

December 9, 2005

Westchester County Solid Waste Commission  
100 East First Street, 7<sup>th</sup> Floor  
Mount Vernon, New York

Re: Application of Northeast Interchange Railway (NIR) for a Class A License

Dear Chairman McShane and Members of the Commission:

As I wrote in my letters of November 11 and November 17, 2005 to the Solid Waste Commission, the Village of Croton-on-Hudson was awaiting files from the Ohio Environmental Protection Agency documenting the “series of serious violations” at the Sunny Farms Landfill, referred to by Ellen Gerber, Supervisor of the Northwest District Office of the Ohio EPA Division of Solid and Infectious Waste.

Last week I received a large box of materials containing letters, reports, and notes of investigations, dating back to early 2003, from the Ohio EPA and Seneca County General Health District. These documents paint a very disturbing picture of persistent violations of environmental laws, which seem to have intensified beginning in early 2005 – when Regus was indisputably in control of the landfill.

As the Commission is aware, Sunny Farms Landfill, in Fostoria, Ohio, is owned and operated by Regus Industries. Regus appears to have taken over the landfill (previously named San-Lan Landfill) from Hocking Environmental Group some time in 2003. A sign-in sheet from a meeting with representatives of Ohio EPA and the Seneca County Health District about the San-Lan Landfill on November 18, 2003 shows two representatives from Regus in attendance. A sign-in sheet from a February 22, 2005 meeting about Sunny Farms also shows two representatives from Regus, including Andreas Gruson, in attendance.

Putting aside the repeated instances of administrative violations (failure to keep required records, to file mandatory reports, and to supply required information et al.), there is a host of violations that have substantive environmental impacts.

When Regus acquired the landfill from Hocking Environmental, the facility was under a consent order with respect to groundwater contamination. That should have led the owners to exercise special diligence in meeting all regulatory requirements. Instead, it is apparent from the Ohio EPA records that, since Regus began operating the landfill, operations at the site have been characterized by a wide variety of significant violations.

Prior to Regus's taking over the landfill, the only violation letters involved compliance with the groundwater consent order. Once Regus started operating the landfill, the range of violations broadened significantly and the number of violations increased dramatically. Below is listing of only some of the violations referred to in the Ohio EPA files. Each of these is documented in a letter or memo, dated as follows, from the Ohio EPA or Seneca County Health District (SCHD):

- October 6, 2003 -- An "extensive amount of dust on County Road 18 from the truck traffic coming out of the landfill," in violation of landfill's air pollution permit and the solid waste regulations. Watering truck is out for repair; Regus failed to notify Ohio EPA as required. (OEPA)
- January 16 and January 28, 2004 -- Despite repeated requests, Regus continues to fail to submit quality assurance/quality control data and other information required to determine if its groundwater monitoring results are accurate. (OEPA) [This violation persisted through the most recent report, dated November 1, 2005.]
- July 13, 2004 -- Failure to submit reports required under Explosive Gas Monitoring Plan. (OEPA)
- January 3, 2005 -- Waste transported by rail and deposited at landfill is not being covered daily as required by regulations; at time of inspection, "daily cover had not been placed in that area for at least several days."  
Working face not kept "at a manageable size/area." (SCHD)

- January 14, 2005 -- On the rail cars being unloaded, “There appeared to be a lot of solid waste mixed in with the construction and demolition debris.” (SCHD)
- January 25, 2005 -- Rail cars containing solid waste were improperly logged as having only construction and demolition debris. (SCHD)
- March 30, 2005 -- Regus admitted that it had “overfilled” portions of the landfill (i.e., deposited waste above the maximum allowable elevation) and was being required to remove and relocate this waste. Additionally, there were “deep erosion gullies throughout the west slope,” and the “rip-rap channel at the northwest corner of Phase 1 was noted to be badly eroded,” and the west perimeter ditch had “an excessive accumulation of silt that was hindering flow.” This was cited “for not maintaining the integrity of the engineered components of the sanitary landfill facility and for not promptly taking corrective actions or repairs.” (OEPA)
- April 5, 2005 -- There were visible emissions from the landfill, in violation of the permit. (OEPA)
- April 22, 2005 -- Numerous rail cars that contained solid waste were improperly logged as containing only construction and demolition debris. (SCHD)
- May 6, 2005 -- During an inspection, it was found that “the leachate tanks were full, as the lights/alarms were flashing.” The leachate collection pipes were storing in excess of 20 inches of leachate, though the permit limit was 12 inches. (SCHD)
- May 10, 2005 -- “No evidence of an [sic] fugitive dust control on any roadway. Entrance & egress RW to facility very dusty & considerable dirt tracked onto CR -- very dusty.” (OEPA)
- May 12, 2005 -- A “leachate outbreak” that had previously been noted still existed, and the leachate levels still exceeded the permit limits. (SCHD)
- May 16, 2005 -- Regus began accepting construction and demolition debris by rail transfer in May 2004 in large volumes (3000 tons/day), and built a rail transfer station. All this required permits

from Ohio EPA, but Regus did not obtain them. This creates “potential significant increase in the emissions of fugitive dust and hydrogen sulfide (H<sub>2</sub>S).” “[T]here is no evidence of any control equipment or control measures employed to minimize emissions of fugitive dust from these activities.” Additionally, “[t]here was no evidence of a water truck in operation and most roadways were extremely dusty. Dirt was also being tracked onto the public roadway causing significant fugitive dust emissions whenever traffic passed the landfill.” Plus, “[t]here was a significant odor emanating from the landfill operations.” Finally, even though Sunny Farms had been cited several times previously, there were still “no signs that are displayed in the manner required regarding asbestos waste disposal operations.” (OEPA)

- June 29, 2005 -- The landfill was found to be accepting many items that should have been rejected, such as metal bed frames, metal overhead garage door, and metal piping. “A spotter was not present at the time of the inspection and a bulldozer was pushing the unacceptable items around at the time of the inspection.” In addition, a previously-noted leachate outbreak had been repaired, but a new one had appeared. Also, leachate levels at four pumps were significantly in excess of 12 inches. Finally, daily logs of operations had not been completed. (SCHD)
- June 30, 2005 -- The scales were not working for most of the week. “During this time the weights at the scale house were guessed based upon history, load composition, or estimates.” Older daily logs still not signed. No daily logs from week prior to inspection. (SCHD)
- June 30, 2005 -- Once again the leachate levels exceed permit limits. “The alarms were on/flashing, the tank was full, and no trucks were hauling leachate.” Additionally, “there was a lot of trash on the access roads that had fallen off of the trucks taking rail debris from the unloading facility to the working face. The roads were covered with wood, paper, metal and miscellaneous debris at the time of the inspection.” “All debris must be removed from road surfaces and trucks need enclosed rear gates to prevent waste from falling out.” Owners cited for “completing the forms and making a determination on the contents [that the rail cars contained C&D] before the rail cars are unloaded.” (SCHD)

- July 20, 2005 -- Several railcars containing solid waste were improperly logged as containing only construction and demolition debris. Additionally, “we observed loads of unidentifiable waste material being unloaded from the rail cars listed above. The waste was loaded into landfill dump trucks and hauled directly to the working face where it was disposed. The contents of the rail cars were determined to be unidentifiable and the weight for the entire rail cars must be properly categorized as a solid waste.” This letter notes that a state fee is assessed for solid waste disposal. Thus logging waste as construction and demolition debris rather than as solid waste amounts to evasion of the fee. (SCHD)
- July 27, 2005 – Visual emissions far in excess of permit. (OEPA)
- August 9, 2005 -- More rail cars noted that contained solid waste but were logged as construction and demolition debris. Regus is reminded that this could lead to underpayment of solid waste disposal fees. Additionally, the leading area of the landfill “needs more cover, as an excessive amount of trash was exposed... We also observed several leachate outbreaks ... that need to be addressed before they flow into the ditch.” (SCHD)
- August 15, 2005 -- A compilation of statistics from May, June and July 2005 shows that when no outside observer is present, Regus logs 22% to 28% of the loads as containing solid waste; but when a government observer is present, 59% to 64% of the loads are logged as containing solid waste. (SCHD)
- September 23, 2005 -- Visible dust emissions were observed. The water truck was not seen. Two trucks “were moving earth from near the pond toward the landfill. These two trucks made many trips during this period on the observed roadway since both drove at high speed back and forth.” (OEPA)
- October 19, 2005 -- Regus continues to be in violation of an order “issued on June 30, 2003 for not reconstructing the east cap of Phase I of the landfill by the December 1, 2003 deadline.” (OEPA)
- November 1, 2005 -- Regus has failed to install monitoring wells necessary to determine the extent of groundwater contamination

from the landfill. “The contamination extends beyond all of [the existing] wells as depicted on the isopleth maps.” (OEPA)

I am including with this letter a copy of the August 15, 2005 compilation of statistics showing the difference in describing the waste loads when an inspector was present at Sunny Farms and when the unloading was not observed. Those statistics are a clear demonstration of Regus’s dissembling and manipulation of its records, which makes it impossible for state and local regulators to “ensure that solid waste ... is disposed of or recycled in an environmentally safe and sound manner,” as required by the Westchester County Solid Waste and Recyclables Collection Licensing Law (“County Solid Waste Licensing Law”).

Notably, in the letter dated January 25, 2005 from the Seneca County General Health District, Regus was cited for failing to file a disclosure statement about firing their manager and hiring a new key employee. It is obvious from a review of the dates of the violations listed above, that the hiring of the new manager coincided with the pattern of understating the amount of solid waste being dumped at the landfill, as well as with a sharp increase in the frequency of violations.

The Village of Croton-on-Hudson believes that licensing a business with a compliance record as disgraceful as Regus’s at Sunny Farms and Warren Hills (ownership issues notwithstanding) will certainly not promote the health, welfare and safety of the people of Croton-on-Hudson and will not ensure that solid waste is disposed of in an environmentally safe and sound manner. Irrespective of Regus’s compliance history at Champion City in Massachusetts (which we have good reason to believe is not the “model operation” Mr. Berger states it is), its performance at the two landfills in Ohio clearly demonstrates that the Regus companies lack honesty and integrity and are not fit to operate solid waste facilities in Westchester County.

At the several Commission meetings on NIR’s application, some of the Commissioners stated that the Commission’s goal in issuing hauling licenses is to make sure that haulers are not connected to organized crime. While that is one of the stated purposes of the County Solid Waste Licensing Law, it is listed as the “second purpose” of the law. The Law’s “first purpose” is to: “(1) enable Westchester County to promote the general health, welfare and safety of the people of Westchester County; (2)

ensure that solid waste generated within the county is disposed of or recycled in an environmentally safe and sound manner ...”

It is regrettable that it was necessary for the Village to shoulder the expense and trouble of conducting this inquiry into the Sunny Farms landfill, after the staff of the Solid Waste Commission had assured the Commission members that they had done an “exhaustive investigation” of the Regus controlled entities, including the Sunny Farms Landfill. It was not until I telephoned Mr. Berger on the morning of November 17, 2005 to tell him what I had just learned from Ohio EPA that the Commission staff contacted the Northwest District Office.

The Village has serious doubts about the thoroughness of the investigation of Regus controlled businesses. Based on the Village’s own investigation, however, the conclusion seems inescapable that NIR should not be licensed in Westchester County. In addition to the actions by the Attorney General with respect to Warren Hills, there is pending administrative activity (although not yet a formal “action”) respecting the Sunny Farms Landfill “which directly relates to the fitness to conduct the business or perform the work for which the license is sought.” County Solid Waste Licensing Law § 826-a.400.2.b.

I have enclosed with my letters to Chairman McShane and Mr. Berger copies of all the documents referred to above. If anyone would like me to send you copies as well, please call me at 674-4100.

Once again, thank you for your careful attention to this matter.

Sincerely,

Marianne Stecich  
Village Attorney

Enclosures

cc: Mayor Schmidt and Members of the Croton-on-Hudson Board of Trustees  
Richard Herbek, Village Manager