

January 27, 2010

FID#: 268262940
SWCORR
Waukesha County

Charlene Lemoine
Waukesha Environmental Action League
1240 Highpoint Lane
Waukesha, WI 53189

RE: Comments on the Proposed Expansion of Orchard Ridge Landfill South Landfill, Village of Menomonee Falls, Waukesha County, Wisconsin License Number 3360

Dear Charlene,

On November 9, 2009, the Wisconsin Department of Natural Resources (the Department) received your comments on behalf of the Waukesha County Environmental Action League (WEAL) regarding the Feasibility Report for the proposed expansion of the Waste Management of Wisconsin (WMWI) Orchard Ridge Landfill in the Village of Menomonee Falls, in Waukesha County. This project entails a proposed addition of approximately 2.6 million cubic yards to the existing disposal capacity. I hope that this letter will address your concerns. I reformatted your letter into sections in order to address both your comments and requests as thoroughly as possible.

Comments and Department responses:

1. Chapter 289 Issues: Chapter 289, Wisconsin's Siting Laws, created a two-track process offering an opportunity for communities to establish a siting committee and a DNR track addressing permitting. Chapter 289 also offers a mechanism for ongoing disposal capacity since communities cannot say "no" to a facility under any circumstances. While the two tracks appear to be separate, they are very much connected. WEAL understands the DNR cannot intervene in the local siting process. However, when local agreements interfere with public participation opportunities in the Feasibility process, it is time for a serious look at Chapter 289. WEAL has found several areas in Chapter 289 that offer "loopholes" and are in need of revision. WEAL welcomes discussions with the DNR, legislators and other interested parties in an effort to make Wisconsin's Siting Laws relevant to present conditions and fair to the public.

Response: You are correct, the Department does not and cannot interfere in the local negotiations during the local siting process. We have no authority to constrain or modify local agreements with affected communities or neighboring property owners. As for the language of the governing state statutes, we can only recommend that your group continue to pursue your desired changes through the elected officials in our State government. As you know, the existing language is an attempt at compromise between the needs of the affected communities and those of the public for safe and well regulated places to properly dispose of waste materials

2. Public Participation: Siting agreements are now approved, or simply extended, well in advance of Feasibility Reports being released for public comment. In December of 2008 Orchard Ridge communities decided to extend the 2004 agreement. This agreement contains language prohibiting residents with a home purchase guarantee from participating in the Feasibility process.

Response: The Department has no say in these matters. The decision to extend the 2004 agreement was made by local government officials, who are answerable to local citizens in the electoral process. We typically are not informed of any of the details before, during, or even after these negotiations have occurred. I ask for a copy of these agreements for information purposes, but we have no authority over their creation. I am aware of a number of benefits (e.g., the extension of municipal water to neighboring private well owners and the construction of public libraries, etc.) that have come out of these agreements which would not have occurred without these negotiations and subsequent agreements.

3. Response to Public Notice: Although the DNR has invited comments regarding the proposed expansion, it is doubtful many comments will be received. Language in the 2004 agreement states: "The Property Owners agree not to commence or undertake any action, litigation, petition, request for hearing, judicial or administrative review of proceedings with regard to attempts by Waste Management to obtain all required licenses and permits necessary for the establishment and operation of the Landfill. In the event the undersigned Property Owners, or either of them, engage in any of the above activities with regard to the aforesaid applications, this Agreement shall become null and void." Residents were not forced to sign this agreement, but since most potential buyers will not wish to live near a landfill, residents have little choice but to sign in order to have a guaranteed purchase from Waste Management. The DNR Public Notice is very specific as to who can request an informational hearing and it is highly unlikely 6 people meeting #1 would not have signed the agreement in 2004. Language within agreements prevents residents from "taking action." Clearly, submitting public comments or requesting an informational hearing will not jeopardize permitting. However, without public comments or a chance to ask questions it appears people living near landfills do not have any concerns.

Response: We understand that protecting property values is only one aspect of the concerns of the local residents, even if they are silent on the subject. On our part, we ensure that their environmental quality of their neighborhoods are maintained and protected consistent with environmental protection statutes and administrative codes, which are generally acknowledged to be among the most stringent in the nation. These agreements typically bring additional benefits to the neighbors and the affected communities, the local communities usually get a portion of the tipping fees generated by the disposal of solid waste at these sites, which is generally used for property tax relief for its citizens.

We are also aware that the Siting Law sets up a potential conflict between the landfill's immediate neighbors, who bear the greatest burden of impacts from the landfill's presence, and the community at large which may benefit from provisions in the local agreement. The Governor's Task Force on Waste Materials Recovery and Disposal examined this issue and recommended legislative action to address this deficiency (see final report, pp. 62-63, at <http://wasteresources.wisconsin.gov/docview.asp?docid=10521&locid=83>)

4.6.0 Evaluation of Need and Design Capacity: Evaluating Need is at best an estimate. Since Need cannot be addressed at the local level it is crucial to have a method that takes into account a variety of possibilities. The recent \$7.10 increase in the state tipping fee will have a significant impact on waste disposed of in Wisconsin landfills, particularly waste from out-of-state. The Feasibility Report states Orchard Ridge is the busiest landfill in Wisconsin. According to the 2008 Tonnage Report Orchard Ridge received less than 600 tons of out-of-state waste. However, Waste Management's Pheasant Run landfill received more than 600,000 tons of out-of-state waste. If out-of-state waste is reduced, even by a small percentage, this will have an impact on available capacity at all Wisconsin landfills because waste

will be diverted between company owned landfills as the volume at one or more landfills decreases. This factor should be taken into consideration when addressing Need.

Response: We agree that factors affecting one company landfill can affect waste tonnages and site life at their other landfills. In the case of Orchard Ridge, however, we believe that: 1) the direct impacts of the increased state tipping fee will be negligible because the facility accepts very little waste from out-of-state, and in-state waste generators using Orchard Ridge are unlikely to send their waste elsewhere; 2) if WMWI diverts waste among its landfills, it is more likely to divert waste from their Metro landfill, which has a capacity shortage, to Pheasant Run landfill than it is to divert waste the much longer distance from Orchard Ridge; and 3) the proposed Orchard Ridge expansion is relatively small in comparison to the generation rate of its service area. It is much easier to establish need for a small expansion in a waste-productive service area, and it is extremely unlikely that waste diversion would be of a degree that would cause the proposed expansion to fail the "needs" test.

5.6.1 Service Area: The Feasibility Report states "The service area of a privately owned solid waste facility is based on an economics of waste collection, transportation, and disposal.." (page 43). A service area is a planning projection to justify capacity. Waste may not come from the areas listed. Several landfills in the Feasibility Report cite Illinois counties as part of their service area although landfills in Illinois receiving Wisconsin waste are not included. The "Twenty-First Annual Landfill Capacity Report -2007" with a reporting period from 1/01/2007-12/31/2007 states during that time 127,679 cubic yards was waste from Wisconsin was disposed of in Illinois landfills. Veolia ES Zion Landfill in Lake County and Veolia ES Orchard Hills Landfill Inc. in Ogle County are two such landfills in nearby Illinois counties taking Wisconsin waste. These landfills should have been included in the Feasibility Report. Additionally, the presently "inactive" Spoon Ridge Landfill in Fulton County IL ranks number one in available capacity in Illinois with 84.6 million airspace cubic yards and a total landfill area of 1,038 acres (372 acres currently permitted). Documentation on this landfill lists Southeastern Wisconsin as part of the service area and rail as a significant component. If less IL waste is disposed of in Wisconsin due to "economics" the Spoon Ridge Landfill could serve as the recipient. Spoon Ridge could very easily become a viable competitor for Illinois waste as well as Wisconsin waste.

Response: Although there may have been a small volume of waste generated in Wisconsin that was diverted to landfills in Illinois this was most likely a business decision to deal with the economics of waste disposal for. Regarding further initiatives to reduce waste, we agree with WEAL that zero waste is a laudable ambition. The DNR's Waste and Materials Management Program has explicitly included waste reduction in its program objectives. We have worked closely with local units of government, non-governmental organizations such as the Associated Recyclers of Wisconsin and Waste Cap Resource Solutions, and businesses across the state on waste reduction, reuse and recycling initiatives. We are currently working to increase the diversion of organic materials from landfills through composting and anaerobic digestion.

7. Electronic Distribution of Material: A letter within the Feasibility Report dated June 5, 2009 from BT2 Inc. states an electronic copy of the Feasibility Report was provided to the DNR. The availability of Feasibility Reports has always presented problems because the public must be able to physically look at the Feasibility Report in order to prepare comments or request a hearing. Although libraries, DNR offices and county clerks have copies, it is not always easy for the public to review this material. Additionally, copying is expensive and time consuming. In addition to having hard copies available for review, WEAL is asking the DNR to also offer Feasibility Reports in an electronic format. The material can be posted on the DNR website or made available for purchase on CD. Electronic availability is a preferred method for distribution and offers greater access to the public. It also reduces copying charges, paper consumption and is compatible with Zero Waste Philosophy.

Response: At my request to their site engineer, an electronic copy of this feasibility report was sent to you by the consultants for WMWI. In response to your comments about posting an electronic copy of the feasibility report to our website to accommodate your request, we agree with you and are working on modifying our website to accommodate your request. We expect in the very near future to be able to post these documents on our website during the public comment period.

WEAL Requests:

1. Copies of all comments submitted regarding the proposed Orchard Ridge Expansion.

Response: W.E.A.L. comments were the only ones we received.

2. DNR position regarding electronic distribution of Feasibility Reports.

Response: We are already following upon your request.

3. Continued notification regarding proposals for the Orchard Ridge Landfill.

Response: We will keep you informed as requested.

4. Input or suggestions regarding potential revisions to Chapter 289.

Response: As stated above, we recommend you work directly with state legislators on this subject. We are available to provide information on the DNR portions of the Siting Law as well. When legislation is developed, the Department will provide information and testimony as requested and as appropriate to our public health and environmental protection mission. The following hyperlink may allow you to determine when changes are being discussed in the Wisconsin State Legislature that address your area of interest:

<http://committee.schedule.legis.state.wi.us/Schedule.aspx>

If you have any questions about this letter, as always feel free to contact me directly, at (414) 263-8581.

Respectfully,

--J11cetJf;

Michael W. Zillmer, G.
Advanced Hydrogeologist
Waste & Materials Management Program
Southeast Region, WDNR

CC: Frank Schultz-WDNR
Rob Grosch-WDNR
Jack Connelley-Brad Wolbert-WDNR
Mike Melanelli-Gerard Hamblin-WMWI
Village of Menomonee Falls Clerk
Village of Germantown Clerk