

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

In the Matter of the Application of

SIERRA CLUB, CONCERNED CITIZENS OF ALLEGANY
COUNTY, INC., PEOPLE FOR A HEALTHY
ENVIRONMENT, INC., JOHN CULVER, AND BRIAN AND
MARYALICE LITTLE,

ORAL ARGUMENT
REQUESTED

Petitioners,

VERIFIED PETITION

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

Index No.

—against—

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, BASIL SEGGOS, COMMISSIONER,
TOWN OF CAMPBELL, AND HAKES C&D DISPOSAL INC.,

Respondents.

Petitioners Sierra Club, Concerned Citizens of Allegany County, People for a Healthy Environment, Inc., John Culver, and Brian and Maryalice Little (collectively “Petitioners”), for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules, by their undersigned attorneys, allege as follows.

I. PRELIMINARY STATEMENT

1. This proceeding challenges the actions of Respondent New York State Department of Environmental Conservation (“Respondent DEC”) in issuing a Final Supplemental Environmental Impact Statement on December 5, 2018 (the “FSEIS”) for a proposed landfill expansion project by Respondent Hakes C&D Disposal Inc. (“Respondent HCDD”) and the actions of Respondent Town of Campbell (“Respondent Town”) in issuing two findings statements on a proposed zoning law amendment, one by the Town Planning Board on January 16, 2019 and one by the Town Board on March 11, 2019 (the “Findings Statements”),

and in approving a zoning law amendment for the benefit of HCDD in reliance on the FSEIS and the Findings Statements on March 11, 2019 (the “Zoning Change”).

2. The FSEIS, the Findings Statements and the Zoning Change are legally deficient because they fail to comply with the requirements of the State Environmental Quality Review Act, ECL Article 8 (“SEQRA”) and the SEQRA regulations, 6 NYCRR Part 617.

3. Petitioners seek a judgment and order and injunctive relief pursuant to Sections 7803(3), 7806, 3001 and 6301-6303 of the Civil Practice Law and Rules (“CPLR”) and Section 267-c of the Town Law vacating and annulling the FSEIS, the Findings Statements and the Zoning Change on the ground that they were issued in violation of lawful procedures, were affected by errors of law, were arbitrary and capricious, and their issuance constituted an abuse of discretion; and enjoining Respondent DEC from approving any future applications by Respondent HCDD relating to its proposed expansion of the Hakes landfill until Respondents have complied with all applicable federal and state laws.

II. PARTIES

1. Petitioner Sierra Club is a national grassroots conservation organization. It is a not-for-profit corporation organized under the laws of the State of California. Sierra Club is the oldest and largest grassroots environmental organization in the country. It was founded in 1892. Its purposes include practicing and promoting the responsible use of earth’s ecosystems and resources, and protecting and restoring the quality of the natural and human environment. The protection of air, soil and water resources is a key aspect of Sierra Club’s work. Sierra Club has more than 803,000 members nationwide, including approximately 54,000 members in New York State, many of whom live in the vicinity of the Hakes C&D Landfill (“Hakes Landfill”) or downriver from the Village of Bath Wastewater Treatment Plant (“Bath WWTP”), which takes

the discharges from the leachate pre-treatment plant at the Steuben County landfill where all of the leachate from the Hakes landfill is sent. The Bath WWTP discharges into the Cohocton River, which is part of the Chesapeake Bay watershed. The interests of the Club and its members are injured by allowing the proposed expansion of the operations of the Hakes Landfill which will increase the volumes of radioactive leachate entering the Bath WWTP and being discharged into the Cohocton River, increase the volumes of radon and other harmful substances being emitted into the atmosphere at the landfill and increase the adverse health impacts of the landfill. Sierra Club and its members participated at every stage in the DEC and Town proceedings related to the FSEIS and the Zoning Change.

4. Petitioner Concerned Citizens of Allegany County, Inc. ("CCAC") is a New York State not-for-profit corporation formed in 1996. Its purposes include providing educational support to citizens of Allegany County and the Southern Tier region working to examine and mitigate environmental impacts. The protection of soil, air and water resources from radiological contamination is a key aspect of CCAC's work. CCAC formed in connection with the efforts to stop a proposed low-level radioactive waste disposal site in Allegany County in the late 1980's, as described in the documentary film, "My Name is Allegany County." More recently, CCAC has worked on radioactivity and other issues involved in the disposal of shale gas drilling wastes in the Hyland landfill in the Town of Anjelica. The Hyland Landfill is one of only three landfills in New York still accepting shale gas drilling wastes from Pennsylvania. CCAC has approximately 20 active members most of whom live in Allegany County. Some of CCAC's members live near the Hyland Landfill or near the Village of Wellsville Waste Water Treatment Plant which accepts leachate from the Hyland Landfill and discharges into the Genesee River. CCAC and its members participated in every stage of the DEC and Town

proceedings related to the FSEIS. CCAC joined with the other organizational petitioners in submitting comments on the draft scope, the DSEIS and the FSEIS to Respondent DEC and in submitting comments on the FSEIS to Respondent Town. CCAC and its members also submitted individual comments on the draft scope, the DSEIS and the Zoning Change.

5. Petitioner People for a Healthy Environment, Inc. ("PHE") is a New York State not-for-profit corporation formed in 2009. The members of PHE organized to advocate for the strengthening and effective enforcement of environmental and land use laws and regulations, and to assist communities, groups and individuals whose land, air, water, health, and quality of life may be subject to degradation by resource extraction activities. PHE's first project was to bring a lawsuit challenging the siting of a regional gas field services facility for Schlumberger, Inc. over the primary aquifer in the Village of Horseheads. PHE was a co-petitioner with Sierra Club in the litigation challenging the failure of the Village of Painted Post to do an environmental impact review of its decision to sell water from its municipal water system to a subsidiary of Shell Oil for hydrofracking in Pennsylvania. PHE has worked extensively on the radioactivity issues presented by the acceptance of shale gas drilling wastes at the Chemung County Landfill. Aquifer protection is a key focus of PHE activities. The Chemung County Landfill is one of only three landfills in New York still accepting shale gas drilling wastes from Pennsylvania. The membership of PHE is centered in the Chemung River valley, and the drinking water of the Chemung River valley may be adversely affected by the actions complained of in this Petition. The interests of PHE and its members are injured by allowing the proposed expansion of the operations of the Hakes Landfill which will increase the volumes of radioactive leachate entering the Bath WWTP and being discharged into the Cohocton River, which is upstream of Corning and Elmira, and a source of drinking water for both cities. The interests of PHE and its

members are also injured by the expansion of operations at the Hakes Landfill emitting increased amounts of radon and other harmful emissions into the atmosphere of this region and increasing the adverse health impacts of the landfill. PHE joined with the other organizational petitioners in submitting comments on the draft scope, the DSEIS and the FSEIS to Respondent DEC and in submitting comments on the FSEIS to Respondent Town. PHE members also submitted individual comments on the draft scope, the DSEIS and the Zoning Change.

6. Petitioner John Culver resides at 9938 Woodcock Road in the Town of Campbell, New York. His home is on one of two adjoining properties in which he has an ownership interest. These properties, totaling 72 acres, border two sides of the site of the proposed expansion of the Hakes Landfill. The DSEIS says that the proposed new landfill disposal cells can be built as close as 50 feet from the adjoining property lines. Mr. Culver is one of the closest neighbors to the landfill on the northern side of the landfill. There are ongoing boundary disputes between Hakes and Mr. Culver. Mr. Culver regularly experiences horrible smells coming from the landfill that make him sick to his stomach. Because of the hazardous traffic conditions created by numerous large tractor-trailer trucks bringing waste to the landfill on the steep winding curves of Manning Ridge Road, he no longer travels that road even though it is the shortest route to major highways. Mr. Culver participated in the DEC and Town proceedings related to the draft scope, the DSEIS, the FSEIS and the Zoning Change. Mr. Culver made comments to DEC on HCDD's proposed expansion project regarding drainage pipes and previous tree-cutting that are discussed on pages 35-36 of the Final Scope.

7. Petitioners Brian and Maryalice Little reside at 9949 Woodcock Road in the Town of Campbell, New York. They are members of the Sierra Club. Their home is on one of two adjoining properties totaling 40 acres they own on Woodcock Road. The southern border of

their properties is approximately 1,500 feet north of the northern boundary of the Hakes Landfill property. They are among the closest neighbors to the landfill on the north. The northern section of the Hakes Landfill property, which is currently undeveloped, is the section proposed for expansion of the landfill. The Littles experience disturbing noises and noxious air emissions from the landfill on their property on a regular basis. Because of the hazardous traffic conditions created by numerous large tractor-trailer trucks bringing waste to the landfill on the steep winding curves of Manning Ridge Road, they no longer travel that road even though it is the shortest route to major highways. The Littles participated at every stage in the DEC and Town proceedings related to the FSEIS and the Zoning Change.

8. Respondent New York State Department of Environmental Conservation (“Respondent DEC”) is the administrative agency of the State of New York performing some of the actions at issue in this case. Respondent DEC assumed the role of lead agency for the EIS process on the Hakes landfill expansion project. Respondent DEC is the governmental body responsible for environmental protection in the state of New York and for the protection of New York’s natural resources. Respondent DEC administers New York’s C&D landfill permitting program. Basil Seggos is the Commissioner of DEC.

9. Respondent Town of Campbell (“Respondent Town”) is an incorporated town located in Steuben County, New York. Respondent Town has the responsibility to assure that all actions taken by the Town are taken in accordance with the laws of the State of New York and the United States, including the New York State Constitution, the New York State General Municipal Law and the New York State Environmental Conservation Law.

10. Respondent Hakes C&D Disposal Inc. (“Respondent HCDD”) is a New York business corporation with its principal executive office at Casella Waste Systems Inc., 25 Greens

Hill Lane, Rutland, Vermont. HCDD operates the Hakes Landfill located at 4376 Manning Ridge Road, Painted Post, New York in the Town of Campbell. HCDD is a wholly-owned subsidiary of Casella Waste Systems.

III. FACTUAL BACKGROUND

11. On December 5, 2018, Respondent DEC issued the FSEIS. Respondent DEC has not yet issued its SEQRA findings. The cover letter Respondent DEC sent to Respondent HCDD stated that Respondent DEC “intends to issue SEQR[A] findings and any eventual decisions on submitted permit applications concurrently. The Department has not received any applications for DEC permits related to this proposal.”

12. Notwithstanding Respondent DEC’s statement on December 5, 2018 that it had not received any applications for DEC permits related to HCDD’s landfill expansion proposal, public notice that a supplemental EIS process would be followed on a proposed HCDD landfill expansion project was given on April 4, 2017, when Respondent DEC published notice in its Environmental Notice Bulletin (the “ENB Notice”) that, as lead agency, it had “determined that the proposed Hakes Construction and Demolition (C&D) Landfill Expansion may have a significant adverse impact on the environment and a Draft Environmental Impact Statement must be prepared.” The notice announced that a draft scope for the project had been prepared and stated that written comments on the draft scope would be accepted until May 5, 2017.

13. Because of widespread concerns that the shale gas drilling wastes accepted by the Hakes landfill contain radioactive components, Petitioners Sierra Club, CCAC, PHE and many others submitted comments on the draft scope objecting to the failure of the draft scope to include radioactivity issues in the outline for the DSEIS for the HCDD expansion proposal.

14. Petitioners asserted that the records of the Pennsylvania Department of Environmental Protection (“PADEP”) showed that the Hakes landfill had accepted the second highest levels of shale gas drilling waste from Pennsylvania of any landfill in New York.

15. Petitioners’ comments on the draft scope pointed out the high levels of radioactive isotopes reported in the landfill’s 2013 leachate testing results, expressed concern that the landfill’s drive-through entrance monitors were not detecting radium and radon in wastes entering the landfill, and pointed out that without consideration of these issues the potential risks posed to health and the environment by the expansion project would not be correctly evaluated.

16. On August 2, 2017, Respondent DEC released the final scope. The final scope stated that the majority of the comments on the draft scope addressed issues with radioactivity in the drilling wastes being accepted at the landfill. Nevertheless, the final scope rejected these comments and determined that the DSEIS would not address radioactivity issues.

17. Following receipt of the Final Scope, Petitioners filed Freedom of Information Law requests for the Hakes landfill leachate radionuclide analytical reports and engaged experts to review the reports obtained.

18. Based upon the evaluations of its experts, Petitioners filed an Article 78 proceeding on November 30, 2017 in Steuben County Supreme Court challenging Respondent DEC’s failure to include radioactivity issues in the Final Scope.

19. Petitioners’ experts, Dr. David Carpenter, Dr. Raymond Vaughan, and Mr. Dustin May, detailed their evaluations of Hakes landfill leachate radionuclide test reports, the type of radiation detection alarm used at the Hakes landfill and the environmental and health risks presented by those evaluations in three affidavits Petitioners filed in the Article 78 proceeding on January 19, 2018.

20. Meanwhile, on January 10, 2018, DEC published notice in the ENB that it had accepted a DSEIS of the Hakes landfill expansion project for public review and had scheduled a legislative public hearing on the DSEIS on February 13, 2018 in Campbell.

21. When Petitioners studied the DSEIS and saw that radioactivity issues were included, even though not adequately addressed, Petitioners withdrew their Article 78 proceeding challenging the Final Scope.

22. On March 19, 2018, Petitioners Sierra Club, CCAC and PHE submitted a comment letter on the DSEIS outlining the failures in the DSEIS to adequately evaluate radioactivity issues. Petitioners Sierra Club, CCAC and PHE asserted that: (1) the DSEIS failed to evaluate the high levels of radioactivity shown in the landfill's leachate test results, (2) the DSEIS fails to evaluate the adequacy of the landfill's entrance monitors, (3) the DSEIS fails to evaluate the presence of radon gas in the landfill's air emissions, gas collection system emissions, and emissions from flaring, (4) the DSEIS fails to evaluate the possible presence of radium, radon and their breakdown products in the landfill's stormwater discharges, groundwater suppression system discharges or liner leakage discharges, (5) the DSEIS fails to evaluate the adequacy of the landfill's liner system and groundwater suppression system to protect against the radium, radon and their breakdown products present in the landfill from entering groundwater and surface water supplies adjoining the landfill, (6) the DSEIS fails to evaluate the risk that opening up the landfill to tie-in the proposed expansion will create new pathways for radon and radium in the landfill to be released to the environment, (7) the DSEIS fails to evaluate the risk that the fires that have been occurring at the landfill have damaged the landfill's liner system, gas collection system or leachate collection system and have created or will create new pathways for radon and radium in the landfill to be released to the environment, and (8) the DSEIS fails to

evaluate the health impacts of the landfill expansion project. Petitioners submitted the affidavits of Dr. Carpenter, Dr. Vaughan and Mr. May as exhibits to the comment letter on the DSEIS, together with an additional presentation prepared by Dr. Vaughan. These affidavits provided scientific evidence, including evidence from the landfill's own leachate test results, that high levels of radium and radon are present in the landfill and present risks that need to be mitigated.

23. The FSEIS released on December 5, 2018 dismissed the significance of Petitioners' evidence of high levels of radium and radon in the landfill on grounds that do not hold up to scrutiny. The FSEIS did not mitigate any of the risks identified by Petitioners.

24. Appendix 5 to the FSEIS contained Respondent Town's response to comments. Attached as an exhibit to the Town response was a May 2018 report by CoPhysics Corporation provided to the Town by Casella Waste Management (the "CoPhysics Report").

25. On January 14, 2019, Petitioner Sierra Club filed a letter with Respondent Town Planning Board asking them to delay consideration of Respondent HCDD's zoning application until Sierra Club could have their expert Dr. Vaughan respond to the CoPhysics Report.

26. On January 16, 2019, Respondent Town Planning Board issued a findings statement and adopted a resolution recommending that the Town Board approve an amendment to the Town Zoning Law to establish a Non-Residential Planned Development District ("NRPDD") as described in HCDD's application for rezoning of the landfill as NRPDD.

27. On February 21, 2019, Petitioners Sierra Club, CCAC and PHE filed a letter with Respondent Town Board enclosing Dr. Vaughan's memorandum discussing the reasons why the FSEIS and the CoPhysics Report do not rebut the evidence presented by Petitioners and their experts.

28. On February 26, 2019, Respondent Town Board held a public hearing on the proposed amendment to the Town Zoning Law. A number of Petitioners' members spoke at that hearing.

29. On March 6, 2019, Petitioner Sierra Club filed a letter with Respondent Town Board enclosing a memorandum by Dr. Vaughan describing relatively simple radon testing that could be conducted of the Hakes landfill gas (LFG) system and the protocols that need to be followed in continuing to test the Hakes landfill leachate for Lead-214 and Bismuth-214.

30. On March 11, 2019, Respondent Town Board issued a findings statement and approved an amendment to the Town Zoning Law establishing a NRPDD.

IV. FIRST CAUSE OF ACTION:
RESPONDENT DEC VIOLATED SEQRA IN ISSUING AN FSEIS THAT FAILED TO
TAKE A HARD LOOK AT SCIENTIFIC EVIDENCE OF HIGH LEVELS OF RADIUM
AND RADON IN THE LANDFILL

31. Petitioners repeat and reallege the allegations in paragraphs 1 through 30 as though fully set forth herein.

32. Respondent DEC violated its responsibilities as "lead agency" under SEQRA in issuing an FSEIS without taking a hard look at the scientific evidence Petitioners presented of high levels of radon and radium in the landfill or providing a reasoned elaboration as to why allowing the landfill to expand its operations despite having high levels of radium and radon in the landfill will not have an adverse effect on the environment and the health and safety of the people, animals and plants living near the landfill.

33. As Petitioners' experts Dr. Vaughan and Dr. May show in their affidavits and memoranda submitted as exhibits to Petitioners' comments on the DSEIS, the landfill's own leachate test results provide scientific evidence of high levels of radon and radium in the landfill.

34. The key evidence is the intermittently high levels of two radionuclides, Lead-214 and Bismuth-214 in the landfill's leachate test results.

35. Lead-214 and Bismuth-214 are produced by the radioactive decay of Radon-222, which in turn is produced by the radioactive decay of Radium-226.

36. From the evidence of intermittently high levels of Lead-214 and Bismuth-214, Petitioners' experts demonstrated using accepted scientific principles that there must be high levels of radium and radon in the landfill.

37. Even though Respondent HCDD did not test the Hakes landfill leachate samples for Radon-222, the scientific principle of secular equilibrium demonstrates that Radon-222 is present in a sample at approximately the same levels as Lead-214 and Bismuth-214 if the sample is more than five hours old. The Hakes landfill test samples were held for 21 days. The highest levels of Lead-214 and Bismuth-214 in the samples at the time of testing were about 6,000 pCi/liter, so 6,000 pCi/liter of Radon-222 would also have been present in the sample at the time of testing because of secular equilibrium.

38. Utilizing the scientific principles of radioactive decay and secular equilibrium, Petitioners' experts demonstrate that in order to have 6,000 pCi/liter of Radon-222 present in a 21-day-old leachate sample that contains extremely low levels of Radium-226—as is the case with the Hakes' samples—the amount of Radon-222 that would have had to have been present in the sample at the time of collection would have to have been about 270,000 pCi/liter.

39. In order to have 270,000 pCi/liter of Radon-222 dissolved in the landfill leachate, the well-established water-air partition coefficient for radon shows that 1.05 million pCi/liter of Radon-222 would have been present in the overlying air inside the landfill under equilibrium conditions. Thus, Petitioners' experts show that the evidence points to more than 1.05 million

pCi/liter of Radon-222 in the air of the landfill at the time of sample collection. For comparison purposes, EPA recommends that action be taken at a level of 4 pCi/liter to reduce exposure to radon gas.

40. Petitioners' experts point out that the source of the Radon-222 in the landfill leachate is Radium-226. This is a consequence of the constant disintegration of the Radium-226 into Radon-222. Although Radium-226 does not show at high levels in the leachate test results, this does not mean that Radium-226 is not present in the landfill. It is likely to mean that the Radium-226 in the landfill is in a high and dry location where it is not directly entering the leachate, but where it is disintegrating into Radon-222. Because Radon-222 is a heavy gas, it can migrate down through the small air spaces in the landfill and into the leachate, thereby becoming dissolved in the leachate. In addition to dissolving in the landfill leachate, it is likely that Radon-222 gas is circulating through the landfill gas collection system and exiting the landfill.

41. Respondent DEC refused to take account of Petitioners' scientific evidence of radium and radon in the landfill in its response to public comments in the FSEIS.

42. Respondent DEC did not conduct tests for Radon-222 in the landfill's gas collection system and leachate samples or consider the ways in which the testing methodologies used by the labs testing Hakes leachate for radionuclides may have failed to detect radium or allowed radon to escape from the samples.

43. For these reasons, Respondent DEC's action in issuing the FSEIS without taking a hard look at the scientific evidence presented by Petitioners of high levels of radium and radon in the Hakes landfill or providing a reasoned elaboration as to why allowing the landfill to expand its operations despite having high levels of radium and radon in the landfill will not have

an adverse effect on the environment and the health and safety of the people, animals and plants living near the landfill was a violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

V. SECOND CAUSE OF ACTION:
RESPONDENT DEC VIOLATED SEQRA IN ISSUING AN FSEIS WITHOUT TAKING
A HARD LOOK AT SCIENTIFIC EVIDENCE THAT THE LANDFILL'S ENTRANCE
MONITORS ARE INEFFECTIVE

44. Petitioners repeat and reallege the allegations in paragraphs 1 through 43 as though fully set forth herein.

45. Respondent DEC violated its responsibilities as “lead agency” under SEQRA in issuing an FSEIS without taking a hard look at the scientific evidence presented by Petitioners that the landfill’s radiation entrance monitors are ineffective or providing a reasoned elaboration for why allowing the landfill to expand its operations despite having ineffective entrance monitors will not have an adverse effect on the environment and the health and safety of the people, animals and plants living near the landfill.

46. The ineffectiveness of the landfill’s entrance monitors in detecting radium and radon in wastes entering the landfill is shown by the landfill’s leachate radionuclide test results which demonstrate that there are significant levels of radium and radon in the landfill.

47. In addition, Petitioners’ experts presented scientific evidence that the detectors can be manipulated by off-gassing radon from loads containing radium and radon before the loads pass through the detectors.

48. For these reasons, Respondent DEC’s action in issuing the FSEIS without taking a hard look at the scientific evidence presented by Petitioners that the landfill’s radiation entrance monitors are ineffective or providing a reasoned elaboration for why allowing the landfill to expand its operations despite having ineffective monitors will not have an adverse

effect on the environment and the health and safety of the people, animals and plants living near the landfill was a violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

VI. THIRD CAUSE OF ACTION:
RESPONDENT DEC VIOLATED SEQRA IN ISSUING AN FSEIS THAT FAILED TO
MITIGATE THE RISKS OF RADIOACTIVITY IN THE LANDFILL

49. Petitioners repeat and reallege the allegations in paragraphs 1 through 48 as though fully set forth herein.

50. Respondent DEC violated its responsibilities as "lead agency" under SEQRA in issuing an FSEIS that failed to mitigate the effects of high levels of radium and radon in the landfill, and failed to mitigate or the ineffectiveness of the landfill's entrance monitors in detecting radium and radon in wastes entering the landfill as required by ECL 8-0109(2)(f).

51. Petitioners identified a number of risks from having high levels of radium and radon in the landfill in their March 19, 2018, comment letter on the DSEIS. Respondent DEC issued the FSEIS without mitigating any of these risks.

52. For these reasons, Respondent DEC's action in issuing the FSEIS without mitigating the risks identified by Petitioners was a violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

VII. FOURTH CAUSE OF ACTION:
RESPONDENT TOWN VIOLATED SEQRA IN ISSUING TWO FINDINGS
STATEMENTS THAT FAILED TO TAKE A HARD LOOK AT SCIENTIFIC
EVIDENCE OF HIGH LEVELS OF RADIUM AND RADON IN THE LANDFILL

53. Petitioners repeat and reallege the allegations in paragraphs 1 through 52 as though fully set forth herein.

54. Respondent Town violated its responsibilities as an “involved agency” under SEQRA and the SEQRA regulations in issuing findings statements and certifying that the requirements of ECL 8-0109 (8) and 6 NYCRR Part 617 had been met for the Hakes landfill expansion project without taking a hard look at the scientific evidence presented by Petitioners that high levels radium and radon are present in the landfill or providing a reasoned elaboration for why allowing the landfill to expand its operations despite having high levels of radium and radon in the landfill will not have an adverse effect on the environment and the health and safety of the people, animals and plants living near the landfill.

55. For this reason, Respondent Town’s findings statements were made in violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

**VIII. FIFTH CAUSE OF ACTION:
RESPONDENT TOWN VIOLATED SEQRA IN ISSUING TWO FINDINGS
STATEMENTS WITHOUT TAKING A HARD LOOK AT SCIENTIFIC EVIDENCE
THAT THE LANDFILL’S ENTRANCE MONITORS ARE INEFFECTIVE**

56. Petitioners repeat and reallege the allegations in paragraphs 1 through 54 as though fully set forth herein.

57. Respondent Town violated its responsibilities as an “involved agency” under SEQRA and the SEQRA regulations in issuing findings statements and certifying that the requirements of ECL 8-0109 (8) and 6 NYCRR Part 617 had been met for the Hakes landfill expansion project without taking a hard look at the scientific evidence presented by Petitioners that the landfill’s entrance monitors are ineffective or providing a reasoned elaboration for why allowing the landfill to expand its operations despite having ineffective entrance monitors will not have an adverse effect on the environment and the health and safety of the people, animals and plants living near the landfill.

58. For this reason, Respondent Town's findings statements were made in violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

IX. SIXTH CAUSE OF ACTION
RESPONDENT TOWN VIOLATED SEQRA IN ISSUING TWO FINDINGS
STATEMENTS THAT FAILED TO MITIGATE THE RISKS OF RADIOACTIVITY IN
THE LANDFILL

59. Petitioners repeat and reallege the allegations in paragraphs 1 through 58 as though fully set forth herein.

60. Respondent Town violated its responsibilities as an "involved agency" under SEQRA and the SEQRA regulations in issuing findings statements and certifying that the requirements of ECL 8-0109 (8) and 6 NYCRR Part 617 had been met for the Hakes landfill expansion project without mitigating the effects of high levels of radium and radon in the landfill, the effects of radon generated by such radium, or the ineffectiveness of the landfill's entrance monitors in detecting radium and radon in wastes entering the landfill.

61. Petitioners identified a number of risks from having high levels of radium and radon in the landfill in their March 19, 2018, comment letter on the DSEIS. Respondent Town certified the expansion project without mitigating any of these risks.

62. For this reason, Respondent Town's findings statements were made in violation of lawful procedures, affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion.

X. RELIEF REQUESTED

WHEREFORE, Petitioners respectfully request that this Court enter judgment against Respondent DEC and Respondent Town as follows:

- A. Annulling the FSEIS issued by Respondent DEC on December 5, 2018, on the basis that it was issued in violation of lawful procedures, was affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion;
- B. Annulling the Findings Statements issued by Respondent Town on January 16, 2019, and on March 11, 2019, on the basis that they were issued in violation of lawful procedures, was affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion;
- C. Annulling the Zoning Change made by Respondent Town on March 11, 2019, on the basis that it was issued in violation of lawful procedures, was affected by errors of fact and law, arbitrary and capricious, and an abuse of discretion;
- D. Enjoining Respondent DEC from approving any future applications by Respondent HCDD relating to its proposed expansion of the Hakes landfill until Respondents have complied with all applicable federal and state laws;
- E. Granting Petitioners the costs and disbursements of this action; and
- F. Granting such other and further relief as the Court deems just and proper.

DATED: Hammondsport, New York
April 9, 2019

Respectfully submitted,

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