

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Regional Director, Region 8

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September 24, 2018

Mr. Jeffrey G. Richardson
Sr. District Manager
Waste Management of New York, LLC
425 Perinton Parkway
Fairport NY 14450

Dear Mr. Richardson:

As you are aware, this Department is in the process of preparing a formal response to the Petition submitted by Linda Shaw, Esq. on behalf of her clients dated July 25, 2018.

On September 20, 2018, we were able to access through the Town of Perinton website the letter from Waste Management ("WM") to the Town dated September 14, 2018 containing certain commitments and other information relative to further efforts to be taken to minimize odors from the High Acres facility. While the Town and WM are not in the position to dictate to DEC what aspects of your agreement we will enforce or how and when my staff will meet or otherwise conduct our business, we remain committed to work with both parties as we have throughout the pendency of this problem, as well as on behalf of the residents of Perinton and Macedon towards achieving an improved situation in the neighborhoods. We look forward to that continued cooperation, and are in the process of reviewing your agreement with the Town to assess how its terms may fit within the context of WM's Part 360 permit and O&M Manual.

In addition, on September 20, 2018, we received WM's response to the residents' petition. The response was voluminous, and staff has begun its review of the information contained in it.

While a more complete response to the Petition will be forthcoming soon, our review of the relevant information from residents, my staff, and the company, including your recent set of commitments to the Town, has resulted in a determination that an interim operational measure, as described below, is appropriate.

Commencing October 1, 2018, WM is not to dump rail waste on any operating day prior to 10:15 a.m. In addition, no rail cars containing waste are to be left on site overnight (exclusive of the night of delivery). In short, WM is directed to process all the rail cars on the business day following delivery. In recognition of the shorter operating hours on Saturday, cars delivered on Friday which could not be processed on Saturday, may be stored until Monday, so long as that does not prevent any cars delivered through the weekend from being processed on Monday as well. To the extent this directive impacts delivery schedules or the number of cars received, we trust you will make appropriate arrangements with CSX.

The rationale for this directive follows.

We support the plan to study the rail traffic contained in your commitment to the Town of Perinton. As we have discussed on several occasions, there is a need to establish delivery times, any delays in the downstate transfer process, and related logistical issues that your study will address. We also support the 12-month period of study as it will aid the evaluation of whether, in fact, rail cars are more "ripe" in summer months, even if the delivery times are the same, due to outdoor temperature. The directive to delay daily rail waste disposal will inform the analysis of whether the widely held view that NYC waste presents a different and significant contribution to a problem has merit, and this measure can be implemented while the study is underway.

In addition, attached you will find a chart my staff prepared breaking down, by time of day, the contacts received by this office following completion by WM of the fugitive gas mitigation measures in mid-May. We used the period between May 25th and the end of the summer to evaluate the current situation in order to avoid the analysis being impacted by conditions existing while the mitigation measures were being implemented, since during that time there is no debate about the existence of odors at an unacceptable level. While it is not universally the case (see, e.g. July 23rd and 24th) it is clear that a majority of notifications received on many of the "bad" days, i.e. when the wind is from the SSE, are received prior to 10:00 a.m. The second attachment removes the pre-9:30 a.m. column, and the difference in the totals is apparent and significant.

This pattern of the early morning notifications has been consistent over time. Different suggestions as to why this occurs have been made, including meteorology in the early morning, the creation of an early issue as the prior day's cover is removed, and the simple fact that in the early morning residents are out to begin their school/work day. Whether it is one factor or some combination, given the information available to us and your agreement to focus on rail as a potential factor, this directive is appropriate as an aide to the analysis.

The delay in dumping this waste stream also means that it will commence during our monitor's normal work hours, which will assist in our continuing assessment and oversight of the situation.

Finally, we recognize the inherent problems with the extent of the information contained in the FAFE app. notification system, and have discussed that issue on several occasions with the residents' counsel, encouraging them to provide more complete and useful information through the Hotline and/or odor complaint log we made available. However, despite the obvious shortcomings in their system, it remains the case that on the "bad" days, there has been a general corroboration, by our staff, Towpath, or both, of the existence of some level of detectable odor, even if of limited duration, and again often most noticeable in the early morning. As a result, we are not, as WM has suggested, prepared to ignore the information received from that system.

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Again, while we will provide a more complete response to the petition in the coming days, there is no reason to delay the implementation of this interim measure. Absent a determination by DEC to the contrary, this directive is to remain in place through the completion of the company's 12-month rail study. This is without prejudice to our directing further appropriate measures in the future.

Thank you for your continued cooperation in the effort to address these issues.

Very truly yours,



Paul J. D'Amato
Regional Director

Attachments

cc: G. MacLean

S. Foti

L. Schwartz, Esq.