



underberg & kessler LLP

RONALD G. HULL, Senior counsel
(585) 258-2838
rhull@underbergkessler.com

June 17, 2011

Mr. Thomas Harvey
Ontario County Planner
20 Ontario Street
Canandaigua, New York 14424

Re: Ontario County Landfill Expansion Project

Dear Mr. Harvey:

The Ontario County Board of Supervisors is seeking to be designated as “lead agency” pursuant to the State Environmental Quality Review Act (“SEQRA”) for the Ontario County Landfill expansion project. The Board of Supervisors has made a preliminary determination to serve as lead agency and has notified “involved agencies”, including the New York State Department of Environmental Conservation (“NYSDEC”), of its intent in accordance with SEQRA’S implementing regulations.

A member of the public, which identifies itself as Finger Lakes Zero Waste Coalition, Inc., and which appears to have its principal mailing address in Geneva, New York, has submitted a letter to NYSDEC, dated June 10, 2011, urging NYSDEC to oppose the designation of the Board of Supervisors as lead agency on the ground that the County has a contractual obligation to support the landfill expansion application and thus has an alleged conflict of interest which, in the words of the objector, “makes it impossible for the County to act in good faith as Lead Agency in developing and evaluating ...environmental findings.”

You have asked our advice regarding the designation of a lead agency under SEQRA and whether the County’s contractual obligations create a conflict of interest which will prevent the County from discharging in good faith the duties of a lead agency.

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We conclude that the Board of Supervisors is the logical and appropriate entity to fulfill the role of lead agency under SEQRA and that the County's contractual obligations do not create a conflict of interest which disqualify the Board of Supervisors from discharging the duties of a lead agency.

First, while there is no doubt that legitimate arguments can be advanced for selection of a "neutral" lead agency that would have no vested interest in the action under consideration, the State Legislature determined when SEQRA was enacted that agencies most directly involved in a project were in the best position to know and evaluate the potential environmental impacts of an action. Determinations of significance by a lead agency require the agency to weigh and balance relevant environmental impacts with social, economic and other considerations which are difficult to quantify and, as a general rule, are best known to the agency closest to the project. Consequently, the Legislature incorporated into SEQRA a statutory directive that a lead agency should be the agency "having principal responsibility for carrying out or approving" an action. ECL § 8-0111(6). To our knowledge, no court has found an agency's ownership or sponsorship of a project to be a ground for precluding it from serving as lead agency.

Second, the objection that the Board of Supervisors is contractually obligated to make a SEQRA determination favorable to the proposed expansion is simply incorrect. The Operation, Management and Lease Agreement between Ontario County and New England Waste Services of N.Y., Inc. and Casella Waste Systems, Inc. was carefully drawn not to inhibit or restrict the County's sovereignty or governmental authority and discretion. The Board of Supervisors is not bound to render any particular determination under SEQRA. Any provision purporting to bind the Board of Supervisors would be unenforceable as an unconstitutional delegation of authority and a violation of the "term limits rule" which prohibits one Board from binding its successors in matters relating to governance. The County has a vested interest in the success of the landfill, but had the same interest when it operated the landfill directly. The insertion of a private entity as the County's agent to operate and manage the landfill does not materially change the nature of the County's underlying interests as owner and permittee.

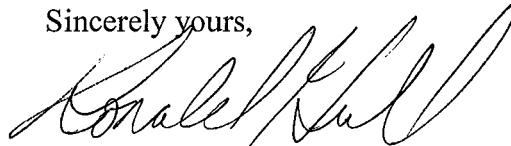
To be sure, there could be a contractual consequence if the Board of Supervisors were to make a finding that the proposed expansion does not avoid or minimize adverse environmental impacts to the maximum extent practicable. In that event, NEWSNY might have grounds to terminate its agreement to operate the landfill, but the County would face a similar consequence if it operated the landfill directly and made a SEQRA determination that the landfill could not expand. The possibility that there are consequences to a potential SEQRA determination does not contractually restrict the

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County to make policy decisions that support landfill expansion. The OMLA does not restrict the discretion of the Board of Supervisors to discharge the duties of lead agency.

Sincerely yours,



Ronald G. Hull

RGH:dp