

February 1, 2022

VIA HAND DELIVERY

Hon. Michael J. Ferrara, Supervisor
& Members of the Seneca Falls Town Board
Seneca Falls Municipal Building
130 Ovid Street
Seneca Falls, NY 13148

Re: Denial of Chapter 185 Landfill Permit for Seneca Meadows, Inc.

Dear Supervisor Ferrara and Members of the Town Board:

Waterloo Container Company (“WCC”) adamantly objects to the issuance of any permit to Seneca Meadows, Inc. (“SMI”) pursuant to Section 185 of the Seneca Falls Town Code while SMI remains in blatant and obvious violation of the New York Environmental Conservation Law (“ECL”), its Solid Waste Management Facility Permit issued by the New York State Department of Environmental Conservation (“NYSDEC”) pursuant to 6 NYCRR Part 360 (“Part 360 Permit”), and the Seneca Falls Town Code, all as detailed below.

Pursuant to the New York Freedom of Information Law (“FOIL”), WCC has obtained from NYSDEC Odor Investigation Checklist reports (“Odor Complaint Reports”) prepared by SMI employees in response to citizen complaints lodged via SMI’s Telephone Hotline, and subsequently filed with NYSDEC¹. Odor Complaint Reports obtained by WCC confirm that **from February of 2018 through November of 2021, SMI employees responded to and confirmed citizen odor complaints approximately 452 times**. In other words, even after SMI’s Part 360 Permit was modified by NYSDEC in 2017 to include 7 new special conditions intended to control the persistent, pervasive and pernicious odors from SMI’s landfill, SMI has continued to emit obnoxious odors which unreasonably interfere with the comfortable enjoyment of life and property by Seneca Falls residents and businesses on an ongoing, regular and routine basis.

Enclosed as Exhibit “A” please find copies of the approximately **452 Odor Complaint Reports prepared by SMI and filed with NYSDEC from 2018 to 2021 where SMI not only**

¹ SMI previously filed these Odor Complaint Reports with the Town of Seneca Falls and NYSDEC, but SMI apparently only files the reports with NYSDEC now, and no longer files the reports with the Town of Seneca Falls.

confirmed the citizens' odor complaints, but also confirmed SMI's landfill was the actual source of the odor, typically described as "Municipal Solid Waste" or "Landfill Gas". The sheer number of these Odor Complaint Reports, where SMI concedes it was the source of the odor, is mind-boggling and confirms unquestionably that SMI and NYSDEC are either unwilling or unable to control or prevent SMI's unreasonable odors from adversely impacting Seneca Falls residents and businesses.

Further proof that NYSDEC is unwilling or unable to control or prevent unreasonable odors SMI's from impacting Seneca Falls residents and businesses can be found in the Solid Waste Management Facility Daily Inspection Reports ("Daily Inspection Reports") obtained from NYSDEC by WCC pursuant to FOIL and enclosed as Exhibit "B". These Daily Inspection Reports for 13 days in July of 2020 and 12 days in March of 2021 are NYSDEC records prepared and filed by the NYSDEC employee who serves as NYSDEC's On-Site Monitor at SMI's landfill. Among the inspection items on the Daily Inspection Reports is item #8 which posits "Odors are effectively controlled so that they do not constitute a nuisance", **but on each and every one of the Daily Inspection Reports obtained², item #8 is checked "NI" meaning not inspected**, which is dubious because the notes accompanying the Daily Inspection Reports confirm that on 15 of the 25 days for which WCC obtained Daily Inspection Reports, the On-Site Monitor noted landfill odors beyond the landfill. On four dates in 2020 and 2021, the NYSDEC On-Site Monitor indicated that item #8 pertaining to odors was "NI" or not inspected, when on those very same dates SMI's employees were busy responding to citizen odor complaints in Seneca Falls and Waterloo, and documenting its landfill odors on Odor Complaint Reports³.

Section 185-3 of the Seneca Falls Town Code (the "Code") provides:

No person shall use as a landfill any of the lands, streams, waterways or bodies of water in the Town of Seneca Falls, New York, except those premises lawfully designated as a landfill by the Town Board and *after compliance with the sections of this chapter and the statutes, rules and regulations of the State of New York or its duly authorized agencies pertaining to the operation of a landfill* (emphasis added).

Section 300-26(B) of your Code further provides that:

Odor. No use within any district shall emit an odor that is *unreasonably offensive as measured at the property line of the use* (emphasis added).

6 NYCRR Part 211.1 provides that:

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration *which . . . unreasonably interfere with the comfortable enjoyment of life or property*. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition

² Upon information and belief, item #8 has been checked "NI" or not inspected on *every* Daily Inspection Report since June 10, 2019 when Anthony Black assumed the duties of the NYSDEC On-Site Monitor at SMI's landfill.

³ July 1, 2020; July 13, 2020; July 22, 2020; and March 19, 2021.

applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others (emphasis added).

6 NYCRR 360.19(i) provides:

The owner or operator of a [permitted solid waste management] facility *must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by the department* (emphasis added).

The Odor Complaint Reports from 2018 through 2021 prepared by SMI and enclosed as Exhibit “A” are SMI’s official business records, and the reports establish conclusively and beyond cavil that SMI has been and remains in regular and continued violation of the ECL, 6 NYCRR Part 360, its Part 360 Permit, 6 NYCRR Part 211.1, and the Seneca Falls Town Code. The Daily Inspection Reports for July of 2020 and March of 2021 prepared by NYSDEC’s On-Site Monitor, along with NYSDEC’s monthly receipt of the hundreds of Odor Complaint Reports, clearly demonstrate that NYSDEC is unable or unwilling to regulate SMI in a manner such that SMI’s persistent, pervasive and pernicious odors don’t regularly and routinely unreasonably impact the residents and businesses of Seneca Falls.

Because SMI is in violation of the ECL, 6 NYCRR Part 360, its Part 360 Permit, 6 NYCRR Part 211.1, and the Seneca Falls Town Code, the Town Board cannot lawfully grant or renew SMI’s Chapter 185 Permit, as to do so would be arbitrary and capricious, and would deprive the residents of Seneca Falls of their right to “clean air and water, and to a healthful environment” in violation of Article 1, Section 19 of the New York State Constitution.

Based on the conclusive documentary evidence enclosed herewith, the Town Board must refrain from granting or renewing any permit to SMI pursuant to Chapter 185 of the Seneca Falls Town Code, and must deny same.

Very truly yours,

Douglas H. Zamelis

cc:
Waterloo Container Company