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SENATOR
MICHAEL F. NOZZOLIO
54TH DISTRICT
MAJORITY WHIP OF THE SENATE

March 30, 2016

Hon. Greg Lazzaro
Town of Seneca Falls
81 W. Bayard Street
Seneca Falls, NY 13148

Dear Supervisor Lazzaro:

All too often misinformation creates confusion, that is why this letter is being sent to you and the members of the Seneca Falls Town board to clarify the exact powers, authority, duties and responsibilities of the Seneca Falls Town board regarding the appropriate government oversight of the Seneca Meadows Landfill and operations of the railroad transport of waste to the landfill.

At my request, a legal analysis was conducted reviewing the applicable laws of New York State, the United States Code, local land use law, including the Code of Seneca Falls, the Permit issued by the Town of Seneca Falls, and the Host Agreement the Town of Seneca Falls entered into with the Seneca Meadows Landfill, as well as a number of news accounts of this matter. Counsel to the New York State Senate oversaw this review. A copy of the analysis is attached.

While the New York State Department of Environmental Conservation can provide technical information, the Town of Seneca Falls is clearly the only appropriate government entity with the power and authority to compel Seneca Meadows to comply with Town law, and the Host Agreement, including site planning, permits, land use questions and the construction of a railroad spur.

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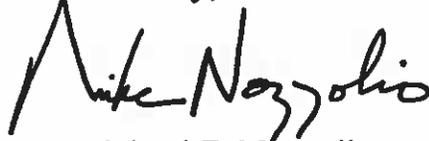
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Also enclosed is a copy of a letter to Department of Environmental Conservation Commissioner Basil Seggos, sent from Assemblymen Brian Kolb and Phil Palmesano and myself requesting a public information session be held in Seneca County.

Although it is not required as a part of the permit renewal process, we, as the New York State Legislators representing the Finger Lakes region, are asking the NYSDEC to conduct a formal public information session in Seneca County in order to allow members of the public to voice their opinions and/or concerns with the renewal of Seneca Meadows Part 360 Solid Waste Permit. It is our hope that this public information session will also include information on actions that Seneca Meadows has been required to take in order to address the significant number of complaints regarding the odor coming from the landfill.

It is my hope that this analysis will provide the Town of Seneca Falls with the information it needs to proceed to take the necessary steps to insure that Seneca Meadows is fully compliant with the terms and conditions as set forth by Seneca Falls town law and as enumerated in the Host Agreement.

Sincerely,

A handwritten signature in black ink that reads "Mike Nozzolio". The signature is written in a cursive, slightly slanted style.

Michael F. Nozzolio
Senator, 54th District

cc: Hon. David DeLelys, Councilman
Hon. Vittorio Porretta, Councilman
Hon. Annette Lutz, Councilwoman
Hon. Mary Conley Sarratori, Councilwoman
Mr. Patrick Morrell, Town Attorney

MEMORANDUM

To: Senator Michael F. Nozzolio

From: The New York State Senate Counsel's Office

RE: An outline of the powers, authorities and responsibilities regarding government oversight of the Seneca Meadows Landfill; and operations of the railroad transport of waste to the landfill.

Per your request an analysis was conducted reviewing of the applicable laws of New York State, the United States Code, local land use law, including the Code of Seneca Falls, the Permit issued by The Town of Seneca Falls and the Host Agreement the Town of Seneca Falls entered into with the Seneca Meadows Landfill, as well as a number of news accounts of this matter.

Powers, Duties and Jurisdiction:

The Town of Seneca Falls is the exclusive entity with the power and legal authority to determine the site location of a landfill, and whether such a landfill will be allowed to operate within its jurisdiction. Throughout our Nation's history, our laws rightfully require critically important zoning and land use decisions to be made at the local government level. The New York State Senate has always been respectful of those laws. The enforcement of actions taken by local zoning boards, planning boards and Town Boards in their issuance of permits and other agreements, must

be undertaken by the locality, and in the question posed by this analysis, that is the elected members of the Seneca Falls Town Board.

The Town of Seneca Falls Has Ultimate Authority Over the Existence and continued Operation of the Seneca Meadows Landfill:

The Town of Seneca Falls has the ultimate authority over the Seneca Meadows Landfill. The Town of Seneca Falls can revoke the use permit if it is demonstrated that the landfill is violating any the conditions of the use Permit or Host Agreement.

The Town of Seneca Falls in 2006 and 2007 entered into a Host Agreement with the Landfill, allowing the Seneca Meadows Landfill to operate and expand operations. Upon reviewing those agreements and the SEQR application it is clear the Seneca Falls Town Zoning Board and the Seneca Falls Town Board issued the necessary approvals to allow the granting of a Permit by the Town of Seneca Falls.

The Town of Seneca Falls is the only entity with the power and legal authority to enforce the terms and conditions of the Host Agreement. In addition, the Town issued a permit to Seneca Meadows to Construct and Operate a landfill as defined under Chapter 58-10 of the Code of Seneca Falls. The State has no legal authority or jurisdiction to intervene or overrule a duly authorized local town action such as this.

This Host Agreement in provides the Town of Seneca Falls with broad authority to engage in essential oversight responsibilities and obligations to monitor and ensure compliance with the operations at the Seneca Meadows Landfill.

The New York State Department of Environmental Conservation does have the limited authority to insure the tonnage accepted by Seneca Meadows does not exceed the allowable limits and the nature of the garbage is within the acceptable permitted classification. This oversight must be in accordance with the parameters of operations allowed by a specific permit issued by the Department.

If the Town of Seneca Falls believes the Seneca Meadows Landfill is exceeding the tonnage limits allowed by its permit the Town needs to advise DEC, and the agency is obligated to conduct a full and appropriate review.

Additionally, it is also clear that under the provisions of the Seneca Falls granted Permit and accepted Host Agreement, the Seneca Falls Town Board has the broad and exclusive authority to exercise extensive powers and engage in essential oversight responsibilities and obligations to monitor and ensure compliance with the Permit and the terms and conditions of the Host Agreement.

For instance, the Town of Seneca Falls has the power and authority to require Seneca Meadows to comply with specific health and safety requirements, reporting require-

ments, inspections, access to business records and significant other powers that are components of the Host Agreement and the Town Permit that the Town can implement to protect its residents.

Specifically, Section VIII of the Host Agreement imposes significant Reporting and Monitoring requirements on Seneca Meadows with obligations to the Town of Seneca Falls. Among those requirements are as follows:

—The Town of Seneca Falls is to receive monthly reports from the onsite DEC monitor at Seneca Meadows. Reasonable questions follow: have those reports been received by the Town? Have any actions been taken by the Town of Seneca Falls based on this data? Is this information shared with members of the Town Board, and is the information shared with the public in any manner?

—The Town of Seneca Falls receives notifications regarding the documentation of complaints dealing with odor at the landfill. Similarly, is the Town receiving those reports, and what action has the Town of Seneca Falls taken with regard to these reports? Is the information shared with members of the Town Board and the public in any manner?

—The Town of Seneca Falls has the right to receive copies of complaint logs maintained by Seneca Meadows as required under the Host Agreement with the Town. Is the Town receiving those logs, and does the Town of Seneca

Falls have established procedures to ensure corrective measures are being taken by Seneca Meadows to resolve these complaints? Are the complaint logs shared with members of the Town Board and the public in any manner?

—The Town of Seneca Falls can designate an individual to be on site to review and monitor current landfill operations. Has the Town exercised this right? Has anyone been designated by the Town to serve in this capacity? If so, what are the reporting requirements of the individual?

—The Town of Seneca Falls can under Section VIII (C) request and receive reports for a major construction event at the Seneca Meadows Landfill, such as those regarding the Expansion of the Railroad Garbage Loading Dock. Have these items been requested by the Town of Seneca Falls, received, and shared with the Board Members and the public?

Section IX of the Host Agreement provides extensive powers to the Town of Seneca Falls to allow full access to the facility. Among those powers are:

—The right for the Town Supervisor and/or Engineer to inspect the landfill to ensure the facility is in compliance with Local Law and the Town permit its terms and conditions.

—The Town of Seneca Falls has access to all records pertaining to the construction and operation of the landfill

including documentation and application documents in support of any documents prepared by governmental and regulatory agency and environmental records, plan specifications, drawings, and sampling data which may be created by Seneca Meadows and equipment, operation or methods required in the construction or operation of the facility, and the right to take split samples and the opportunity to monitor sampling events. Does the Town of Seneca Falls systematically review these records? What information has been made available to the public?

Hauling Waste by Railroad:

It is long stated law that railroads and the interstate transportation of materials are governed by federal law, the United States Code, and regulations of the Federal Railroad Administration. The hauling of garbage by railroad is not regulated by New York State agencies.

Recent news accounts indicate that United States Senator Kirsten Gillibrand secured the grant that enabled the Finger Lakes Railway to construct a railroad siding across from the Seneca Meadows landfill.

In order to construct a railroad siding to service the Seneca Meadows landfill, Finger Lakes Railway was required by Town Law to obtain a building permit from the Town of Seneca Falls. The Town authorized the construction and provided the railroad owner with the approved permit. The Town of Seneca Falls has reversed itself and recently is-

sued a stop work order halting construction of the rail siding.

This action again demonstrates that the critically important questions of zoning and land use are locally determined, and are within the Town of Seneca Falls authority to regulate. Land use and zoning are not questions within the authority of the New York State Legislature.

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SENATOR
MICHAEL F. NOZZOLIO
54TH DISTRICT
MAJORITY WHIP OF THE SENATE

March 30, 2016

Mr. Basil Seggos, Acting Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Re: IESI/Seneca Meadows Public Meeting

Dear Commissioner Seggos:

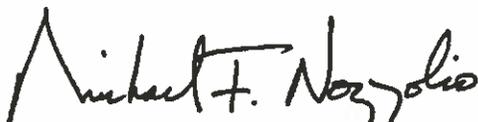
It is our understanding that IESI/Seneca Meadows has submitted a formal application to the New York State Department of Environmental Conservation (NYSDEC) for the renewal of their Part 360 Solid Waste Permit as required every 10 years under NYSDEC regulations.

Although it is not required as a part of the permit renewal process, we, as the New York State Legislators representing the Finger Lakes region, are asking the NYSDEC to conduct a formal public information session in Seneca County in order to allow members of the public to voice their opinions and/or concerns with the renewal of Seneca Meadows Part 360 Permit.

It is our hope that this public information session will also include information on actions that Seneca Meadows has been required to take in order to address the significant number of complaints regarding the odor coming from the landfill.

Your willingness to conduct this formal public information session in the very near future will be deeply appreciated.

With best wishes.


Senator Michael F. Nozzolio
54th District


Assemblyman Brian Kolb
131st District


Assemblyman Philip Palmesano
132nd District

