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February 8, 2016

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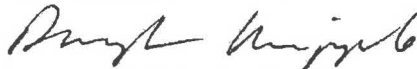
Gina McCarthy, Administrator
U.S. Environmental Protection Agency Region 2
1200 Pennsylvania Avenue NW
Washington, D. C. 20460

Re: Petition Requesting that the Administrator Reopen the Title V Operating Permit
for Seneca Energy II, LLC

Dear Administrator McCarthy,

Enclosed please find one original copy of the above-referenced petition together with
Exhibits A through E.

Respectfully submitted,



Douglas C. Knipple, Ph. D.
President, Finger Lakes Zero Waste Coalition, Inc.

cc: Judith Enck, EPA Region 2 (via email)
Steven Riva, EPA Region 2 (via email)

**BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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In the Matter of the Seneca Energy II, LLC,
Ontario County Landfill Gas to Energy Facility
Renewed and Modified Title V Permit,
NYSDEC Application ID 8-3244-00040/00002
Issued by the New York State Department of
Environmental Conservation

_____X

**PETITION REQUESTING THAT THE ADMINISTRATOR REOPEN THE TITLE V
OPERATING PERMIT FOR SENECA ENERGY II, LLC**

I. INTRODUCTION

Pursuant to the Clean Air Act § 505(b)(2) and 40 C.F.R. § 70.8(d), Finger Lakes Zero Waste Coalition, Inc. (FLZWC, "Petitioner") hereby petitions the Administrator of the United States Environmental Protection Agency (EPA) to reopen the Title V Operating Permit for the Ontario County Landfill Gas-to-Energy Facility, (LFGTE plant), located on site at the Ontario County Landfill (the landfill), and operated by Seneca Energy II, LLC (SE). Both SE and the landfill have Title V permits issued by New York State Department of Environmental Conservation, (DEC), but the respective permits treat each as separate sources, with separate unrelated control requirements.

FLZWC is an environmental organization incorporated under New York's Not-for-Profit Corporations Law and recognized as a charitable organization under IRC § 501(c)(4). FLZWC's members, live, work, shop, play, rest and breathe the air in Seneca, New York, the town in which the subject LFGTE and landfill facilities are located. FLZWC's mission is to advance the goals of a "zero waste" society in the local community, that is, a society in which no waste is generated for disposal.

II. BACKGROUND

On January 9, 2012, SE submitted to NYSDEC an application for renewal and modification of SE's Title V permit. On or about July 18, 2012, NYSDEC issued a public notice providing a draft proposed Title V permit modification for SE and an opportunity for the public to comment on the proposed permit, up to August 17, 2012. Available at

<http://www.dec.ny.gov/enb/20120718_reg8.html#832440004000002>. On August 17, 2012, prior to the close of the public comment period, FLZWC submitted comments to NYSDEC on the application. FLZWC's comment letter is provided herewith as **Exhibit A**. On or about September 11, 2012, DEC referred the proposed Title V permit for SE's LFGTE plant to EPA without any substantive changes in response to FLZWC's comments, and a permit report. Available at <http://www.dec.ny.gov/dardata/boss/afs/issued_atv_n.html>.

On or about September 11, 2012, NYSDEC issued a "Responsiveness Summary" responding to FLZWC's comments. The Responsiveness Summary provided herewith as **Exhibit B**. On December 22, 2012, FLZWC petitioned the EPA requesting that the Administrator object to issuance of the Title V operating permit for SE on the principal basis that the landfill and its "companion" LFGTE plant are under common control and constitute a single major source for purposes of New Source Review (NSR), Prevention of Significant Deterioration (PSD), and Title V programs under the Clean Air Act (CAA). On June 29, 2015, the EPA Administrator issued an Order (EPA Order) in response to FLZWC's December 2012 petition directing the DEC to provide the case-specific facts and factors it considered in its analysis that lead it to conclude that the LFGTE plant and the landfill are not under common control and that the two facilities should not be treated as a single source for CAA purposes. On October 26, 2015, the Acting DEC Deputy Commissioner issued a response to the EPA Order, provided herewith as **Exhibit C**.

As the EPA Order noted, when a state responds to a title V objection by supplementing the permit record, the EPA treats the supplementation as a new proposed permit for purposes of CAA section 505(b) and 40 C.F.R. § 70.8(c), (d). See EPA Order at p. 5. EPA did not issue an objection to DEC's supplementation of the permit record within the Agency's 45-day review period. Thus the present petition is timely submitted within 60 days after EPA's 45-day review following receipt of the DEC's October 26, 2015 response letter. This petition addresses issues

specifically identified in comments provided to DEC during the initial public comment period in this matter.

III. SUMMARY OF THE ARGUMENT

FLZWC argued in its December 2012 Petition, incorporated in this petition by reference and provided herewith as **Exhibit D**, that EPA should object to SE's Title V air permit as issued by DEC for failure to consider the landfill and LFGTE plant a single source because the two facilities are contiguous, share a common major industrial classification (SIC code prefix), and are under common control. Only the latter of these three criteria is in dispute in the present case.

Petitioner described factors in its December 2012 Petition at p. 16-21, of which several were identified in the referenced contracts contained in Exhibit O (Gas Assignment Agreement, provided herewith renamed as **Exhibit E**), that we believe are indicative of a common control relationship between the SE LFGTE plant and the landfill:

- 1) landfill gas is currently SE's LFGTE plant's only fuel source;
 - 2) the landfill operator has assigned exclusive rights to the landfill gas to SE, and SE is prohibited from purchasing any other gas unless the landfill is not producing enough gas of sufficient quality to meet SE's requirements;
 - 3) the landfill operator and SE share equally tax credits granted to the latter;
 - 4) SE is contractually required to return treated landfill gas to the landfill operator at no cost to fuel a boiler serving the landfill operator's office building;
 - 5) SE is contractually obligated to provide the landfill operator with a steady flow of excess treated landfill gas at no cost;
 - 6) the landfill shares control of the landfill gas collection system with SE, including by contractually maintaining appropriate inventory of pipeline and incidentals that can be used in the repair and maintenance of the LFG collection system, by allowing SE employees access to the landfill property to make emergency repairs when the landfill is unmanned, and that such access is necessary given that the SE LFGTE plant is designed to operate continuously;
- and.

7) the condensate generated by SE's landfill gas transport and treatment process is pumped through a sealed system into the landfill leachate collection system, which is an indicator that the SE LFGTE plant is dependent upon the landfill for disposal of this byproduct.

Petitioner takes the position that the DEC's October 26, 2015 letter failed to respond as directed in the EPA Order. The EPA Order made clear that there is "rebuttable presumption [of common control] when one entity locates on another entity's property." EPA Order, p. 10. The DEC Commissioner's Declaratory Ruling 19-19 adopts the rebuttable presumption rule. See Decl. Ruling 19-19, under the heading "The 1995 'Spratlin Letter' - Questions and Presumption/or Co-Located Facilities," discussing the Spratlin letter. Thus, the assertion in the DEC Response Letter that the SE common control determination comports with Declaratory Ruling 19-19 is erroneous.


DEC's October 26, 2015 response to EPA also erroneously states that EPA failed, in its Order, to "find that SE II's Title V permit for the LFGTE facility fails to meet [a] requirement of the Act," as required by CAA sec. 505(b)(2). Section 505(b)(2) requires EPA to "issue an objection" to the permit "if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this Act." The EPA Order issued an objection to the SE permit based on EPA's finding "that the Petitioner demonstrated that the DEC did not provide an adequate record explaining its determination that the Seneca Energy Facility and the landfill are two separate sources. Specifically, the DEC did not provide an adequate record explaining its analysis on the common control element." EPA Order, p. 16.

A Title V permit must include an adequate "statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory and regulatory provisions)." 40 CFR § 70.7(a)(5). It is the statement required under 40 CFR § 70.7(a)(5), as provided by DEC initially, and in substance provided again unchanged with its October 26, 2015 response that is defective. In other words, the EPA Order concludes that NYSDEC failed to satisfy 40 CFR § 70.7(a)(5), a "requirement of the Act". In addition, NYSDEC's defective 40 CFR § 70.7(a)(5) statement fails to rebut the presumption that SE and the landfill are under common control, because they are located on the same land.

IV. CONCLUSION

Petitioner has identified specific facts and factors in the contractual agreements between SE and the landfill that are indicative of a common control relationship based on long-established EPA criteria. DEC has disregarded these facts and factors in making its determination that the SE LFGTE plant and the landfill are not under common control and issuing separate Title V permits for the two facilities. DEC also has failed to respond as directed in the EPA Order to provide sufficient reasoning for determining that SE is not within the common control of the landfill whose collected gas it controls, and thus failing to sufficiently justify its decision not to combine both facilities' emissions as a single source. Petitioner requests that the Administrator reopen SE's Title V permit and direct the DEC to recalculate baseline and future emissions for all sources at the site on a per-pollutant basis using a "worst case scenario" approach to estimating PTE for the single aggregated source.

Respectfully submitted,



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