to control landfill gas emissions. The steep-sloped northern, western, and southern perimeter of the Landfill appear to have largely reached their final elevation years ago, yet the cover system on these side slopes do not comply with NYSDEC requirements for intermediate or final cover such as the installation of a geomembrane liner for the final cover system. As a result, it is likely, in my professional opinion, that these unmonitored, non-compliant side slope areas are a significant source of ongoing nuisance odors impacting adjacent properties. While WMNY, almost as an aside and not as an actual commitment, casually mentions in the Application that it will “remain committed to the continued evaluation and deployment of additional mitigation and control measures, including installation of temporary geomembrane liner on intermediate outside slopes,” it makes no concrete promises to do so to any particular extent, and certainly not to the full extent necessary to control fugitive emissions to eliminate the off-site odors that continue to occur.

Conclusion

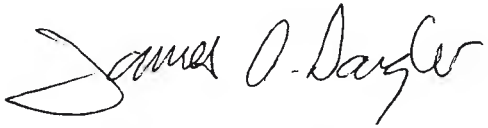
In my professional opinion, based on WMNY’s lack of an adequate construction and maintenance plan for monitoring and ensuring the integrity of the Landfill cover systems, insufficient final cover on side slopes, and the ongoing issues of nuisance odors impacting adjacent properties, the ZBA cannot approve the Application because it cannot rationally make the required finding of Town Code §208-21(D)(2)(b) that the Landfill does not unduly interfere with the quiet enjoyment of adjacent properties, and that sufficient precautions are being taken to prevent odors.

It is further my professional opinion as a professional engineer with extensive experience related to the processing of applications under SEQRA and environmental analyses associated with MSW landfills, the substantial ongoing nuisance odors related to the Landfill represent changes regarding issues of significant and substantive environmental concern occurring subsequent to the prior approval of the Permit in 2016, and as a minimum warrant a positive declaration and public scoping of a DEIS pursuant to SEQRA.

If the ZBA has any questions or comments regarding the above, please do not hesitate to contact me.

Sincerely,

DAIGLER ENGINEERING, P.C.



James A. Daigler, P.E.
President

Enc.

EXHIBIT A

Privileged and Confidential Attorney Work Product Material - NOT SUBJECT TO FOIL

**James A. Daigler, P.E.
Chief Engineer**

Summary of Experience

- Solid Waste Management Facility Design, Construction and Operation
- Management/Design, Permit Consultant
- Construction Management/Supervision
- Construction Quality Assurance

Education

B. S. Civil Engineering

Tri- State University – Angola, Indiana
 Area of Emphasis: Geo-environmental Engineering
 Related Areas of Study: Construction Management
 Degree Granted: 1980

A.A.S. – Civil Technology

Erie Community College
 Area of Emphasis: Civil Technology
 Related Areas of Study: concrete design, hydraulics and surveying
 Degree Granted: 1977

Professional Experience

2002 - present

President - Daigler Engineering, P.C. - Grand Island, New York

Professional consultant in geo-environmental and civil engineering, with focus on land disposal engineering and construction quality assurance. Areas of expertise includes site investigation and planning, hydrogeologic investigations, geotechnical engineering studies, landfill design, environmental and municipal permitting, construction specifications/bid document preparation, construction inspection and certification, waste site remediation, excavation support system design, de-watering, foundations and wastewater management.

1994 - 2002

Engineering Services Manager - Seneca Meadows, Inc., Seneca Falls, New York

Development, staffing and leadership of the *SMI Engineering Group* for the purpose of in-house environmental permitting, facility design, construction management and construction quality control.

Project Manager for a comprehensive solid waste management facility expansion application complying with local zoning/ordinances, 6NYCRR Part 360 (solid waste), Part 201 (air quality), Part 757 (storm water/surface water), Part 663 (freshwater wetlands), Part 608 (use and protection of waters) Part 621 (uniform procedures) and Part 617 (SEQR).

Principal/Certifying design engineer for a 126-acre solid waste management facility. Including landfill design and operation, environmental monitoring, storm water, wastewater and landfill gas management systems. Authored Engineering Reports, Operation Manuals and Environmental Monitoring Plans.

Planning, economic analysis, design and permitting for waste tire facility development.

Project Manager for initial/supplemental remedial investigations at an Inactive Hazardous Waste site.

In-house operations consultant relative to requirements for optimizing disposal practices, environmental compliance and construction quality

Preparation of detailed Contract Documents including technical specifications, contract drawings and agreements used to procure and manage engineering and construction services.

Privileged and Confidential Attorney Work Product Material - NOT SUBJECT TO FOIL

**James A. Daigler, P.E.
Chief Engineer**

Professional Experience
(Continued)

1990 - 1994

Associate – Wehran Engineering, Grand Island, New York

Managed the day-to-day activities of a staff of 20 engineers, scientists and technicians
 Coordination of marketing-technical activities, review and development of technical and cost proposals, preparation of project plans.
 Coordinated staffing of main/branch offices to increase employee productivity and Company profitability.

1984-1990

Senior Engineer– Wehran Engineering, Grand Island, New York

Technical Services Manager responsible for the planning, design, construction quality assurance and operational planning for numerous solid waste management facility designs completed by the Branch Office.
 Project Manager and principal engineer for the preparation of permit applications and construction documents including site characterization studies, data assessment, engineering design and coordination with residents, negotiated approvals from multiple federal, state and local agencies.
 Expert testimony in landfill construction quality control and assurance programs.
 Company specialist in geosynthetic materials/design applications, including participation in ASTM D35 committee on geosynthetics.

1980-1984

Staff Engineer – Wehran Construction

On-site engineering design for civil projects including site grading and drainage, hydraulic structures, earthworks, subsurface drainage and environmental containment systems.
 Construction management and supervision for remediation of inactive and uncontrolled waste sites.
 Responsible for construction quality control activities related to site remediation and landfill construction projects completed by Wehran Construction.

1973 -1979

Skilled Laborer - Bero Construction Corporation – Depew, New York

Installation of pipe systems including sanitary sewer, water supply, natural gas and communications.
 Heavy/Highway construction including earthwork, drainage infrastructure, bridge deck and pavements.

Professional Affiliations & Registrations

Professional Engineer - New York State License No. 061689
 Intern Engineer - Indiana
 40 hour Hazardous Waste Operations and Emergency Response/Site Health and Safety Supervisor
 Member - New York State Chapter of The Solid Waste Association of North America

EXHIBIT D

FAFE Comments on HCA

Knauf Shaw LLP on behalf of Fresh Air for the Eastside, Inc. (“FAFE”) submits the comments below to the Draft Host Community Agreement, dated April 12, 2021 (“HCA”), between the Town of Perinton (“Town”) and Waste Management of New York, L.L.C. (“WMNY”).

GENERAL COMMENTS ON THE HCA.

As an initial and general comment about the HCA as a whole, we are disheartened and dismayed by the amount of power the Town of Perinton (“Town”) is voluntarily recusing to WMNY. The Town is not exercising the substantial authority it maintains through its Code, namely its Solid Waste Facility Permit section, § 208-21(D), and required Special Use Permit (“Special Permit”). WMNY needs this Special Permit to legally operate within the Town. Importantly and despite the fluff language used in Section I entitled “Purpose” of the HCA, WMNY is required to enter into a contract with the Town as part of its Use Permit. *See* § 208-21(D)(5). This requirement should be acknowledged in the HCA.

Further, it is clear that the Town prefers to pass the buck to the New York State Department of Environmental Conservation (“NYSDEC”), rather than retaining any power and control itself. The law in New York is very favorable towards municipalities seeking to regulate and control solid waste management facilities such as the High Acres Landfill (“Landfill”). *See Jones v. Town of Carroll*, 122 A.D.3d 1234, 996 N.Y.S.2d 804 (4th Dep’t 2014), *lv. to app. den’d*, 25 N.Y.3d 910, 15 N.Y.S.3d 287 (2015) (upholding a law that “generally regulat[es] the operation of [solid waste management] facilities in the interest of public safety and welfare” by completely prohibiting their operation because “[i]t is well established that a municipality has the authority, pursuant to its police powers, to impose conditions of operation . . . upon preexisting nonconforming uses to protect public safety and welfare.”) [internal citations omitted]. We strongly urge the Town to reconsider its position and redraft this agreement to retain all its powers and authorities, as the Town is in the best position to truly protect the communities interests, rather than the NYSDEC or WMNY.

Another initial comment is that material terms in this draft are wholly lacking. It is unconscionable to think that the community can provide substantive comments when the most controversial and arguably important portions of the HCA are blank. The community cannot determine whether this agreement is beneficial to the community without these terms. Further, the majority of exhibits to the HCA are missing. Given the multitude of references to Exhibit B, the “Commitment Letter,” its absence alone is grounds for an additional comment period. We therefore demand that the public, or at least FAFE, be given another opportunity to comment on the HCA once the terms are finalized.

Further, it is not clear whether the Town has or plans to conduct the required review under the State Environmental Quality Review Act (“SEQRA” or “the Act”). The approval of this HCA is subject to SEQRA. *See* 6 NYCRR 617.2, 617.3. Approving an agreement that without a doubt may cause a significant impact on the environment is certainly subject to the Act. *See* Environmental Conservation Law Article 8. An Environmental Impact Statement is required when an action “may include the potential for at least one significant adverse environmental impact.” 6 NYCRR 617.7(a)(1). It cannot be considered a Type II action. *See* 6 NYCRR 617.5. The Town must comply with SEQRA. *See Waterloo Contractors, Inc. v. Town of Seneca Falls Town Bd.*, 2017 NY Slip Op. 31977(U) (Sup. Ct. Seneca Co. 2017) (annulling a decision by a Town to commence an action allowing a Landfill to operate past a certain date without analyzing

FAFE Comments on HCA

the likely environmental impacts of that action). We look forward to participating in the SEQRA process.

Finally, an HCA should be effective and in place regardless of whether the Landfill is open or closed in Perinton. The Town is sending WMNY the wrong message when it suggests that it does not have a seat at the table once the Landfill is closed. The Landfill will be in Perinton forever, will continue to generate landfill gas for decades, and will still be able to create nuisance conditions once closed. The Town needs to make clear in no uncertain terms that an HCA needs to be in existence whether the Landfill is open or closed since the Town will need a fund to monitor and deal with the lingering effects of the Landfill in perpetuity.

In conclusion, the Town waited a very long time to issue this document and the Special Permit application has not even been submitted. Since the Special Permit is also subject to SEQRA, there appears to be too little time to perform a compliant SEQRA review. We look forward to the opportunity to comment on a completed draft of this HCA. The most critical terms were missing in this draft - notably the number of days waste can be in a rail car; the volume of NYC garbage that will be reduced; who is included in the PVPP, the fee to the Town, etc. - and at the same time the Town has negotiated against its citizens in the PVPP limiting the percentage of loss it can recover from WMNY to 15%. The Town almost negotiates the terms of this HCA as if it is not in a position of power which is certainly not the case. Therefore, the final draft provisions should be far more favorable. Failure to do so would be a disservice to the community.

WHEREAS CLAUSE THREE.

Curiously lacking from this WHEREAS clause is any mention of the current Benefits Agreement, dated December 31, 2013, which expired on December 31, 2018 and has been proceeding on a month-to-month basis. This information should be included.

WHEREAS CLAUSE FOUR.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. Further, we suggest that the Town limit the year term to no more than two years, in order to reassess and ensure WMNY is fulfilling its promises. However, preferably the HCA would not extend past August 22, 2021 when WMNY's Special Use Permit expires, or July 8, 2023, the date WMNY's Landfill permit expires with NYSDEC.

Additionally, this clause should include language that indicates that Town Board approval at a public hearing is required in order for the HCA to be effective.

WHEREAS CLAUSE FIVE.

This clause should also include the requirement that Town Board approval is required in order for the HCA to be amended "from time to time." These amendments should not take place behind closed doors and should instead be openly discussed at a public hearing.

SECTION II.B: AGED WASTE.

This definition is highly problematic. Aside from the fact that it lacks essential terms, it is very ambiguous and could be subject to a variety of interpretations and varying timelines. The age of waste should be calculated from the day it is deposited into a garbage receptacle in order to

FAFE Comments on HCA

truly measure and calculate its potential to cause odors. The Town should explain how it intends on calculating this number, and the community should be given an opportunity to comment once it does.

SECTION II.K: GENERATION TIME.

“Railcan” should be “railcar.”

SECTION IV.B: USE.

As the Town is aware, WMNY is only permitted to operate the Landfill within the Town via a Special Permit for a solid waste management facility permit (the “Special Permit”) granted to it by the Zoning Board of Appeals on August 22, 2016. This Special Permit expires on August 22, 2021. The Special Permit is granted under § 208-21 of the Town Code, which states that the “dumping of waste material [] is prohibited in all districts in the Town,” unless a Special Permit is issued. Before it issued the Special Permit, the ZBA found the following facts to be true under Town Code § 208-21:

The granting of such **permit is in the public interest to establish environmentally sound facilities** to dispose of and treat solid waste.

Adequate plans have been presented to show that the solid waste facility **does not create a public hazard; that the solid waste facility does not unduly interfere with the quiet enjoyment of adjacent properties**; and that **sufficient precautions are to be taken** to prevent fires or the creation and spread of smoke, **odor**, dust, fumes or noises **liable to become a nuisance**; and that when the operation is completed, the fill material or disturbed area will be covered with at least six inches of clean nondeleterious topsoil within a reasonable time thereafter and seeded with a permanent pasture mixture or other fast-growing surface vegetation and that such reseeded is continued until growth has been established.

We are very concerned that there is a chance this HCA may extend past the expiration date of the Special Permit. We feel that puts the Town in an unfavorable position if this HCA is executed but it wishes to deny renewal of the Special Permit. Regardless, the terms and code provisions related to the Special Permit should be included within this Section of the HCA.

Regarding Sub Section IV.B.3.a. and Sub Section IV.B.4., the Town should be aware that it appears WMNY has violated the Town’s prohibition of disposal of natural gas and/or petroleum extraction, exploration or production wastes, *see* Town Code § 144-5, when it accepted 60 tons of “Frac Tank Solids” on December 17, 2018. Regardless, the Landfill routinely accepts unique wastes that the Town should be aware of, including petroleum contaminated soils, rotten milk, dead deer, friable asbestos, transformer oil impacted soils, PCB contaminated stones, POTW sludge, moldy drywall, etc. WMNY seeks NYSDEC approval for these “Special Wastes.” The Town should insist that it also be provided copies of all Special Waste requests made to NYSDEC and all approvals.

Subsections IV.B.3.b, 3.c, and 3.e. are missing essential terms, and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized.

FAFE Comments on HCA

While the concept behind Section IV.B.3.e. is sound, the Town should explain exactly how WMNY will determine when waste becomes “aged waste” and must be rejected by WMNY. These details are extremely important and should be detailed in the HCA.

Finally, regarding Section IV.B.7., the Town does in fact have grounds to enforce and restrict WMNY. Town Code § 208-21(D)(6) states that “[a]ny permit issued hereunder may be revoked after a hearing to be held upon 10 days’ written notice to the holder of such permit, upon proof presented to the Zoning Board of Appeals that any condition of this section or the approval granted has not been complied with.” Conditions include that the Landfill be an “environmentally sound facilit[y],” that the Landfill “does not unduly interfere with the quiet enjoyment of adjacent properties,” and “that sufficient precautions are to be taken to prevent fires or the creation and spread of smoke, odor, dust, fumes or noises liable to become a nuisance.” *See* Town Code § 208-21(D)(2)(b). The Town does not need to commit to going to Arbitration when its own Code provides an adequate remedy.

SECTION V: TERMS AND SEVERABILITY.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. Further, this Section should include that Town Board approval is required before the HCA can be effective.

SECTION VI.C.: NOTIFICATIONS.

The concept behind Subsection 3 is admirable but it is unclear how this will be enforced. The phrase “where undue odors (gas or garbage) may result” is ambiguous. This section should detail how WMNY will determine that.

The Town should create an email listserv to then subsequently alert interested residents of the notifications required in this Section. The Town should also post on its website so that the Community can be aware and prepare for undue odors.

SECTION VI.D.: FACILITY LIASION (SIC).

Is a Citizen Advisory Committee the same as a Citizen Advisory Board? Normally, Citizen Advisory Boards are community organizations comprised of local residents, including those appointed by the municipalities and NYSDEC as the regulator, so it is curious why WMNY is involved in the formation. The Town needs to explain in more detail how this Committee will be formed, how members will be appointed, the expectations with respect to issues and recommendations of the Committee and the required response of the Town and WMNY to them, and the budget and source of funding for the Committee to engage appropriate, independent subject matter experts. We hereby request that at least one FAFE representative be on the Committee.

SECTION VII: NOTIFICATION MANAGEMENT PROGRAM.

This entire section is very concerning and is in need of a total revamp. First, the Town and WMNY should refer to the FAFE odor tracking application (“FAFE App”) data in order to determine whether WMNY is in compliance with the complaint management program. The FAFE data supplied through the FAFE App includes the date and time of each Odor complaint, the name of the complainant as entered into the FAFE App, a geocoded address based on complainant’s location at the time of the odor complaint, a description of the odor, its intensity on a scale of 1 to 10, the temperature, wind direction and speed, weather conditions, barometric pressure, any

FAFE Comments on HCA

contemporaneous comments made by the complainant at the time of the report, the latitude and longitude of the complainant at the time the complaint was reported in the FAFE App, the individual odor complaint identification number, the identification of the device used to enter the odor complaint in the FAFE App, and the distance to the Landfill from the location where the complaint was reported in the FAFE App. This data is comprehensive and should not be ignored by the Town or WMNY. FAFE is willing to provide this data in the form of an excel spreadsheet on a frequent basis, and can even include the “responder” to the pre-set email list, so that residents who choose to send an email with their odor complaint can notify the “responder” immediately in real time of odor events.

Second, the HCA does not state who the “responder” will be. FAFE objects to the use of Towpath as the responder since it is a biased company and has proven to be ineffective and unreliable. Its reputation is highly questioned in the community. There is a complete lack of trust with the continued use of this company for odor complaint responses. Further it is unclear whether there will be only one responder or multiple. During certain odor events, there may be numerous complaints across a large geographical area, so it may be impossible for a single responder to arrive within 30 minutes.

Third, the Town should not have to request the complaint log, rather it should be provided to the Town on a weekly basis. WMNY should also geocode all of the complaints, or provide the information to the Town in the most effective and easy to understand manner, in order to properly identify which residents are most impacted and where the problem areas are on the Landfill. Additionally, the HCA should include what details are to be recorded on the log.

SECTION VIII: PROPERTY VALUE PROTECTION PROGRAM/ EXHIBIT C.

Below are numerous comments on specific provisions of the Program, however, generally, this program is ineffective to properly protect Perinton residents against lost value of their homes because it excludes all residents who choose to remain in their homes and not move away. These residents should not be punished for wanting to remain in their homes and the community they love. These residents still maintain a decrease in value of their property which has real financial impacts, but have been completely left out of this Program. The Program should be revamped to include payment for residents who choose to remain in their homes and endure the impacts from the Landfill.

Scope of Program. It is impossible for the community to determine whether this Program is advantageous for the community when Schedule A has not been provided. The Town must detail the portions of the community it intends to include in the Program prior to the finalization of this HCA. We suggest that the Program include no less than a four mile radius from the Landfill. Further, the scope of the program does not clearly state the duration. It should be clarified to state that the Program will be available to all Eligible Properties for the entire duration of time waste is accepted at the Facility, including when waste disposal ceases in the Town of Perinton. Finally, the definition of “Program Lands” is confusing. It describes owners as those who “previously opted, in writing, to participate in the Program,” yet does not provide details on how an owner would do that and contradicts Section III.. This confusing language should be removed from this section.

Eligible Properties. This section should include “and first subsequent owner who purchases a Program Land from an original Eligible Property Owner (“Owners”),” as the section on Eligible Property Owners does. Otherwise the two sections cannot be read together. Further, the language which completely excludes all FAFE Plaintiffs is arbitrary, inappropriate, and must be removed. The

FAFE Comments on HCA

Plaintiffs in the *FAFE v. WMNY* lawsuit are some of the most impacted residents and do not deserve to be excluded from the Program. The Town must explain its justification for this. The prohibitory language is so broad that even if a FAFE Plaintiff dismisses its claims against WMNY, they still could not participate in the Program because they “participated in a legal action” against WMNY. This language is arbitrary and capricious and should be completely stricken from the HCA.

Listing of Property for Sale. The requirement that an Owner must list for three months between February and October is unfair. A resident who suddenly has to move out of the area for a job or otherwise and is forced to sell during the winter months, should not be punished and ineligible for the Program. Further, as written it appears that an Owner has to wait a full three months before reducing the asking price at all. This is highly unusual and goes against real estate norms. This language should be removed. Finally, the 15% compensation limit placed on the Program wrecks of bad faith. The entire purpose of the Program is to protect the residents who are most impacted by the Landfill. The Town should not agree to this Program that will blatantly allow WMNY to cause such financial harm to its residents.

Sale of Property/Compensation from WMNY. The term “Fair Market Value” should be explicitly defined to be “the most probable monetary price the property will bring in a competitive open market place *with the assumption that the Landfill does not impact the market value...*” Otherwise, the appraisal would already account for the impacts of the Landfill on property values and depress the appraised value used to determine the Program benefit. The requirement that a Program participant must give fifteen days advanced written notice seems unreasonable, and like an easy loophole for WMNY to get out of paying compensation. We suggest a shorter notification period, like five days. Further, the requirement that WMNY must receive all written offers received by the Owner is completely unnecessary. The Program already requires an affidavit from a broker listing all offers and counter offers on the property and marketing efforts taken. WMNY does not need to receive the actual offers. WMNY is not qualified to second guess a Broker, and should not be afforded an opportunity to overanalyze the offers received. Finally, the required Affidavit of Compliance should be included in the HCA so a resident can thoughtfully decide whether it wishes to participate in the Program.

Release of WMNY. Any release agreement WMNY seeks from Program participants should be included in the HCA so that a resident can thoughtfully decide whether it wishes to participate in the Program, and perhaps seek legal counsel.

Remedies. Again, the language here seems to give WMNY an easy loophole to deny an Owner compensation under the Program. For example, if an Owner only gives fourteen days advanced written notice prior to the closing, this provision as written allows WMNY to disqualify that Owner from the Program. This language is predatory and should be removed. Or, at the very least, the sentence should read, “Except where specifically excused herein, failure of Owner to **materially** adhere to the terms, conditions, steps and procedures as set forth in this HCA, **which resulted in an abuse of the Program...**”

Finally, it is clear that this Program was not uniquely crafted for the Town since it is an almost identical Program to one in the Town of Macedon. It is very disappointing that the Town did not make the effort to protect its residents.

FAFE Comments on HCA

SECTION XI: CURB-SIDE RECYCLING.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized.

SECTION XII: ANNUAL VOLUME.

It is arbitrary for residential waste drop off to not be included in the volume limitations at the Landfill.

SECTION XIII: WASTE DISPOSAL/ COLLECTION SERVICES.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized.

SECTION XIV: BENEFIT AGREEMENT PAYMENTS.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. In Subsection A, the waiver of the requirement for WMNY to pay the *Guaranteed* Minimum Payment if the Perinton side of the Facility receives less than 500 tons per day is illogical. The Guaranteed Minimum Payment should be just that, *guaranteed*, it represents the minimum payment the Town should expect to endure the presence of the Landfill in the community. Further, it is clear from this Section that WMNY intends to cease some payments to the Town once landfilling on the Perinton side has ceased. This is nonsensical. The impacts from this Landfill will continue long past the time when landfill ceases on either the Perinton or Macedon side. The definition of Facility in the HCA includes “[a]ll aggregate elements of the High Acres Solid Waste Landfill and ancillary facilities in the Town of Perinton and in the Town of Macedon.” Payments should be made to the Town as long as the Facility is in operation, and not arbitrarily cease when landfilling is no longer occurring on one side of an imaginary line.

SECTION XV: OFF-SITE IMPACTS.

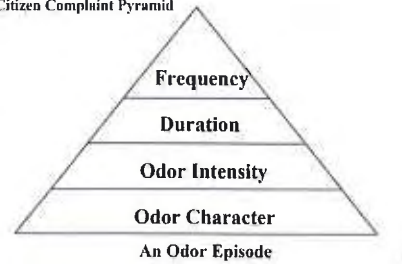
The acknowledgement drastically understates the impacts the Landfill has caused to the community. These impacts have been well-documented. Please reword this section to properly acknowledge that.

We reiterate the same concern as above, that the valuable data from the FAFE App is being ignored. The footnote to the table is unacceptable. First, is it a NYSDEC or WMNY Hotline? The HCA references that WMNY maintain the hotline, not NYSDEC. Second, it is clear that this footnote was specifically written to exclude the valid complaints collected by the FAFE App. For the reasons stated above, the Town should modify this.

More importantly, the proposed chart and steps outlined to make a “categorical determination of an odor” is wrought with issues. An example of common conceptual model for citizen complaints of nuisance odors can be illustrated in a pyramid:

FAFE Comments on HCA

Figure 1. Citizen Complaint Pyramid



There are four building blocks that “create the nuisance experience” including odor character, odor intensity, duration of odor event, and the frequency of odor events. The proposed N-Butanol chart in the HCA (“Chart”) addresses three of the four but neglects to address the **character of the odor—i.e. is the odor pleasant or foul**. Intensity is not a measure in and of itself of a nuisance condition, which is clearly the focus of the Chart. Pleasing odors can be nuisances at a high intensity, and of course foul odors such as landfill gas, rotting waste, and compost are nuisances even at low intensity.

Further, the ASTM E544-18 is not a reliable means of making a determination of an odor by itself. The procedures outlined in the ASTM specifically warn of the olfactory adaptation an assessor may experience that can render the sense of smell less sensitive, making it difficult to detect odor at the lower intensities. Therefore, the Town should require using a tool like the Nasal Ranger© to make up for the shortcomings of the ASTM standard. FAFE’s solid waste management facility consultant can provide additional technical input to the Town to develop an appropriate objective, reliable odor assessment methodology for the Landfill.

Neither the Chart nor text identify among other important criteria, the specific olfactometer that will provide for the eight-point intensity scale. In fact, the chart only includes five “Odor Categories” when the ASTM provides for eight: 1. Not perceptible; 2. Very weak; 3. Weak; 4. Distinct; 5. Strong; 6. Very Strong; 7. Extremely strong; 8. Intolerable. It is unclear why the Chart deviates from the ASTM this way.

Next, if the frequency/ duration functions detailed on the Chart are to be the triggers for WMNY to take action, then a very high number of Town residences will be subjected to nuisance odors for an unacceptable amount of time and duration. These frequency and duration functions should be cut in half, at least. For example, the way the Chart reads, twenty confirmed complaints (not including any complaints made on the FAFE App) of moderate offensive odors must occur for up to two days and two nights before WMNY must act. This is unacceptable. Why would the Town subject its residents to this?

Additionally, the list of steps WMNY will take to address off-site odors is also unacceptable. The community does not want the odors “neutralized” or “misted” away. They want the operational issues at the Landfill to be remedied. Flavor and fragrance agents have already been detected and sampled in the air off-site from the Landfill. The community does not want these chemicals in their air, they want fresh air. Further, it is unclear what is meant by “lower cells,” “minimization of the working face,” and “well/vacuum improvements.” These phrases should be clarified and expanded.

¹ <http://www.fivesenses.com/Documents/Library/28%20%20Odor%20Intensity%20Scales.pdf>

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Finally, the proposed follow up procedure for when odors are verified is wholly lacking. WMNY needs to be held accountable. Following the first 10-day mitigation period, WMNY should be held in default of the HCA and in violation of its Special Use Permit. Alternatively, WMNY should pay a fine that can be held in escrow until the odor issues are fully remedied. In other words, these provisions need teeth. Otherwise there will just be an endless cycle of 10-day periods.

SECTION XVI: END USE AND POST CLOSURE OBLIGATIONS.

Essential terms are missing and therefore comprehensive comments cannot be provided. We request another opportunity to comment once the terms have been finalized. Regardless, the timeframes in this Section should be no less than the timeframes required pursuant to the NYSDEC laws and regulations. *See e.g.*, 6 NYCRR 363-9.6, 6 NYCRR 360.22. Thirty years is a fairly common timeframe for post closure obligations. This Landfill's size (second largest in the State) and proximity to residences are likely grounds to have a longer period of time.

SECTION XVII: COMPLIANCE WITH LAWS.

This section should also state that compliance with regulations are necessary.

SECTION XVIII: HOURS OF OPERATION.

This section should include a requirement that the Town will notify the community of operational hour changes via its website or an email listserv of interested residents.

EXHIBIT E



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PERINTON RELEASES NEW, REVAMPED HOST COMMUNITY AGREEMENT INCLUDING AN 8-POINT PLAN TO CONTROL ODOR AT HIGH ACRES LANDFILL

New initiatives include an Odor Verification Program, Citizens Advisory Board, Property Protection Value Program, restrictions on rail waste from New York City, and more.

Town Supervisor **Ciaran Hanna** today announced that the draft Host Community Agreement (HCA) for High Acres Landfill is complete and released for public comment. The new HCA not only describes the benefits provided to the Town and its residents for hosting a portion of the High Acres Landfill in the Town of Perinton, but it also outlines an 8-Point Plan to mitigate and control landfill odors. While feedback is collected from residents on the new HCA, the Town of Perinton will begin negotiating with Waste Management to secure these benefits and protections for years to come.

*"High Acres Landfill has existed in Perinton for 50 years, and since becoming Town Supervisor in 2018, I've looked at every aspect of the current landfill agreement with a fresh take," said **Hanna**. "Today, we are delivering a completely revamped Host Community Agreement that will not only secure benefits for our residents but also incorporate new protections and enhanced accountability in ways our community has never seen before. This includes new restrictions on rail waste coming from the 5-boroughs of New York City to High Acres Landfill. These new rail restrictions have never been attempted in the HCA before, but it is a top priority of mine."*

A comprehensive **8-point plan** designed to complement the Town's existing efforts to ensure the proper operational management of High Acres Landfill is included in the new, draft HCA. The Town has worked to establish several of these practices since the significant odor event of 2017. However, the Town's plan will also take new action by calling for new restrictions on rail waste arriving from New York City and additional limitations on the amount of highly odorous material landfilled at High Acres. The **8-point plan** includes the following measures:

1. **Improvements to the general operation and maintenance of the landfill.** This will ensure that Waste Management continues to invest in best operating and maintenance practices, including those identified in Waste Management's September 2018 commitment letter to the Town of Perinton.
2. **Enhanced Monitoring and Reporting.** Making Waste Management responsible to perform the most stringent landfill surface scanning assessment for fugitive gas emissions in all of New York State.
3. **Continued and improved information sharing.** The Town will ensure Waste Management's participation in routine Tech Team meetings to discuss operational activities, ongoing mitigation, employment of best management practices, and causes of odor concerns. Waste Management will also provide the Town with updates on all regulatory communication with Federal/State Agencies.

4. **Creation of a new Odor Verification Program** utilizing ASTM Standards to evaluate the intensity of odors.
5. **Upgraded Odor Notification Program.** Waste Management will continue to be responsible for maintaining, operating, and funding a local odor notification hot-line accessible 24/7. Trained personnel will respond within 30-minutes to measure odor type, duration, and intensity utilizing a scientific ASTM n-butanol scale.
6. **Odor Event Accountability.** Waste Management will provide written justification to the Town of Perinton for the cause of undue odors, identify mitigative steps that will be taken and associated timeframes to address off-site impacts.
7. **New restrictions on rail operations.** The Town is concerned over the volume of municipal solid waste coming from the 5-boroughs of New York City to High Acres Landfill. Therefore, the Town will work with Waste Management to reduce the volume of municipal solid waste delivered to High Acres Landfill by rail from New York City to pre-2017 levels. The Town is making this request to ensure that Waste Management can reasonably manage incoming waste delivered by rail to High Acres Landfill and responsibly control associated odors.
8. **Additional restrictions on waste in accordance with the Waste Characterization Study.** In 2018, the Town of Perinton and the New York State Department of Environmental Conservation commissioned a Waste Characterization Study, completed by a third-party consultant, which evaluated all types of waste and all types of transport methods, including rail waste coming from New York City.

According to that study, bio-solids were identified as a highly odorous waste stream. Therefore, the Town seized an opportunity to partner with Monroe County and Waste Management to help mitigate odor issues by reducing the total amount of bio-solids coming into High Acres Landfill from Monroe County's VanLare Wastewater Treatment Plant.

Additional restrictions will also be placed on the age of waste brought to High Acres Landfill. The Town will work with Waste Management to restrict when municipal solid waste is considered aged through agreed-upon time limits. This new restriction would also apply to rail waste coming from New York City.

Monroe County Executive Adam Bello said, *"The increase in out of town garbage coming to High Acres over the last several years is well-documented. Under this new Host Community Agreement, trash coming from New York City will be significantly reduced, and there will be greater communication and protections for residents and homeowners of the Perinton community. These efforts are a step in the right direction and will make a difference for those who reside near the landfill. I want to thank all of the Perinton and Fairport residents who have continued to advocate for change at High Acres, putting this issue at the forefront."*

Also included in the new HCA are several opportunities to increase the community value of High Acres Landfill. These include continuing the popular Residential Drop-Off Program, creating a new Citizens Advisory Group, establishing a Property Value Protection Program, and increasing royalties to benefit taxpayers.

Another priority of the new HCA is a renewed focus on environmental sustainability. The Town is looking to partner with Waste Management for a residential organics composting pilot program, which could help divert waste from the landfill. The new HCA also includes Waste Management's continued commitment to recycling residential leaf and yard debris into free wood mulch and compost provided to residents. Other goals include continuing free curbside recycling for all Town and Village residents, as well as the Waste to Energy Program.

Negotiations with Waste Management are set to begin soon; however, for the first time in the development of a new HCA in Perinton, the Town is inviting residents to review the agreement and provide written feedback. Starting today and running through May 3rd, Perinton residents can review the new HCA and submit written comments by visiting www.perinton.org.

"With enhanced accountability, added protections, increased community value, and a renewed focus on environmental sustainability, this new Host Community Agreement is a fresh and innovative take on the benefits provided to our residents. We want your engagement and feedback to ensure this agreement will benefit and protect our residents for years to come," continued **Hanna**.

Established in 1971, High Acres Landfill is a privately-owned landfill, a division of Waste Management of New York, LLC. It is located on the eastern edge of Monroe County in the Town of Perinton and crosses over the western border of Wayne County in the Town of Macedon. The 1,200-acre property includes a renewable energy plant, nature/trail area, fire department training facility, police range, a compost recycling area, a residential drop-off station, and approximately 360-acres of permitted landfill area.

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EXHIBIT F

SCREENSHOTS OF MONROE COUNTY PROPERTY VIEWER DISTANCE MEASUREMENTS



SCREENSHOTS OF MONROE COUNTY PROPERTY VIEWER DISTANCE MEASUREMENTS



SCREENSHOTS OF MONROE COUNTY PROPERTY VIEWER DISTANCE MEASUREMENTS

