



August 13, 2021

VIA ELECTRONIC MAIL
lunsfordj@nyassembly.gov

Ms. Jennifer Lunsford
268 Fairport Village Landing
Fairport, New York 14450

RE: High Acres Landfill

Dear Ms. Lunsford:

You may recall meeting me for breakfast before your last campaign for the State Assembly position to discuss the High Acres Landfill (the “Landfill”). The Fresh Air for the Eastside Group could really use your assistance at this time. As we believe you are aware, the Town of Perinton plans to issue Waste Management another 5-year permit in one week on August 19, 2021, without first conducting a proper environmental review of the impacts of the Landfill over the last five years, and without determining how the Landfill will not cause impacts for the next five years. In addition, despite Supervisor Hanna’s impassioned press conference in April 2021, promising the community a robust Host Community Benefit Agreement with favorable terms for the Community, including a Property Value Protection Plan, no such Agreement has been finalized. Nevertheless, the Town appears intent on approving WM’s request for a permit. If the Town issues this permit, not only will it be in complete violation of its own Town Code and SEQRA, but the Town will also lose its leverage to obtain a positive Host Community Benefit Agreement, and actually help the community that suffers daily from the Landfill.

We are enclosing the two letters we just sent to the NYSDEC and County of Monroe asking for each to step up and request, as involved or interested agencies, a full Environmental Impact Statement (“EIS”) including specific Landfill enhancements and odor mitigation measures. Also enclosed are the letters we sent to the Town’s Boards, objecting to the approval of Waste Management’s request for a Town permit, which also provide a more thorough background of the issues at hand. So far, despite hiring a landfill expert, who has helped identify a major cause as to why the terrible odors continue, our advice and requests to impose stringent conditions on WM is falling on deaf ears.

This is obviously an emergency. The current Town permit expires on August 22, 2021. Therefore, the Town is under the gun to approve the permit at its next Zoning Board of Appeals meeting on August 19.

Please advise if you are willing to help and at a minimum contact both the NYSDEC Commissioner and the County to request that the Town not issue the Permit until a full EIS is prepared with mitigation measures, and until the Host Community Benefit Agreement is fully reviewed by the public and then executed.



Ms. Jennifer Lunsford
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We appreciate any help you or your staff can provide. I am also available to discuss this matter with you any time before August 19th.

Sincerely,

KNAUF SHAW LLP

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

LINDA R. SHAW

Enclosures w/o attachments

2021.8.10 Letter to Monroe County

2021.8.10 Letter to NYSDEC

2021.8.3 Letter to Perinton Conservation Board

2021.7.23 Letter to Perinton Zoning Board of Appeals



August 10, 2021

**VIA HAND DELIVERY &
ELECTRONIC MAIL**

countyexecutive@monroecounty.gov

Mr. Adam J. Bello
Monroe County Executive
39 W. Main Street
Rochester, New York 14614

RE: High Acres Landfill

Dear Mr. Bello:

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 in 2017, yet odors from the Landfill continue at unacceptably high levels.

WM has submitted an application request to the Town of Perinton (the “Town”) for renewal of its five year Special Use Permit for the Landfill (the “Application”). *See* Application attached as **Exhibit A**. The Town appears to be approaching an approval of a new five-year permit, as a SEQRA Type II Action, and has presumably not made a referral to the County Planning Department of this imminent permit approval by treating it as a mere renewal. *See* General Municipal Law (GML) §239-m(3)(b). Furthermore, the County should have been notified as an involved or interested agency because the renewal is a Type I action. A Type I action involves “a project or action that involves the physical alteration of 10 acres[.]” 6 NYCRR § 617.4(b)(6)(i). Coordinated review by all involved agencies is required for a Type I action. *See id.*

WM’s Application also fails to recognize that a GML § 239-m review is required when property subject to an approval is located within 500 feet of county or town border. Wayne County and the Town of Macedon are within 500 feet of the Landfill. Thus, the Application should have been referred to the County Planning Department, which should recommend against granting the Application.

In addition, the Application should not be treated as a renewal because there have been significant landfill design changes, inferior operation and maintenance of closed portions of the Landfill and substantial changes in accepted waste streams, which all represent material changes in operation and performance of the Landfill. Furthermore, a new Host Community Agreement is required. *See* Perinton Zoning Code § 208-21(D)(5). For a permit renewal to be classified as a Type II Action, there must be “no material change in permit conditions or the scope of permitted activities”—which is plainly not the case here. 6 NYCRR § 617.5(c)(32).

We are submitting this letter to you to request that you inform the various Boards of the Town that the final approval of this permit should be postponed until there is a proper referral to the Monroe County Planning Department, pursuant to GML § 239-m, and proper environmental

review under the State Environmental Quality Review Act (“SEQRA”) requiring an Environmental Impact Statement (“EIS”) with time to be fully evaluated by Monroe County (the “County”), New York State Department of Conservation (“NYSDEC”) and the Town.

Specifically, there have been significant landfill design changes when WM inexplicably removed the horizontal collectors, which the company has admitted caused the 2017-2018 “odor event” (which should have been called the “odor disaster”) in Cells 10 and 11, despite the fact that these collectors were deemed the primary odor mitigation measure in the company’s last EIS for the NYSDEC permit.

Moreover, a landfill expert hired by FAFE uncovered the lack of permanent cover on, and failure to monitor, closed portions of the Landfill that have not been landfilled for over twenty (20) years (i.e., the Western Expansion, which was landfilled from 1991 – 2001 has only twelve (12) acres of final cover, the Parkway Expansion I, which was landfilled from 2002 -2003, and has no permanent cover, and Parkway Expansion II, which has very steep side slopes also has no permanent cover). WM’s failure to adequately cover portions of the Landfill that have reached final grade with a composite barrier consisting of a geosynthetic clay layer and a separate geomembrane is a violation of 6 NYCRR § 363-6.16. In addition, the final slopes of a closed portion of the Landfill must not be greater than 33 percent. *See* 6 NYCRR § 363-7.1(a)(1). WM maintains in their own documents they are unable to monitor all the Landfill because the slopes of the closed portions are too “dangerous.” If the slopes are dangerous, they are too steep and must be permanently closed. This inadequate operation is causing ongoing public nuisance conditions that should have been subject to a SEQRA EIS review with the County and other involved agencies.

Further, New York City (“NYC”) garbage began to arrive at the Landfill in sealed railcars five years ago, around the same time the last Town permit was issued, which has caused ongoing public nuisance odors since the time frame that garbage is allowed to “cook” in the railcars is unregulated by either NYSDEC or the Town.

Nothing in WM’s current 2021 Application to the Town of Perinton for a new Solid Waste Landfill Permit explains how ongoing public nuisance conditions will be further mitigated or how another odor disaster will not occur when the current geomembranes covering defective Cells 10 and 11 are planned to be removed in three years during the term of this permit.

These changes are all material changes that require SEQRA review before a new permit can be issued. *See* 6 NYCRR § 617.5(c)(32). The Town appears to be so dependent on the money it receives from WM each year that it is failing in its duties to perform the proper environmental review for the community of what should be considered a new solid waste permit since conditions have changed. An EIS involved agency review is required prior to issuance of another permit.

FAFE is trying to be reasonable, but it may be necessary to seek legal redress against all agencies that have abdicated their legal responsibilities to require the performance of a proper new permit environmental review given the ongoing nuisance conditions due to significant Landfill changes and failure to close portions of the Landfill that have not been landfilled for over 20 years. To avoid such a result, we respectfully request that the County immediately notify the various Town Boards roughly as follows:

The County of Monroe should have been named as an involved agency in the SEQRA review of the pending application by the Town of Perinton for a five-year Town of Perinton Solid Waste Landfill Permit because the Landfill is continuing to cause ongoing public nuisance conditions. These conditions should have been subject to a SEQRA Environmental Impact Statement (EIS) review with the County being an involved agency. WM's late Special Use Permit Renewal Application must be subjected to a General Municipal Law ("GML") § 239-m review required because property subject to an approval is located within 500 feet of the County and Town border. The County was not notified to be an involved agency. See GML § 239-m(3)(b). The County respectfully requests that an involved agency notice be sent to not only to the County but also to the NYSDEC since WM's State Part 360 Permit expires on July 8, 2023, during this proposed five year permit, making NYSDEC an involved agency, and the Perinton Town Board because "a contract with the Town Board," most notably the Host Community Benefit Agreement, is required in order for the Landfill Permit to be granted by the ZBA. See Perinton Zoning Code § 208-21(D)(5). We request that WM be required to prepare an Environmental Impact Statement including new mitigation measures to address ongoing nuisance conditions including permanent closure of the portions of the Landfill no longer being filled within one calendar year pursuant to 6 NYCRR § 363-9.3(a), including the Western Expansion, which was landfilled from 1991 – 2001, and has only twelve (12) acres of final cover, the Parkway Expansion I, which was landfilled from 2002 -2003, and has no permanent cover and Parkway Expansion II, which has very steep side slopes and also has no permanent cover.

We have received assurance from FAFE that it will not commence an Article 78 proceeding and will allow the Landfill to continue to operate under the existing Town Permit without seeking injunctive relief for six more months if the involved agencies require WM to prepare an EIS in the interim, including details on how it plans to permanently close the very large side slopes of the Western Expansion area that has not been landfilled since 2001-2003, how it plans to permanently close Cells 10 and 11 which are no longer being landfilled, and how it will execute a HCBA with terms favorable to the community similar to the Riga HCBA. We believe that this is a favorable resolution of an unfortunate situation that would not have happened had WM provided a proper application and an EIS with sufficient time for review and had the Town made it clear to WM that not only was an EIS required since there were material changes to the design, waste stream and operations at the Landfill but multiple agencies would be involved.

We would very much appreciate a written response to this letter by this Friday August 13, 2021, if this approach is acceptable. Please contact me if you have any questions or would like to discuss the matter further.

Sincerely,
KNAUF SHAW LLP



LINDA R. SHAW

cc: Laura Smith



August 10, 2021

VIA ELECTRONIC MAIL
basile.seggos@exec.ny.gov

Mr. Basil Seggos, Commissioner
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1010

RE: High Acres Landfill

Dear Commissioner Seggos:

We write to you on behalf of our client, 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.

WM has submitted an application to the Town of Perinton (the “Town”) for renewal of its Special Use Permit for the Landfill (the “Application”). See Application attached as **Exhibit A**. The Town appears to be rapidly proceeding to an approval of a new five-year permit, as a SEQRA Type II Action, despite ongoing public nuisance conditions caused by significant landfill design changes, inferior operation and maintenance of closed portions of the landfill, and substantial changes in accepted waste streams. Because of these material changes in operation and performance, and because the State Part 360 permit expires in 2023, the Application should be subject to a supplemental SEQRA Environmental Impact Statement (EIS) review with the NYSDEC being an involved agency. See 6 NYCRR § 617.9(a)(7). We are submitting this letter to you to request that you inform the various Boards of the Town that the final approval of this permit should be postponed until there is a proper preparation and review of an EIS coordinated between Monroe County (the “County”), the New York State Department of Conservation (“NYSDEC”) and the Town.

You should also be aware that WM testified on July 26, 2021, at the Town of Perinton Zoning Board of Appeals hearing in support of their new five-year solid waste permit, that NYSDEC approved the removal of the horizontal collectors, which the company has admitted caused the 2017-2018 “odor event” (which should have been called the “odor disaster”). Our firm has submitted Freedom of Information Law (“FOIL”) requests to the NYSDEC multiple times for this approval and we are submitting another FOIL request in relation to this approval since either NYSDEC did in fact “approve” (which should be in writing) the removal of the horizontal collectors despite the fact that these collectors were deemed the *primary odor mitigation measures* in the company’s last EIS for the NYSDEC permit, or the agency did not in fact approve (at least properly in writing) the removal of these collectors.

Since the horizontal collectors were considered the primary mitigation measure in the company's last EIS to mitigate odors, we have already advised the agency that if an informal non-written verbal approval by one staff person was made, this was a violation of the agency's own regulations since such a significant change to the Landfill's design and odor mitigation measure should have been treated as a major permit modification. Not only was the entire landfill design changed as a result of the removal of this primary portion of the odor collection system in Cells 11 and 12, if it had gone through a proper public permit modification process, the 2017-2018 odor event would likely have never occurred. We are hereby advising the agency that such a grave failure of the required SEQRA review of such an action should not happen again.

Nothing in WM's current Application explains how ongoing public nuisance conditions will be further mitigated, or how another odor disaster will not occur, when the current geomembranes covering defective Cells 10 and 11 are planned to be removed in 3 years, which will be during the term of the applied for permit. The removal of the landfill geomembrane temporarily covering cells 10 and 11 will also be a material change to the Landfill operation.

In addition, as our landfill expert James Daigler advised the Department on a call held on April 26, 2021, WM has failed to adequately cover portions of the Landfill that have reached final grade with a composite barrier consisting of a geosynthetic clay layer and a separate geomembrane as required by 6 NYCRR § 363-6.16. The relevant regulations require that the final slopes of a closed portion of a landfill must not be greater than 33 percent. *See* 6 NYCRR § 363-7.1(a)(1). WM's Jeff Richardson confirmed at the July 26th ZBA Hearing in his own testimony that only 12 acres of the extremely large Western Expansion, which was active from 1991 but where landfilling ceased in 2001, and the Parkway Expansion I, which operated from 2002 -2003, are not covered in a manner consistent with the 6 NYCRR § 363-6.16 regulations. The Town has less stringent cover regulations, but we advised the Town that its Code is illegal since a municipality can impose more stringent regulations on a facility such as a landfill but not less stringent regulations. *See* ECL § 27-0711.

Interestingly, the only provision in the attached Application to the Town that WM offers as a new mitigation measure is place temporary cover on the closed side slopes. This is not good enough. If neither the NYSDEC nor the Town has been able to make this Fortune 100 company comply with the State permanent cover regulations for portions of the Landfill, some of which have ceased landfilling for over 20 years ago, now is the time. Please, at a minimum, explain to the Perinton Boards that the Western Expansion and Parkway Expansion I area must be PERMANENTLY covered pursuant to your own regulations, which must be similarly implemented at a minimum, by the Town.

In addition, Parkway Expansion II, where landfilling started in 2002, and also has extremely high side slopes, should be partially permanently covered up to the point where active landfilling is still occurring.

Finally, the now defective Parkway Expansion III area, including Cells 10 and 11 without the horizontal collectors for over 100 feet of these cells, remains partially closed with only a geomembrane and not a permanent 6 NYCRR § 363-6.16 cover. This "problem area," which was the characterization given to this area by WM's own consultants at the July 26th hearing, cannot be opened again without 100 percent assurance that another massive, multi-month continuous everyday odor event will not occur again, and if it does what the ramifications will be. This

problem area, even with the geomembrane, continues to include breaches in the quarterly scans as does even the one original closed Superfund portion of the Landfill. There is no good reason that NYSDEC allows major breaches to continue every quarter, only to take the entirety of the next quarter to fix the last set of breaches, only to start all over again.

WM must be required to permanently close the areas no longer being landfilled as stated above, to monitor all portions of the Landfill on a continuous basis and make more rapid repairs. If the slopes of the closed portions are too dangerous to monitor because they are too steep already, they must be permanently closed. This inadequate operation is contributing to the ongoing public nuisance conditions that should have been subject to a SEQRA EIS review with the NYSDEC and other involved agencies.

Finally, in late 2016, subsequent to the prior approval of the last Town Special Use Permit, the Landfill's waste stream changed from regional waste to garbage from New York City shipped by rail car. WM admitted at the July 26th hearing that New York City garbage is present in the rail cars for sometimes up to 11 days. When my family inadvertently forgets to bring our own garbage to the curb every week, and we are forced to have a pail full of waste for more than 7 days, the odor is exponentially greater. It does not take an odor expert to know that the long waste sits in a sealer rail car, the worse the odors will be. Resident after resident testified on July 26th that the odors became worse after the NYC garbage began arriving at the Landfill because of the extensive, and unregulated time in transit, which has also substantially contributed to the public nuisance created by the Landfill.

Individually and together, the removal of the Cell 10 and 11 geomembrane, the failure to comply with the cover and grade requirements of the side slopes, the removal of the horizontal collectors from the approved design, changes in the waste stream to New York City garbage, and the ongoing nuisance conditions represent material changes to the Landfill, requiring require a new SEQRA review and the preparation of an EIS. Instead, the Town appears to be of the position that the Application constitutes a mere "renewal", and as such, is a SEQRA Type II action. For a permit renewal to be a Type II action, there must be "no material change in permit conditions or the scope of permitted activities"—which is plainly not the case here. 6 NYCRR § 617.5(c)(32). The Town appears to be so dependent on the money it receives from WM each year that it is failing in its duties to perform the proper environmental review.

FAFE is trying to be reasonable, but it may be necessary to seek legal redress against all agencies that have abdicated their legal responsibilities to require the performance of a proper new environmental and permit review given the ongoing nuisance conditions due to significant Landfill changes and failure to permanently close portions of the Landfill that have not been used for landfilling for over 20 years. To avoid such a result, we respectfully request that the NYSDEC immediately notify the various Town Boards roughly as follows:

NYSDEC should have been named as an involved agency in the SEQRA review of the pending application by the Town of Perinton of a five-year Solid Waste Landfill Permit because the NYSDEC Part 360 permit expires during the term of this local permit and there have been material changes to the scope of permitted activities at the Landfill. The ongoing public nuisance conditions present at the Landfill should have been subject to a SEQRA Environmental Impact Statement (EIS) review with the NYSDEC being an involved agency. Further, the NYSDEC respectfully

requests that an involved agency notice be sent to the Town Board because “a contract with the Town Board,” most notably the Host Community Benefit Agreement, is required for the Landfill Permit to be granted by the Town ZBA. See Perinton Zoning Code § 208-21(D)(5). The Western Expansion (1991-2001), Parkway Expansion I (2002-2003), and portions of Parkway Expansion II no longer being landfilled on the steep side slopes must be permanently closed pursuant to the 6 NYCRR § 363-9.3(a) cover requirements within the next calendar year. In addition, since off-site Landfill odors continue at unacceptably high levels, monitoring of all surface areas must now be continuous and not quarterly. WM must submit a mitigation plan detailing how it will guarantee that the removal of the geomembrane cover over Cells 11 and 12 will not cause the type of odor event that occurred in 2017 and 2018. If WM cannot make such a guarantee, these areas of the Landfill also need to be permanently closed.

We have received assurance from FAFE that it will not commence an Article 78 proceeding, and will allow the Landfill to continue to operate under the existing Town Permit, without seeking injunctive relief for six more months if the involved agencies require WM to prepare an EIS in the interim, including details on how it plans to permanently close the very large side slopes of the Western Expansion and Parkway Expansion I areas that have not been landfilled since 2001 and 2003, how it plans to permanently close Cells 10 and 11 which are no longer being landfilled, and when it will execute a HCBA with terms favorable to the community similar to the Town of Riga HCBA. We believe that this is a favorable offer of resolution to an unfortunate situation that would not have happened had WM provided a proper Application and EIS with sufficient time for review, and had the Town made it clear to WM that not only was an EIS required since there were material changes to the design, waste stream and operations at the Landfill, but that multiple agencies would be involved in its review.

Please provide a written response to this letter by this Friday August 13, 2021 and let us know if this approach is acceptable. Please contact me if you have any questions or would like to discuss this matter further to avoid litigation.

Sincerely,
KNAUF SHAW LLP



LINDA R. SHAW

cc: Thomas Berkman, Esq. - Thomas.berkman@dec.ny.gov
Martin Brand - martin.brand@dec.ny.gov
Tim Walsh - tim.walsh@dec.ny.gov
Greg MacLean - greg.maclean@dec.ny.gov
David Vitale - david.vitale@dec.ny.gov



August 3, 2021

**VIA HAND-DELIVERY
& ELECTRONIC MAIL**
lstid@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

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.

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

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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.



July 23, 2021

VIA HAND-DELIVERY
& ELECTRONIC MAIL
lstd@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.

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

“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.**

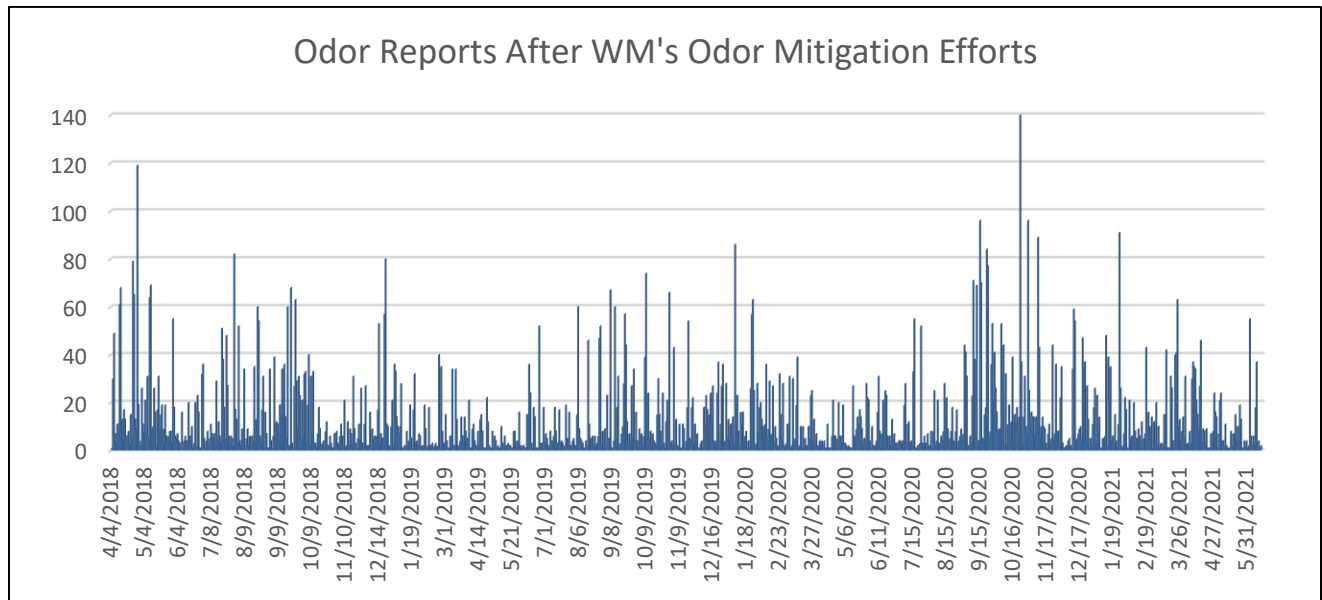
Row Labels	Count of 6/15/2021
2017	945
Qtr4	945
2018	10725
Qtr1	6838
Qtr2	1526
Qtr3	1428
Qtr4	933
2019	2942
Qtr1	514
Qtr2	442
Qtr3	946
Qtr4	1040
2020	4604
Qtr1	1017
Qtr2	568
Qtr3	1446
Qtr4	1573
2021	1778
Qtr1	1086
Qtr2	692
Grand Total	20994

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

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

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:

<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."

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

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.

- 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

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.

- **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/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

- 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

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

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.