

RECOMMENDATION
PERINTON ZBA

TOWN OF PERINTON CONSERVATION BOARD

August 19th, 2021

RECEIVED

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TOWN OF PERINTON

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

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

The PCB has reviewed the following information:

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

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

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

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

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

(2) Town Code Review Findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 NYCRR Part 360 –Solid Waste Management Facilities (NYSDEC)

6 NYCRR Part 200 –Prevention and Control of Air Contamination and Air Pollution (NYSDEC)

6 NYCRR Part 612, 613, 614 –Petroleum Storage and Handling (NYSDEC)

40 CFR Part 61 –National Emissions Standards for Hazardous Air Pollutants (NYSDEC)

Town of Perinton Special Use Permit

Town of Macedon Special Use Permit

State Pollutant Discharge Elimination System Permit (SPDES) (NYSDEC)

Sewer Use Permit (Monroe County Department of Environmental Services –Division of Pure Waters)

Air Permits 6 NYCRR Part 201 and USEPA Title V

Freshwater Wetlands Permit and 401 Water Quality Certification (NYSDEC)

Section 404 Wetland Permit (U.S. Army Corps of Engineers)

NYSDEC daily inspection report submitted to the Town

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

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

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

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

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

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

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

(4) Recommendation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For the Perinton Conservation Board,

A handwritten signature in black ink that reads "Ken Rainis" followed by a stylized flourish or symbol.

Kenneth G. Rainis
Chairman