



August 19, 2022

Via Email (Basil.Seggos@dec.ny.gov)

Mr. Basil Seggos
Commissioner
NYSDEC
625 Broadway, 14th Floor
Albany, NY 12233-1010

Re: S.A. Dunn Landfill / Permit ID 4-3899-00006/00006

Dear Commissioner Seggos:

As you know, O'Connell and Aronowitz, P.C. represents the Rensselaer Environmental Coalition ("REC"), a grassroots organization working to assist the residents of the City of Rensselaer (the "City") and East Greenbush to obtain a fair, transparent and complete review of the permit renewal applications ("renewal application") for the S.A. Dunn ("Dunn") Construction and Demolition Landfill in Rensselaer, NY ("Dunn Landfill").

REC's May 2, 2022 Letter

On May 2, 2022, REC sent you a letter containing (1) a ten-page analysis that they conducted on the inadequacy of the Dunn's original permit application and review process; (2) a request for a full SEQRA review for the entire renewal permit; and (3) a request for the Department of Environmental Conservation's (DEC) denial of the renewal application. I am writing to you today to bring to your attention additional information that REC has learned about the inadequacy of the original permit review, recommendations REC has for the application review going forward, and to offer comments from REC on the environmental justice process to date.

As a result of records DEC sent in response to a Freedom of Information Law (FOIL) request in which REC requested "details of any in person environmental site assessment conducted by DEC staff at the proposed location of the Dunn Construction and Demolition proposed project site prior to the issuance of the first operating permit

EDWARD J. O'CONNELL
1925-1939
SAMUEL E. ARONOWITZ
1925-1973
LEWIS A. ARONOWITZ
1951-1979

STEPHEN R. COFFEY
THOMAS J. DiNOVO
PAMELA A. NICHOLS
JEFFREY A. SIEGEL
DAVID R. ROSS
KURT E. BRATTEN
MICHAEL P. McDERMOTT
PETER A. PASTORE
KEVIN LAURILLIARD
KELLY J. MIKULLITZ
WILLIAM F. BERGLUND
ROBERT J. KOSHGARIAN
MATTHEW J. DORSEY
FRANCIS J. SMITH, JR.
PAUL C. PASTORE
GRAIG F. ZAPPIA
CHAD A. JEROME

OF COUNSEL
CORNELIUS D. MURRAY
JEFFREY J. SHERRIN
HON. LEONARD A. WEISS
RICHARD S. HARROW
FLORENCE M. RICHARDSON
CRISTINA D. COMMISSO
DANIEL J. TUCZINSKI
KAREN MARTINO VALLE
BRIAN M. CULNAN
ANDREW J. WEISSENBERG

MICHAEL Y. HAWRYLCHAK
SAMANTHA L. FEMIA
MARINA W. CHU
NICHOLAS M. CERVINI
MICHAEL J. LAWSON
COLLEEN R. PIERSON

HOLLY E. VEGAS*
*(DIRECTOR, HEALTHCARE
CONSULTING GROUP)*

*NOT A MEMBER OF THE
LEGAL PRACTICE

in 2012,” it is not readily apparent that such assessments were conducted. We ask that going forward with the renewal application, DEC correct past oversights and take into account the information REC has brought to your attention in the May 2, 2022 letter and this letter.

What the FOIL responses from DEC did reveal, however, is that the permit administrator who reviewed the original permit application possessed detailed knowledge regarding the school’s location to the proposed landfill. Despite that knowledge, DEC accepted the FEIS stating that the school is not proximal to the landfill, and yet inexplicably seemed to have neglected to take it into consideration when deciding whether to grant or deny the original permit.

REC’s May 2, 2022 letter outlines just how little the Dunn Landfill’s proximity to the Rensselaer City Schools was considered during Dunn’s original permit application review process. Your review of the current renewal application requires testing for greenhouse gases and exhaust near the school; however, Dunn should be required to provide an explanation as to why the proximity to an entire school district was minimally discussed in their original application and why their location is reasonably appropriate for a construction and demolition debris landfill. The burden is on them.

Truck Route

As an initial matter, DEC’s March 30, 2022 notice of incomplete application only mentions the downhill descent down Partition Street by the trucks as important to the noise analysis. The ascent up the hill by fully loaded trucks is by far the noisiest part of the trip and must be included.

While noise and diesel exhaust fume testing are major issues that need to be addressed, REC strongly recommends examining the truck route because it is well-documented that the route the trucks take to the Dunn Landfill causes a wide array of problems for both residents and the infrastructure of the City itself. Yet the original application did not adequately address these impacts either. As mentioned previously, the burden is on Dunn. Dunn should be required to offer alternatives to mitigate the current situation.

Testing

As I mentioned in the email I sent to you on August 12, 2022, the Environmental Protection Agency (“EPA”) announced this May that they have added five PFAS to the Regional Screening Level (“RSL”) tables after having reassessed their toxicity. EPA uses these RSLs to determine

whether a removal action is required, or whether further investigation is needed to protect human health and the environment. See <https://semspub.epa.gov/work/HQ/402363.pdf>.

In addition, as you are aware, in June of 2022, EPA issued Interim Health Advisories (HAs) for three PFAS: 4 parts per quadrillion (ppq) for PFOA, 20 ppq for PFOS, and 10 parts per trillion (ppt) for GenX, meaning there is now *virtually no safe level* of PFOA and PFOS. Sampling done at Dunn Landfill was back in May and June of 2021 and the resulting report, dated September 3, 2021, provided, for example, that “the highest concentration of PFAS in surface water was 33 ng/L of perfluorohexanoic acid (PFHxA), one of the five chemicals that was added to the RSL table by the EPA after reexamining its toxicity. Sampling was also conducted in the Fall of 2021 which again detected PFAS, including perfluorohexanoic acid.

The community deserves answers as to whether DEC has looked into this and what it is going to do about it because as previously mentioned, with the new EPA assessments, this landfill has unsafe levels of toxic PFAS that have the potential to cause great harm to the community and to contaminate the Hudson River, which serves as a source of drinking water for many.

Environmental Justice Review

Residents of the City of Rensselaer often do not speak up because they do not believe their voices will be heard. Further, residents may be unable to attend meetings due to disabilities, childcare issues, jobs that require them to work nights, and part of environmental justice is ensuring that adequate recordings of community meetings are posted online. Not only is the recording of the June 14, 2022 community meeting held by Dunn completely inadequate, the zoom portion of the meeting which allowed residents to participate in the meeting virtually was a complete failure. Additionally, we have not yet heard answers to questions asked by community members at this meeting.

I wish to reinforce the requests REC has already made asking that the Dunn Landfill take steps to improve the quality of the posted recording. Once that is complete and the public has a chance to hear that recording, we are advocating a special Zoom meeting so people who were not able to effectively participate in the original zoom program are given a second chance along with others.

The inadequacy of the approval process of the original permit utterly failed the City residents. We urge you to take REC’s analysis and concerns into consideration so that we can move forward in a positive direction that prioritizes the health and safety of the residents.

Very truly yours,

O'CONNELL AND ARONOWITZ, P.C.

By:

A handwritten signature in black ink, appearing to read 'Colleen R. Pierson', written over a light blue horizontal line.

Colleen R. Pierson, Esq.

cc: Kate F. Kornack, Deputy Regional Permit Administrator, NYSDEC (via e-mail)
Anthony Luisi, Regional Director, NYSDEC Region 4 (via e-mail)