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January 7, 2022

VIA EMAIL

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**Re: Comments on the Proposed Renewal and Modification of the
Lockwood Ash Disposal Landfill SPDES Permit, ID: NY-0107069
Application ID: 8-5736-00005/00001**

Dear Ms. Merchant:

On behalf of our members, the Sierra Club Atlantic Chapter, Seneca Lake Guardian, the Committee to Preserve the Finger Lakes, Cayuga Lake Environmental Action Now (CLEAN), South Shore Audubon, Stop the Algonquin Pipeline Expansion, Grassroots Environmental Education, NYPAN Environmental Committee, People for a Healthy Environment, Inc. and Fossil Free Tompkins respectfully submit the following comments objecting to the proposed renewal and modification of the SPDES permit for the Lockwood Ash Disposal Landfill (“Lockwood”) without the preparation of a full environmental impact statement evaluating the

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environmental impacts of the repurposing of the Greenidge Generating Station (“Greenidge”) and its associated landfill as a bitcoin mining operation.

The Lockwood Ash Disposal Landfill is owned by Lockwood Hills LLC. The landfill is adjacent to Greenidge Generating Station and takes the waste from the Generating Station. Both Lockwood Hills, LLC and the owner of Greenidge Generating Station, Greenidge Generation LLC, are wholly owned subsidiaries of Greenidge Generation Holdings Inc., which recently listed its shares on NASDAQ.¹

Notice of the proposed modification and renewal of the Lockwood SPDES permit was given by the New York State Department of Environmental Conservation (DEC) in its Environmental Notice Bulletin on December 8, 2021.²

We request a legislative hearing on the proposed Lockwood SPDES permit because there is a significant degree of public interest in this permitting process and how it relates to other ongoing permitting and regulatory processes at Lockwood Ash Disposal Landfill and Greenidge Generating Station. A number of substantive and significant adverse environmental impacts are identified in this letter and in our comment letter on the proposed Greenidge air permits dated November 19, 2021.³ (A copy of our November 19 letter is attached as Exhibit A.) A public hearing will aid DEC’s decision-making processes by providing a forum for the collection of public comment.

The overall project of which the renewal of the Lockwood SPDES permit is a part is the repurposing of Greenidge Station for bitcoin mining operations. DEC has treated this project as a matter for bilateral negotiations between DEC and Greenidge Generation Holdings Inc. DEC’s efforts to exclude the public from participation in the negotiations surrounding the repurposing project are contrary to the requirements of SEQRA which mandates public involvement in processes of giving regulatory approval to actions that may have an impact on the environment. DEC seeks to exclude the Greenidge repurposing project from SEQRA review by treating each of the required permits for the project as a separate process and then characterizing these individual permitting processes as exempt from review under SEQRA. This use of segmentation on a grand scale is completely contrary to the requirements of SEQRA.

¹ Greenidge Generation Holdings Inc., Sec. & Exch. Comm’n, Form S-1 Registration Statement (September 20, 2021), <https://ir.greenidge.com/static-files/e212c3fc-c311-4437-8fd9-4de0f763d708> .

² https://www.dec.ny.gov/enb/20211208_reg8.html#857360000500001

³ Comments from Seneca Lake Guardian, The Committee to Preserve the Finger Lakes, Fossil Free Tompkins, Sierra Club, and Earthjustice in Opposition to the Draft Title V Air Permit for Greenidge Generating Station, November 19, 2021,

<https://treichlerlawoffice.com/water/greenidge/SC%20EJ%20Greenidge%20T5%20comments.pdf> .

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POINTS

**I. Modification of the Lockwood SPDES Permit Is a Component of
Repurposing Greenidge Generating Station for Bitcoin Mining**

**A. Repurposing Greenidge Generating Station for Bitcoin Mining is a Type I Action
under SEQRA**

For the reasons set forth in our November 19 letter,⁴ repurposing Greenidge Generating Station for bitcoin mining qualifies as a Type I Action under SEQRA.

**B. Operations at Lockwood Landfill are Directly Associated with Operations at
Greenidge Generating Station**

Operations at Lockwood Landfill are directly associated with operations at Greenidge Generating Station. Since the landfill was opened in 1979, the landfill has taken wastes from Greenidge, which is located across NYS Route 14 from the landfill.

The direct association between Lockwood and Greenidge was most recently acknowledged in the SPDES Permit Fact Sheet prepared for Lockwood on November 12, 2021.⁵ The fact sheet relies upon that direct association to exempt the landfill from EPA Effluent Limitation Guideline (ELG) calculations. The Fact Sheet states, “The Lockwood Ash facility was determined to be exempt from ELG requirements for landfill point source category due to applicability of 40 CFR Part 445.1(f).”⁶ 40 CFR 445.1(f) provides that “This part does not apply to discharges of landfill wastewater from landfills operated in conjunction with other industrial or commercial operations **when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill** and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation.[emphasis added.]” Thus the Fact Sheet indicates that Lockwood is currently receiving wastes generated by Greenidge.

This is in accordance with Greenidge’s historic use of Lockwood as a waste depository. The lay-up plan for the landfill prepared by Daigler Engineering and submitted to DEC in May 2011 describes the landfill as being in “support of the power plant operation” and an “integral element of power station operations.”⁷ The layup plan was prepared for Lockwood after Greenidge was retired in March 2011. The plan states:

⁴ Copy attached as Exhibit A.

⁵ See https://treichlerlawoffice.com/water/greenidge/lockwood/lockwood.ash.NY0107069_Factsheet.pdf .

⁶ Id., p. 21.

⁷ See <https://treichlerlawoffice.com/water/greenidge/lockwood/2011lockwoodlayupplan.pdf> , p. 110.

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AES Greenidge, L.L.C. (AES) owns a coal fired electrical generating plant on the west shore of Seneca Lake near the Village of Dresden in the Town of Torrey, Yates County, New York. In support of the power plant operation, AES also owns the Lockwood Ash Disposal Site located on Swarthout Road, across NYS Route 14 from the power plant. . . .

The Greenidge Power Generating Station is in the process of entering a protective layup status. . . . As an integral element of power station operations, the Lockwood Ash Disposal Site is also being prepared for protective layup.⁸

Before it became public knowledge that Greenidge was engaging in bitcoin mining in early 2020,⁹ the Lockwood Annual Reports described the Lockwood Landfill as “a primarily coal ash monofill **associated with the Greenidge Power Generating Station, an electric generating plant that used to burn coal** in the Town of Torrey, Yates County, New York [emphasis added].”¹⁰ In contrast, the report filed in February 2020, the 2019 Annual Report, eliminates mention of any association with “the Greenidge Power Generating Station, an electric generating plant that used to burn coal” and states simply that Lockwood is “a primarily coal ash monofill in the Town of Torrey, Yates County, New York.”¹¹

As noted above, the fact that Lockwood and Greenidge are each wholly-owned subsidiaries of Greenidge Generation Holdings LLC is described in the Form S-1 Registration Statement filed by Greenidge Generation Holdings LLC with the SEC on September 20, 2021.¹² The 2021 Form S-1 does not state that the landfill is currently taking waste from the power station or that an increase in operations at the power station for bitcoin mining will increase the amount of waste entering the landfill.

We have had difficulty ascertaining the amount of waste, if any, that Greenidge is currently placing in Lockwood. The 2018 annual report states that no “ash waste” was disposed in the landfill during 2018. The 2019 annual report, the most recent report available, does not mention waste coming from Greenidge. The 2019 report estimates the remaining capacity for the currently constructed, synthetically-lined portion of the landfill as of December 31, 2019, as

⁸ Id.

⁹ See Greenidge Plant Now Operates Full-Time As a Bitcoin Mining Operation that Relies On Cheap ‘Behind-the-Meter’ Power, Peter Mantius, *WaterFront Online Blog*, March 6, 2020, <https://waterfrontonline.blog/2020/03/06/greenidge-plant-now-operates-full-time-as-a-bitcoin-mining-operation-that-relies-on-cheap-behind-the-meter-power/>

¹⁰ See 2017 and 2018 Annual Reports for the Lockwood Ash Disposal Site, Facility No. 62N01, p. 1-1, https://treichlerlawoffice.com/water/greenidge/lockwood/62N01_Lockwood_Ash_ind_R8_2017.2018-03-01.AR.pdf and https://treichlerlawoffice.com/water/greenidge/lockwood/62N01_Lockwood_Ash_Disposal_ind_R8_2018.2019-03-01.AR.pdf.

¹¹ See 2019 Annual Report, p. 1-1, https://treichlerlawoffice.com/water/greenidge/lockwood/2019_LADS_Annual_Report.pdf.

¹² See note 2 above.

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approximately 416,294 cubic yards. The report states, “Conservatively assuming a waste disposal rate of 100,000 tons per year (or 86,957 cubic yards per year, assuming an effective waste density of 1.15 tons per cubic yard that accounts for cover soils and other materials placed in the landfill) the projected life of the remaining lined area is approximately four years and ten months.”¹³ If 100,000 tons per year is a conservative estimate for wastes being deposited in Lockwood, where would such waste be coming from? Would it come from Greenidge? The report also notes that, “Beyond the capacity of the currently constructed landfill, an additional 2.45 million cubic yards of permitted, but not yet constructed capacity still remains on the site.”¹⁴

Our November 19 letter pointed out that the 95 MW of electric usage projected in the 2021 Form S-1 is 333 times the maximum usage anticipated by DEC in DEC’s 2016 Amended Negative Declaration covering the 2016 air permits.¹⁵

A full environmental review must be conducted to determine if increased electric usage at Greenidge for bitcoin mining is resulting in an increase in the wastes that are being deposited in the Lockwood landfill and must evaluate the impacts from those new wastes.

C. Modification of the Lockwood SPDES Permit Does Not Constitute a Type II Action under SEQRA

As DEC did with the Greenidge air permits, DEC mischaracterizes the modification of the Lockwood SPDES permit as a Type II action under SEQRA. The material changes in operations at Greenidge Generating Station, of which Lockwood Landfill is an integral part, and at the Lockwood Landfill require that the Lockwood SPDES permit decision be treated as a segment of an overall Type I action for the repurposing of Greenidge Station.

The requirements of SEQRA are summarized in our November 19 comment letter on the air permits.¹⁶ As we explain in that letter, to be classified as a Type II action, an action must have been determined not to have a significant impact on the environment.¹⁷ To be considered as a Type II action by DEC, an action must be listed in Section 617.5(c) of the SEQRA regulations as one of the actions that have been determined not to have an adverse effect on the environment. As in the case of its Type II determination for the air permits, DEC’s failure to identify which of the actions in the Section 617.5(c) list is the basis for its Type II determination for the Lockwood SPDES permit is unreasonable.

As lead agency for the SPDES permit, DEC is required under SEQRA to make a reasoned elaboration of the basis for its Type II determination.¹⁸ In the notice for the draft

¹³ Op.cit., note 10, p. 2-2 to 2-3.

¹⁴ Id.

¹⁵ See Exhibit A, p. 48.

¹⁶ Id. at 42-46.

¹⁷ 6 NYCRR 617.5(a).

¹⁸ *Zutt v. State*, 99 A.D.3d 85, 949 N.Y.S.2d 402 (2012); *Gernatt Asphalt Prod., Inc. v. Town of Sardinia*, 87 N.Y.2d 668, 664 N.E.2d 1226 (1996).

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Permit, the DEC simply wrote: “Project is not subject to SEQR because it is a Type II action.”¹⁹ No explanation of the determination was provided. Nor has DEC responded to requests for an explanation of its SEQRA determination.²⁰ This lack of reasoned elaboration is not in compliance with SEQRA.

It would not be appropriate for DEC to rely on the exemption in Section 617.5(c)(32) for certain types of permit renewals. This categorization only applies “where there will be no *material change* in permit conditions *or the scope of permitted activities.*”²¹ Here, as discussed below, modifications of the Lockwood SPDES permit conditions are necessary to comply with the requirements of EPA’s national coal ash regulations and DEC’s 2015 consent order for violations of the Lockwood SPDES permit and the Lockwood Part 360 permit. In these circumstances, the modification of the Lockwood SPDES permit does not qualify as a Type II action and is not exempt from SEQRA review.

Furthermore, the modification and renewal of multiple permits is not a Type II Action under Section 617.5(c)(32). The modification of the Lockwood SPDES permit is only one segment of an overarching project to repurpose the Greenidge Generating Station for bitcoin mining. Each of the other permits for Lockwood and Greenidge are in the process of being reissued or will be reissued soon in conjunction with this project.

II. Modifications of All Lockwood and Greenidge Permits Must Be Evaluated Together in a Single Co-ordinated Full Environmental Impact Statement

DEC announced on September 8, 2021, that it had received applications to renew the Greenidge air permits.²² The comment period on these applications was extended to November 19, 2021.²³ On December 8, 2021, DEC announced the proposed modification and renewal of the Lockwood SPDES permit.²⁴ The expiration date of the Lockwood SPDES permit, which was last modified in 2010, was extended administratively by DEC in February 2016.²⁵ The Lockwood Part 360 permit, which was issued in 2008,²⁶ appears to be headed for renewal

¹⁹ ENB notice, note 2 above.

²⁰ Local attorney Rachel Treichler received no response for several requests she made for the Environmental Assessment Forms prepared by the applicant and DEC to assist her in understanding the Type II determination. See email from R. Treichler to K. Merchant attached as Exhibit B.

²¹ 6 NYCRR 617.5(c)(32) (emphasis added).

²² DEC ENB, Region 8 Completed Applications 09/08/2021, Sept. 9, 2021), https://www.dec.ny.gov/enb/20210908_reg8.html#Greenidge_Generation_LLC%20/2.

²³ Id.

²⁴ https://www.dec.ny.gov/enb/20211208_reg8.html#857360000500001.

²⁵ Notice that SPDES permit expiration date will be extended while DEC completes technical review of the permit, February 18, 2016, <https://treichlerlawoffice.com/water/greenidge/lockwood/LTO.SPDES.NY0107069.2016-02-18.SAPAExtended.pdf>.

²⁶ <https://treichlerlawoffice.com/water/greenidge/lockwood/2008%20Lockwood%20Part%20360%20Permit.pdf>.

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shortly.²⁷ The Greenidge SPDES permit and the Greenidge water withdrawal permit will be up for renewal in September of this year.²⁸

DEC's failure to consider the renewals and modifications of all these permits together is segmentation in violation of the SEQRA regulations. Section 617.4(a)(1) of the SEQRA regulations provides that, "For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in section 617.7(c) of this Part." 6 NYCRR 617.4(a)(1). Section 617.7(c)(2) provides that:

For the purpose of determining whether an action may cause one of the consequences listed in paragraph (1) of this subdivision, the lead agency must consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are:

- (i) included in any long-range plan of which the action under consideration is a part;
- (ii) likely to be undertaken as a result thereof, or
- (iii) dependent thereon.

6 NYCRR 617.7(c)(2). The SEQRA regulations thus make clear that all permits related to the operations of Greenidge and Lockwood need to be evaluated together when a SEQRA review of the impacts of the permits is conducted. It is impermissible segmentation for DEC to consider the modifications to the individual permits separately as it has been doing.

The stated reason for DEC's extension of the expiration date of the Lockwood SPDES permit was that DEC would be "undertaking a full technical review of the SPDES discharge to determine the need to incorporate new permit requirements under the Federal Clean Water Act."²⁹

The new permit requirements referred to by DEC in its extension notice are presumably the requirements of EPA's Disposal of Coal Combustion Residuals from Electric Utilities final rule (the CCR Rule), signed by the EPA Administrator on December 19, 2014, and published in the Federal Register on April 17, 2015.³⁰ 40 CFR Part 22, 124 and 257. These regulations provide a comprehensive set of requirements for the safe disposal of coal ash from coal-fired

²⁷ See e.g., Response to 9-11-2020 Notice of Incomplete Application #3, from Daigler Engineering to DEC, October 9, 2020, which references both the Lockwood SPDES renewal and the Lockwood Part 360 renewal, https://treichlerlawoffice.com/water/greenidge/lockwood/Lockwood_Response_to_9-11-20_NOIA.pdf.

²⁸ See https://treichlerlawoffice.com/water/greenidge/Greenidge_IndSPDES_NY0001325_2019-09-05.ModIssuance.pdf and https://treichlerlawoffice.com/water/greenidge/WaterPermit_Final_2017-09-11_.pdf.

²⁹ Id.

³⁰ <https://www.epa.gov/coalash/proposed-rule-disposal-coal-combustion-residuals-electric-utilities-federal-ccr-permit>.

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power plants. The regulations include technical standards that prevent the leaking of contaminants into groundwater, blowing of contaminants into the air as dust, and catastrophic failure of coal ash surface impoundments. Additionally, the rule sets out inspection, monitoring, recordkeeping and reporting requirements and makes transparency a cornerstone of the program by requiring facilities to post compliance data online on a facility-established, publicly available website.³¹

The requirements of the CCR regulations apply not only to the Lockwood SPDES permit, but also to the Lockwood Part 360 permit and the Greenidge SPDES permit. Both the Lockwood site and the Greenidge site contain coal ash residuals and are subject to the CCR regulations.³²

The adoption of the CCR regulations and the need for DEC to evaluate the incorporation of new permit provisions to be in compliance with the CCR requirements makes clear that public is not in a position to evaluate the Lockwood SPDES permit on a stand-alone basis without having had a chance to review the shortly to be proposed Lockwood Part 360 permit or the shortly to be proposed new Greenidge SPDES permit.

In addition to both the Lockwood SPDES permit and the Lockwood Part 360 permit being subject to EPA's CCR regulations, both permits are also subject to the 2015 Lockwood consent order. On February 18, 2015, DEC and the owner of the landfill executed a consent order.³³ The consent order states that DEC "has determined that groundwater at the site contains substances in excess of the duly promulgated water quality standards for, *inter alia*, total dissolved solids, boron, manganese, magnesium, iron, sodium and sulfate," and that DEC "believes that the Leachate Pond is a source of the substances and has contributed and continues to contribute to a contravention of duly promulgated water quality standards in violation of ECL § 17-0501 and 6 N.Y.C.R.R. § 360-1.14(b)(2)."³⁴

Apparently, DEC is working out some sort of termination of the consent order through various requirements that have been imposed under the consent order and that are being implemented under the new Lockwood SPDES permit and a new Lockwood Part 360 permit. In these circumstances, asking the public to comment on terms of the Lockwood SPDES permit before new terms for the Lockwood Part 360 have been made public is clearly segmentation.

It is also segmentation not to consider the impacts of the toxic discharges being allowed under the Lockwood SPDES permit together with the impacts of the toxic discharges being allowed under the Greenidge SPDES permit. Both sets of discharges are going into three closely related bodies of water, Seneca Lake, its tributary Keuka Outlet and the connected groundwater aquifer in the Town of Torrey. Lockwood is allowed to discharge into the Keuka Outlet at a

³¹ Id.

³² Both Lockwood and Greenidge are maintaining the required CCR websites. See Lockwood Hills LLC Combined Coal Residuals (CCR) Rule Compliance Data and Information, <https://lockwoodhillsllc.com/>, and Greenidge Generation LLC CCR Rule Compliance Data and Information, <https://greenidgeccr.com/>.

³³ <https://treichlerlawoffice.com/water/greenidge/lockwood/2015-2-19%20Consent%20Order.pdf>.

³⁴ Id.

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point just upstream of the point where Greenidge is allowed to discharge millions of gallons of condenser cooling water. The impacts of the hot water discharges by Greenidge on the toxic chemicals being discharged by Lockwood need to be fully analyzed. Although Greenidge discharges its toxic chemicals directly into Seneca Lake, these discharges circulate above the local aquifer for quite a distance before being released into the lake. This is the same aquifer that the 2015 consent order found was being contaminated by discharges from Lockwood.

Both the Lockwood SPDES permit and the Greenidge SPDES permits have Mercury Minimization Plans that allow mercury discharges of 50 ng/L, far in excess of the standard 0.7 ng/L mercury limits.

Although groundwater monitoring is required at Lockwood and at Greenidge, both monitoring programs need to be coordinated and evaluated together in a comprehensive environmental impact statement for overall operations. The Lockwood SPDES permit fact sheet states that “the groundwater monitoring program requirements were removed from the permit as they are now covered under the Environmental Management Plan as part of the Part 360 series Permit for the facility.”³⁵

A comprehensive analysis of the hydrogeology of the area where Lockwood and Greenidge are discharging is badly needed. This is made even more urgent because DEC has approved a dilution study workplan pursuant to the Greenidge SPDES permit that allows Greenidge and Ferro—Transelco Division to mix their toxic discharges in an inland pond and discharge the mixed discharges into Seneca Lake.³⁶

In fact, just such a hydrogeological study is required by Section 363-4.4 of the landfill regulations to be prepared in connection with a Part 360 permit application, but to our knowledge has not yet been produced. 6 NYCRR 363-4.4. The requirements for this report are very detailed. A copy of 6 NYCRR 363-4.4 is provided as Exhibit C.

A full environmental impact statement considering the cumulative impacts of the Greenidge toxic discharges, the Lockwood toxic discharges and the toxic discharges by Ferro is required before the Lockwood and Greenidge discharges can be properly evaluated. The cumulative impacts of all these discharges must be considered under SEQRA. 6 N.Y.C.R.R. 617.3(g)(1); 6 N.Y.C.R.R. 617.2(ag).

CONCLUSION

In these circumstances, the Lockwood SPDES permit must be denied because DEC’s Type II determination is incorrect, and no SEQRA review has been conducted of combined operations at Lockwood and Greenidge or of the cumulative impacts of toxic discharges from Lockwood, Greenidge and Ferro.

³⁵ Op. cit., n. 5, p. 21.

³⁶ See https://treichlerlawoffice.com/water/greenidge/2019-9-27%20Dilution_Study_Workplan_9-27-2019_Final.pdf.

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