“The 4th Department ruled that the Green Amendment cannot be asserted to force DEC to take a discretionary enforcement action closing a landfill. While we disagree that a state agency can exercise its discretion to allow a violation of the constitution to continue, our suit doesn’t ask the court to force DEC to do anything— it asks for a declaratory judgement that the SMI landfill is causing a violation of the enshrined right to clean air and a healthful environment and an injunction prohibiting or preventing DEC from approving an expansion of the landfill.

The 4th Department decision also sets out how State involvement in a landfill operation can make the landfill operator subject to a Green Amendment suit seeking to enjoin the operator from continuing to operate its landfill. We believe that our suit satisfies the conditions set out by the 4th Department due to the DECs pervasive on site control through an on-site monitor over odor complaints and responsive actions— all of which have been completely ineffective to abate noxious odors.”

Philip Gitlen
Whiteman Osterman & Hanna LLP