

# Frontenac Environmental Services, Inc.

DEC 27-02

## Statutes and Regulations

*ECL Sections 23-2301(1), 23-2307(1), 27-0301, 27-0901(3), 27-0913(1) and Article 27, title 11; and 6 NYCRR Parts 360 and 364.*

*NOTE: ECL 27-0301 has been renumbered Section 27-0305 by modification occurring in 1981. Waste facility siting regulations were promulgated by the Department in February, 1982 at 6 NYCRR Part 361.*

## Issue

Whether operation of Frontenac's Utica facility requires a permit under 6 NYCRR Part 360 and a certificate for siting pursuant to ECL Article 27, Title 11.

## Summary of Facts

Frontenac Environmental Services, a subsidiary of a Canadian corporation, operates a waste haulage and general waste disposal industry in Canada and the U.S.

Frontenac's facility in Utica would be used exclusively for storage of synthetic fuels and the shipment of the fuel for public use. Frontenac's continued use of the site for storage does not require any major structural alternations. No waste reclamation would take place on the site.

At the time of the ruling, the property was owned by Exxon and used for storage of petroleum fuel. The site houses 6 storage tanks, a recovery tank and a buffer tank, with a storage capacity of 188,250 barrels of petroleum. The only alterations which Frontenac anticipates would be cosmetic changes or changes pursuant to DEC requirements to convert the facility from petroleum storage to synthetic fuel storage.

## Summary of Ruling

The proposed fuel storage at the Utica site requires a Part 360 permit because of the use of hazardous wastes in the production of synthetic fuels. A Part 364 permit is also required for transportation of the fuel. ECL Article 27, Title 11 siting certification does not apply to the Frontenac facility. Although the synthetic fuel in question is of a different nature than the petroleum previously stored at the site, the site continues to be employed for comparable activities.

## Judicial Disposition

No party has challenged the declaratory ruling.

## Text of Ruling

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Syracuse, New York 13202

Dear Mr. Gingold:

In your March 8, 1980 letter (and its enclosed petition), received here March 11, 1980, you requested a declaratory ruling concerning the applicability of 6 NYCRR Part 360 and ECL Article 27, Title 11 to certain proposals of your client Frontenac Environmental Services, Inc. ('Frontenac') for use of a facility at Leland Avenue, Utica, New York.

Our ruling is based on the assumption that the factual averments in your March 8 petition are accurate.

It appears that the Leland Avenue facility has for some time been continuously used for the storage of petroleum fuel products, which activity required neither a Part 360 permit nor Article 27, Title 11 certificate. Although the Frontenac proposal entails a continuation of fuel storage activities, with no intended major structural and operational alternations at the facility, it is understood that the synthetic fuels intended for storage are not of the same character as the earlier petroleum fuels.

A complete account of the regulatory jurisdiction of this Department bearing upon the Frontenac proposal goes beyond the narrow perspective you suggest under Part 360 or ECL Article 27, Title 11 and stems from the character of the materials you describe as synthetic fuels.

It is understood that those fuels will originate as industrial waste which may include hazardous waste, as defined in ECL Section 27-0901.3, and used or waste oil, as defined in ECL Section 23-2301.1. Under ECL Section 27-0301 and 6 NYCRR Part 364, transportation of any such materials must be pursuant to a Part 364 permit, a condition of which is that transportation terminates in a manner which must be approved by the Department. In this case, the transportation which brings the synthetic fuels to the proposed facility would require such a permit, and, consequently, an approval for the facility.

More specifically, as to the hazardous materials, the proposed activity would require a Part 360 permit pursuant to ECL Section 27-0913.1, and, as to used oil, a permit by virtue of ECL Section 23-2307.1. In that latter regard, Section 23-2307.1 authorizes delivery of used oil only to a rerefiner, except as otherwise permitted by the Department. Regulations soon to be promulgated will reflect the Department's administration of that section allowing for delivery to approved storage or reprocessing facilities, pursuant to permit.

Concerning the ECL Article 27, Title 11 certificate requirement, the proposal appears to involve use of an existing, already sited, facility for a purpose which is comparable to prior use (i.e., fuel storage) but distinguishable on the basis of the exact character of the materials involved. Under these circumstances, including the applicability of the ECL and 6 NYCRR regulatory jurisdiction described above, initiation of the proposed activities would not constitute the siting of a new facility contemplated by ECL Article 27, Title 11.

As comparably noted in my February 19, 1980 letter concerning the Frontenac Niagara Falls inquiry, each specific proposal involving treatment, processing, storage, or disposal of industrial wastes must be evaluated in its specific context, and each resultant ruling has a correspondingly limited applicability.

Richard A. Persico  
General Counsel

Dated: March 21, 1980