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October 24, 2005

## VIA EMAIL AND USPS

Hon. Molly T. McBride  
N.Y.S. Department of Environmental Conservation  
Office of Hearings and Mediation  
625 Broadway  
Albany, NY 12223

Re: Waste Management of N.Y., LLC, Chaffee Landfill Western Expansion Application,  
DEC No. 9-1462-00001/00017; **Applicant's revised Mined Land Use Plan for  
Borrow Area C, and Petitioner's October 14 site visit**

Dear Judge McBride:

Please accept this letter regarding the above-referenced subject, as scheduled by you during a conference call on October 17. I have attached hereto and incorporate by reference the technical comments and additional attachments of Petitioner's ecological expert Charles Rosenberg (hereafter, CR Memo).

This letter primarily addresses one of two deferred issues in this matter, involving potential project impacts on wetlands. Secondly, new information supports further comments on the deferred issue involving protected habitats on the site.

Mr. Rosenberg conducted a site visit on October 14, accompanied by the Applicant's technical representatives and facility manager. The site visit involved almost all areas of the proposed Western Expansion, the perimeter of the existing landfill, and proposed Borrow Area C, located immediately north of the existing landfill. The visit was nevertheless limited to delineating wetlands in and around the site, and did not survey for protected habitats. Despite this limitation, Mr. Rosenberg found habitats exist on the site supporting all 19 species of concern listed in his earlier comments dated and filed with Your Honor on October 13, 2005. See CR Memo, pp. 9-10. See also Petition, pp. 12-13.

Regarding the deferred habitats issue, the importance of this finding cannot be underestimated because Mr. Rosenberg's primary finding is that all wetlands identified by the Applicant and some that have not been so identified are hydrologically interconnected and together comprise largely functionally interdependent ecological system. (Fully determining the degree of functional interdependence depends on further development of the habitats issue.) As we suspected, those smaller wetland areas the Applicant delineated as isolated are not isolated. Id., p. 6.

The results of our site visit, as detailed in Mr. Rosenberg's new comments, show that proposed excavation in Borrow Area C has the potential to draw down shallow groundwater resources on which much of the surrounding wetland system depends. *Id.*, pp. 4-5. An existing "fire pond" is located within proposed Borrow Area C, within 100 feet of federal Wetland 11 and NYSDEC Wetland AR-11, all of which share the same or very similar water levels, suggesting common recharge from shallow groundwater. *Id.*, p. 8. The location of all these water bodies in the headwaters of their common watershed further supports this finding, since recharge by precipitation is unlikely to account for this phenomenon. *Id.*

A previously unacknowledged intermittent stream drains the fire pond, a perennial stream drains W-11, and both flow to the East Branch Casenovia Creek, a trout stream. Each of these water bodies as well as the areas the Applicant considered isolated wetlands (and were for this reason removed from many maps in the application), are part of the large, high quality NYSDEC Wetland SD-1. *Id.*, pp. 1, 3 and 6.

Once consequence of finding substantially more interconnected wetlands on the site is that the total wetland area that would be lost and thus must be mitigated is substantially larger, and is higher quality than previously thought. Mr. Rosenberg found 1.11 acres previously considered isolated, (*id.*, p. 6, bottom), the 2.5-acre fire pond, and approximately 700 feet of stream length in two streams would be taken, (*id.*, p. 9), but are not included in the Applicant's mitigation plan. If, as Mr. Rosenberg found, Wetlands AR-11, 1, 3, 5, 8 and 9 (and perhaps Wetland 7) are part of Wetland SD-1, (*id.*, pp. 1, 3 and 6), the entire wetland system may share the high quality classification of Wetland SD-1.

Another consequence is that because it would redirect drainage from half of the Western Expansion site from the Casenovia Creek watershed to the Hosmer Brook watershed, the project "would likely have serious consequences for wetlands and streams" the application never addressed. *Id.*, pp. 8-9.

These findings are relevant not only to the two the deferred issues. Unexpectedly, the site visit also found serious potential noncompliance in the operation of the existing landfill. Specifically, substantial runoff is draining directly from the landfill to the west, uncontrolled by the existing stormwater collection system. Photographs 5 and 6 attached to Mr. Rosenberg's memo show runoff from the west berm, which has been directed beneath a culvert under the landfill access road to the west.<sup>1</sup> In addition, Borrow Area B, further to the west, was excavated in what now appears to be non-isolated federally jurisdictional wetlands without a permit. See *id.*,

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<sup>1</sup> In Figure 5 attached to Mr. Rosenberg's memo the flow channel cuts through proposed Cell 1 in the expansion area.

p. 6.<sup>2</sup> In addition, substantial berm erosion in an area on the north side of the landfill addressed repeatedly in the Department's monitoring reports had broken through silt fencing.<sup>3</sup>

The new facts found as a result of our site visit go beyond potential impacts that could be mitigated. In light of these findings, unavoidable impacts trigger a consideration of siting restrictions that were never adequately addressed by the application. In addition to the restriction on adverse modification of protected habitats, (Part 360-1.7(a)(2)(iii)), it is now clear that the Applicant cannot avoid building the expansion in a regulated wetland. Part 360-1.7(a)(2)(iv).<sup>4</sup> The likelihood that adverse impacts on the regional perched water table would affect a larger system of wetlands than the application addressed implicates "anomalous features that may alter groundwater flow." Part 360-2.12(a)(1)(iv).<sup>5</sup> At a minimum, any of these features of the site trigger the requirement for a site selection study, so far missing from the application. Part 360-2.12(a), 2.12(b)(2).<sup>6</sup>

In short, Petitioner's October 14 site visit has deepened our conviction that the deficiencies in the proposed site are significant. To overcome these deficiencies, the Applicant should be required to supplement its application with a site selection study and a demonstration of the need for the project, and the public should be given an opportunity to raise issues that may be presented by such supplemental materials.

Respectfully submitted,

/s

Gary A. Abraham

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gaa/encs.

cc: David Stever, Esq. (via email)  
Daniel M. Darragh, Esq. (via email)

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<sup>2</sup> This is the same borrow area discussed in Petitioner's Issues Conference Brief, pp. 5-6 (September 10, 2005), where point is made that excavation in this area has created unnatural thinning of the underlying clay soils and dessication cracks forming potential conduits for transmission of pollutants, triggering the requirement to consider the need for the project. See also Petition, p. 24 (proposing the issue of need under SEQRA).

<sup>3</sup> Petitioner's offer to bring photos of the area taken during the site visit into the record to prove this allegation.

<sup>4</sup> Cf. also Petition, pp. 13-14.

<sup>5</sup> Cf. also Petition, p. 6.

<sup>6</sup> Cf. Petitioner's Issues Conference Brief, pp. 3-4.