SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

NEW ENGLAND WASTE SERVICES OF M.E., INC., LEO DICKSON & SONS, INC., DICKSON'S ENVIRONMENTAL SERVICES, INC., AND DICKSON LAND HOLDINGS, LLC

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 and Section 3001 of the Civil Practice Law and Rules,

-against-

TOWN BOARD OF TOWN OF THURSTON AND THE TOWN OF THURSTON,

Respondents-Defendants.

VERIFIED PETITION AND COMPLAINT

Index No. _____

RJI No. _____

Petitioners-Plaintiffs, New England Waste Services of M.E., Inc. ("Casella"), Leo Dickson & Sons, Inc. ("Leo Dickson"), Dickson's Environmental Services, Inc. ("Dickson Environmental"), and Dickson Land Holdings, LLC ("Dickson Land Holdings") (collectively, "Dickson," and collectively with Casella, "Petitioners"), by their attorneys, The West Firm, PLLC for Casella, and Barclay Damon, LLP for Dickson, and for their Verified Petition and Complaint, allege as follows:

NATURE OF THE PROCEEDING/ACTION

1. This proceeding/action challenges Local Law No. 3 of 2023, a Local Law Regulating the Disposal of Sewage Sludge ("Local Law No. 3"), enacted by the Respondent-Defendant, Town Board of the Town of Thurston ("Town Board"), on October 18, 2023, and filed with the New York State Department of State ("DOS") on October 23, 2023. A true and accurate

copy of Local Law No. 3 (with the DOS filing receipt) is annexed hereto and incorporated herein as Exhibit A.

2. Local Law No. 3 has the effect of prohibiting land application of "sewage sludge" (hereinafter, "biosolids") anywhere within the Respondent-Defendant Town of Thurston (the "Town"), including on farms that are located within certified Agricultural Districts and authorized for land application of biosolids under State Part 360 permits.[1]

3. Specifically, Local Law No. 3 (Section VI) contains three different metrics which impose a land application prohibition. The first metric (Section VI.A) directs that "[t]he land application of sewage sludge shall be prohibited [ ] [w]ithin 10 miles of a disadvantaged community." *See* Local Law No. 3, Section V (defining disadvantaged community per the criteria in Environmental Conservation ["ECL"] 75-0111).

4. Geographic information system ("GIS") mapping performed by Casella's consultants establishes that this provision results in banning land application of biosolids throughout the entire Town, including in Agricultural Districts. A true and accurate copy of the GIS map is annexed hereto and incorporated herein as Exhibit B. A true and accurate copy of a map depicting Agricultural Districts within the Town is annexed hereto and incorporated herein as Exhibit C.

5. The biosolids land application ban in Local Law No. 3 is based on the Town's asserted concerns about per- and polyfluoroalkyl substances ("PFAS"). PFAS, however, are ubiquitous in the environment; and the regulation of PFAS in biosolids is addressed through comprehensive regulation by the U.S. Environmental Protection Agency ("EPA") and the New York State Department of Environmental Conservation ("DEC").

[1] Henceforth, the terms "Town Board" and "Town" will be used interchangeably.

6. Further, State and Federal policy both strongly encourage the properly regulated beneficial reuse of biosolids though land application, as opposed to disposal of biosolids via landfilling or incineration.

7. In enacting Local Law No. 3, the Town thus ignored Federal and State regulation and longstanding State and Federal policies that encourage land application of biosolids; and the Town did so without the benefit of any bona fide testing or analysis linking land application of biosolids to PFAS contamination.

8. The townwide biosolids land application ban imposed by Local Law No. 3 will significantly impair the longstanding operation of the Bonny Hill Organics Facility ("Facility") located in the Town and now owned and operated by Casella. The ban will also preclude use of biosolids on those portions of Casella's property that are leased/used for farm operations within Agricultural Districts within the Town and that hold State Part 360 permits authorizing land application of biosolids.

9. The townwide biosolids land application ban imposed by Local Law No. 3 will also significantly adversely impact farm operations in the Town that depend on biosolids as organic fertilizer, in lieu of chemical fertilizers, including the farm operation of Dickson.

10. Importantly as well, the townwide biosolids land application ban imposed by Local Law No. 3 has the potential to result in significant negative environmental impacts due to, among other things, (1) necessitating the increased use of chemical fertilizer and (2) increasing the burden on landfills (i.e., due to the increased land disposal of organic material, as opposed to those organics being diverted from the waste stream for beneficial use).

11. The increased use of chemical fertilizer has its own negative impacts in terms of, *inter alia*, surface and groundwater contamination, energy consumption, and the lack of any

benefit relative to soil amendment (in contrast with biosolids use). The increased burden on landfills, beyond unnecessarily using valuable landfill space for a product capable of reuse, will result in increased emissions of greenhouse gases due to decomposition of organics.

12. Petitioners maintain that Local Law No. 3 is fatally infirm, as being violative of a number of State statutes and discordant with longstanding State (and Federal) policies.

13. First, the Town violated General Municipal Law 239-m by failing to refer Local Law No. 3 to the Planning Department of the County of Steuben ("County Planning") for County Planning's recommendation of approval/disapproval (or await 30 days) prior to adopting the local law.

14. Second, the Town violated Environmental Conservation Law ("ECL"), Article 8, the New York State Environmental Quality Review Act ("SEQRA") both procedurally and substantively.

15. Procedurally, the Town violated SEQRA by failing to coordinate review with County Planning (which the Town identified as an involved agency) in accord with the procedures in 6 NYCRR 617.6(b).

16. The Town also violated SEQRA procedurally by failing to identify other interested and/or involved agencies (and coordinate review with the latter) as required by 6 NYCRR 617.3(d) and 617.6(b).

17. Specifically, DEC and the New York State Departments of Health ("DOH") are interested agencies by virtue of the enforcement/consultation process created by the Town in Sections VIII.C and IX.D of Local Law No. 3, which provisions impose responsibilities on these State agencies. The DEC is also an interested agency by virtue of its statutory/regulatory authority over the permitting of biosolids facilities and the land application of biosolids and the

control/regulation of PFAS. *See, e.g.,* 6 NYCRR Part 361-2. The Town's failure to identify these agencies as interested agencies violated 6 NYCRR 617.3(d).

18. Additionally, the New York State Department of Agriculture and Markets ("Agriculture and Markets") is, at the least, an interested agency, given its jurisdiction to determine if local enactments are superseded under Agriculture and Markets Law 305-a where such enactments unreasonably restrict farm operations in Agricultural Districts. Thus, per 6 NYCRR 617.3(d), Agriculture and Markets should have been identified as an interested agency.

19. Moreover, under the facts of this case – i.e., where, prior to enactment of Local Law No. 3, petitions already were pending before the Commissioner of Agriculture and Markets (the "Commissioner") challenging the validity of a proposed prior version of Local Law No. 3 (which also banned land application of biosolids throughout the Town) – Agriculture and Markets is an involved agency. As more fully detailed below, the Town knew that Agriculture and Markets had already been engaged by Petitioners to determine the validity of a biosolids land application ban as applied to Petitioners' farm operations. Thus, under these facts, Agriculture and Markets was an involved agency for purposes of SEQRA review of Local Law No. 3 (i.e., which also bans land application on Petitioners' farms, all of which are located in Agricultural Districts).

20. In sum, the Town was obliged to coordinate SEQRA review with County Planning (at the very least) and Agriculture and Markets in accord with 6 NYCRR 617.6. The Town also should have identified DEC and DOH as interested agencies and included them in the SEQRA process. Having failed to do so, the Town failed to comply with SEQRA's procedures, rendering the Town's negative declaration and Local Law No. 3 invalid.

21. Local Law No. 3 is also invalid for the Town's failure to substantively comply with SEQRA – namely, by failing to identify, meaningfully evaluate or make a reasoned elaboration as

to a host of obvious environmental impacts from the biosolids ban imposed by Local Law No. 3 (e.g., impacts from increased use of chemical fertilizers [among them, groundwater/surface water impacts], impacts from increased landfilling and associated effects on human health and the environment [including air impacts], impacts on recycling goals and strategies, inconsistency with community plans and character [i.e., the right to farm in Agricultural Districts], and impacts on energy consumption [i.e., energy consumed in trucking biosolids longer distances in lieu of land application or in manufacturing chemical fertilizers).

22. The Town did not even acknowledge most of these impacts, let alone perform any meaningful evaluation. Instead, the Town identified only one impact – the increased use of chemical fertilizer. Then, the Town summarily concluded (without actual investigation or analysis) that any resulting adverse impacts "are comparatively less deleterious to human health than sewage sludge." This unsupported conclusion (which lacks any analysis), together with the Town's failure to acknowledge and evaluate numerous other obvious environmental impacts, violated SEQRA's substantive requirements, rendering the Town's negative declaration and Local Law No. 3 invalid on this ground as well.

23. Third, Local Law No.3 is invalid because it is conflict preempted by State statutes/regulations, namely: (1) the State Right to Farm Law, Agriculture and Markets Law 305-a; (2) the Climate Leadership Community Protection Act ("CLCPA"); and (3) State policy and practice, as embodied in ECL 27-0106 (which prioritizes reuse/recycling over disposal) and 6 NYCRR Part 361-2 (which comprehensively regulates biosolids facilities and land application of organics) and Part 360.6 (which specifies testing protocols).

24. Local Law No. 3 violates Agriculture and Markets Law 305-a, which protects farming operations in Agricultural Districts from unreasonably restrictive local regulation absent a showing of a public health or safety threat.

25. The Commissioner of Agriculture and Markets has repeatedly found comparable local biosolids bans (as applied to farm operations in Agricultural Districts in other municipalities) to be superseded by Agriculture and Markets Law 305-a.

26. And, the Town has failed to make any legitimate showing of a public health threat that would warrant upholding the unduly restrictive regulation.

27. Here, the Town's only showing of an alleged public health threat is home kit testing by a third-party citizens' group, which testing was not performed by a certified laboratory, making the results unreliable and unacceptable to governmental agencies. *See* https://cyclopure.com/product/water-test-kit-pro/. The Town has provided no testing by laboratories certified by the DOH (as required by DEC regulations [*see* 6 NYCRR 360.6(b) and 361-2(e)(1)(ii)(f)]) in support of Local Law No. 3, let alone demonstrated any link whatsoever between land application of biosolids and elevated PFAS.

28. Notably, even if the Town's test results are taken at face value, they do not show any exceedance of State drinking water standards. Further, to the extent in-home testing shows the presence of PFAS, the Town has provided nothing suggesting, let alone demonstrating, any link to the application of biosolids on the Part 360-permitted farms/fields.

29. Therefore, the Town's showing – which is non-compliant in all respects with State testing protocols/requirements and, in any event, does not show any exceedance of State standards (or link to the land application of biosolids) – is insufficient on its face to permit such pervasive impairment of farm operations in the Town. In other words, Agriculture and Markets Law 305-a

supersedes Local Law No. 3, as applied in Agricultural Districts within the Town on farms State-permitted to receive biosolids.

30. Local Law No. 3 is also preempted by Agricultural and Markets Law 305-a because it creates a direct jurisdictional conflict. The enforcement/consultation process in Sections VIII.C and IX.D of Local Law No. 3 (involving DOH, DEC and County Planning) usurps the exclusive jurisdiction of the Commissioner of Agriculture and Markets to determine the enforceability of local enactments as applied to farm operations in Agricultural Districts. Thus, Local Law No. 3 is fatally infirm on this ground as well.

31. Local Law No. 3 also directly conflicts with the CLCPA. The CLCPA mandates drastic reductions in greenhouse gas emissions statewide. Local Law No. 3 diverts biosolids from reuse/recycling to land disposal (in landfills), incineration, or management requiring out-of-area trucking (for disposal, incineration or land application elsewhere). These alternatives yield air impacts, including increased emissions of greenhouse gases (among them, methane), in direct conflict with the CLCPA, thereby rendering Local Law No. 3 conflict preempted by the CLCPA.

32. Local Law No. 3 likewise conflicts with (1) ECL Article 27, specifically, the solid waste management hierarchy set forth in ECL 27-0106, which prioritizes reuse over land disposal; (2) longstanding State public policy, promoting beneficial reuse of biosolids; and (3) State standards (e.g., 6 NYCRR Parts 360.6[b] and 361-2) which comprehensively regulate biosolids, including land application, and set forth specific testing protocols governing same.

33. Moreover, even if the biosolids land application prohibitions in Local Law No. 3 were deemed valid (which they are not), other provisions of the law are not. For example, the unilateral attorney fee provisions are infirm on their face, as they are not authorized by any statute, contract, or court order. Also, as noted above, to the extent Local Law No. 3 is applied to farm

operations in Agricultural Districts, the enforcement/consultation provisions in Sections VIII.C and IX.D (creating a consultation/approval process involving County Planning, DEC and/or DOH) usurp the exclusive jurisdiction of the Commissioner of Agriculture and Markets. Those provisions, therefore, are invalid as well.

PARTIES

34. Petitioner-Plaintiff New England Services of M.E., Inc. (i.e., Casella) is a corporation organized under the laws of the State of Maine, with an office located at 25 Greens Hill Lane, Rutland, Vermont 05701. Casella is the current owner of the Bonny Hill Organics Facility (i.e., the Facility) via acquisition in July 2022. This acquisition included the assets of the land application operation that Leo Dickson and Dickson Environmental operated since the late 1960s – i.e., the 150 acres on which the Facility is located, as well as the transfer of the DEC Part 360 permit to store and land apply liquid biosolids and food waste on agricultural fields. Casella leases the remaining 2700 acres for land application, all of which are in the Towns of Thurston, Cameron and Bath in Steuben County, and located in Agricultural Districts 1 and 2.

35. Petitioner-Plaintiff Leo Dickson & Sons, Inc. (i.e., Leo Dickson) is a corporation organized under the laws of the State of New York, with a principal office at 5151 Bonny Hill Road, Bath, New York 14810. Leo Dickson previously held the DEC Part 360 permit to store and land apply liquid biosolids and food waste on agricultural fields, and it maintains the right from Casella to spread biosolids on lands constituting the Facility and within the Town.

36. Petitioner-Plaintiff Dickson's Environmental Services, Inc. (i.e., Dickson Environmental) is a corporation organized under the laws of the State of New York, with a principal office at 7443 State Route 415 North, Bath, New York 14810. Dickson Environmental

continues to own land in the Town on which Leo Dickson applies biosolids and conducts a farm operation.

37. Petitioner-Plaintiff Dickson Land Holdings, LLC (i.e., Dickson Land Holdings) is a company organized under the laws of the State of New York, with a principal office at 7443 State Route 415 North, Bath, New York 14810. Dickson Land Holdings continues to own land in the Town on which Leo Dickson applies biosolids and conducts a farm operation.

38. Collectively, the Petitioners manage and implement a farm operation consisting of the Facility and associated lands within the Town.

39. Respondent-Defendant Town Board of the Town of Thurston (i.e., the Town Board) is the legislative board of the Town of Thurston, with office/address located at 7578 County Route 333, Campbell, New York 14821.

40. Respondent-Defendant Town of Thurston (i.e., the Town) is a New York municipal corporation located in the approximate center of Steuben County and formed in 1844, with offices located at 7578 County Route 333, Campbell, New York 14821.

JURISDICTION AND VENUE

41. Under CPLR §§ 7803, 7804(b), 7806, 3001, 3017(a), 3017(b), 6001, and 6301, this Court has jurisdiction to grant Petitioners' request for relief and any further relief this Court deems just and proper.

42. Venue is proper in this Court under CPLR §§ 503, 506(b) and 509.

FACTUAL BACKGROUND

A. Facility Background; Local Farms' Reliance on Biosolids

43. The Facility is located on Bonny Hill Road in the Town of Thurston, Steuben County, New York and is a State-permitted biosolids Facility, authorized to store and land apply organics/liquid biosolids and food waste on agricultural fields.

44. The Facility and land application operations were owned/operated since the late 1960s by Leo Dickson and Dickson Environmental.

45. On July 21, 2022, Casella purchased the Facility.

46. The acquisition by Casella included the assets of the operation that Leo Dickson and Dickson Environmental had operated since the late 1960s. Specifically, the acquisition included 150 acres on which the Facility is located, as well as the transfer of the State Part 360 storage/land application permit.

47. Additionally, Casella leases the remaining 2700 acres for land application, and all of those land application sites are located in the Towns of Thurston, Cameron and Bath.

48. All the land application sites are located in Agricultural Districts 1 and/or 2 in Steuben County, New York; and these local farms have long relied on the land application of biosolids from the Facility.

49. A specific example of reliance on land application of biosolids is Leo Dickson, which is a third-generation farm. In October of 2021, Leo Dickson sold all of its livestock and now operates as a crop farming operation growing corn, soybeans, and alfalfa. Leo Dickson had operated a dairy farm in conjunction with a Part 360 land application permit since the late 1960s. Leo Dickson has been dependent on biosolids for soil amendment since the late 1960s. Since the sale of Leo Dickson's livestock, however, the need for biosolids has increased, since there is no

longer manure available for land application; therefore, the biosolids are needed for soil amendment and are an essential source of nutrients to grow the crops.

50. Upon information and belief, Dickson operates one of the largest farms in the Town and relies on biosolids from the Facility for continuing farm operations. The Dickson farm operation and other farms within the Town should have the ability to utilize biosolids from the Facility to allow for more productive, efficient, and cost-effective farm operations, in accord with the protections and policies embodied in New York State Constitution Article I, Section 9, and Agriculture and Markets Law 305-a.

B. New York State Policy and Practice Support Land Application of Biosolids

51. The use of biosolids (including "sewage sludge," as that term is defined in Local Law No. 3) – in lieu of chemical fertilizer – to amend soil and enhance crop production is a longstanding practice encouraged by New York State. Chemical fertilizers can and do have distinct negative adverse environmental impacts and are comparatively fleeting in terms of soil amendment and nutrient enrichment. Chemical fertilizers are also increasingly expensive. Thus, biosolids are far more cost-effective and are superior for soil amendment, providing a permanent addition of mass and nutrients, benefits that are not obtained from chemical fertilizers which quickly leach from soil. Therefore, the use of biosolids (as opposed to chemical fertilizer) has significant agronomic, environmental, and economic benefits relative to farm operations.

52. As observed by the EPA, properly managed biosolids land application is preferable to the use of chemical fertilizer because (1) such promotes recycling and avoids depletion of a non-renewable resource, (2) nutrients in biosolids are not as soluble, resulting in slow release versus rapid release from chemical fertilizer, (3) biosolids application is subject to more stringent regulation, reporting and monitoring, as compared with application of chemical fertilizer, and (4)

biosolids improve soil properties, resulting in optimum plant growth and health, thus reducing the need for pesticides. USEPA, *Land Application of Biosolids* (March 2023) (epa.gov/biosolids/land-application-biosolids) (citing *Fact Sheet: Land Application of Biosolids* [Sept. 2000], EPA 832-F-00-064).

53. Land application of biosolids (including sewage sludge) – as opposed to disposal in landfills – has the added environmental and societal benefit of decreasing the burden on landfills. Importantly, reduction of land burial of organic materials accords with the New York State Solid Waste Management Policy's prioritizing recycling for beneficial use, as opposed to disposal by land burial. *See* ECL 27-0106(1)-(3). Beneficial reuse of biosolids also accords with longstanding Federal policy.

54. Therefore, as a matter of longstanding public policy, the DEC (and EPA) support land application of biosolids, as such reduces the use of chemical fertilizer which has adverse environmental impacts and reduces the amount of organic material destined for landfill disposal.

55. Additionally, every aspect of this practice (i.e., the testing, storage and land application of biosolids) is highly regulated and performed in a manner protective of public health. *See generally,* 6 NYCRR Part 360-2; *see also* 6 NYCRR 360 and 360-3. Land application of biosolids is subject to an exceedingly detailed, comprehensive regulatory scheme administered by the DEC. *See* 6 NYCRR 360-2. The stringent regulatory standards applied by the DEC thus protect the public health while allowing farm operations to benefit from the many advantages of using biosolids for soil amendment and foregoing the use of chemical fertilizer (thus avoiding the negative impacts of same).

56. Furthermore, as to the Town's concerns regarding PFAS, the DEC has published a new Program Policy specifically addressing the control of PFAS in biosolids. *See generally,*

NYSDEC, Division of Materials Management Policy "*DMM-7/Biosolids Recycling in New York State – Interim Strategy for the Control of PFAS Compounds"* (Issued, September 7, 2023) (published in the Environmental Notice Bulletin on September 20, 2023; effective October 30, 2023) (hereinafter, "DMM-7"). DMM-7 imposes additional sampling requirements on Part 361-2 and 361-3 facilities, mandating sampling of PFAS for each biosolids source per DEC specifications. DMM-7 also delineates specific thresholds for no action, additional sampling and recycling prohibitions. These additional testing requirements and standards will further enhance protections to ensure public health and safety.

57. Thus, the longstanding State-supported practice of land application of biosolids (in lieu of chemical fertilizer) has proven to be very beneficial, if not vital, for farming operations, including in the Town, with public safety protected through comprehensive statewide regulation.

58. Notably, State policy continues to support the use of biosolids in lieu of chemical fertilizer for farm operations for a host of reasons. As stated in DMM-7: "When applied to land at the appropriate agronomic rate, biosolids provide several benefits including nutrient addition, improved soil structure and water reuse. Land application of biosolids can also have economic and waste management benefits (e.g., conservation of landfill space; reduced demand on non-renewable resources…; and a reduced demand for chemical fertilizer). Diverting organics, such as biosolids, from disposal at landfills also reduces climate impacts associated with methane emissions from landfills." DMM-7, Section III.

59. Upon information and belief, the biosolids land application ban imposed by the Town in Local Law No. 3 could be devastating, both financially and agronomically, to local farms due to the rising cost of chemical fertilizer and the loss of agronomic and environmental benefits of organic fertilizer (as compared with chemical fertilizer).

C. Casella's Substantial Investment & Current Permitting Status of the Facility

60. As noted, Casella purchased the Facility in July 2022. The Facility includes the assets of the Leo Dickson/Dickson Environmental land application operation, 150 acres on which the Facility is located, and the transfer of the land application Part 360 permit. Dickson retains the right to apply biosolids to its land holdings.

61. Casella's purchase of the Facility was part of a long-range plan to diversify its services and provide additional management options to its customers, as well as meet impending changes relative to landfill management due to enactment of the CLCPA.

62. More specifically, Casella's interest in the Facility was heightened after enactment of the CLCPA when it became clear that the CLCPA would significantly impact how landfills are managed and regulated in New York State.

63. That is, the CLCPA requires significant reduction in the emission of greenhouse gases. One such greenhouse gas is methane, and it is produced by the decomposition of organic matter in landfills. In terms of environmental impact, methane is said to have approximately 83 times the impact of carbon dioxide. Accordingly, the reduction of methane production from landfills (i.e., meaning the reduction of disposal of organics in landfills) is directly implicated by the CLCPA.

64. When the impact of the CLCPA on landfill management came into focus, so did Casella's efforts to acquire the Dickson operation (including the Facility). The Facility is located nearly equidistant to three of Casella's Part 360 landfills. Casella thus saw the utilization of the Facility as a mechanism to divert organic material away from its landfills, thereby minimizing methane emissions in accord with the CLCPA. The biosolids would then be put to beneficial use

for soil amendment and fertilization (in lieu of chemical fertilizer), presenting a win-win scenario for area farms and compliance with the mandates and policies of the CLCPA.

65. Casella acquired the Facility, representing an investment, to date, totaling approximately $ 2,000,000.

66. After acquisition, Casella applied to DEC Region 8 for the Part 360 land application permit transfer.

67. The requested permit transfer amounted to an administrative transfer involving only a change of ownership, with no operational changes.

68. The permit transfer to Casella was approved/finalized on September 20, 2023. As noted, the permit transfer application did not request any operational changes, and, thus, none were granted relative to the longstanding authorization to store and land apply biosolids. The permit transfer, however, does impose some additional testing/reporting requirements in order to comply with newly enacted DMM-7. Those additional requirements will further enhance public safety protections as they pertain to PFAS. A true and accurate copy of the permit transfer approval cover letter and the permit are annexed hereto and incorporated herein as Exhibit D.

D. <u>Town of Thurston Regulation of Part 360 Facilities</u>

69. In February 2023, the Town of Thurston adopted Local Law No. 1.

70. Local Law No. 1 imposed a moratorium on new Part 360 facilities and expansions of existing Part 360 facilities. Local Law No. 1, therefore, did not have any impact on the Facility's operations.

71. Shortly after Local Law No. 1 was enacted, the neighboring Towns of Cameron and Bath followed suit, each with a similar moratorium. (Recently, the Town of Bath rescinded the moratorium.)

72. On Monday, August 14, 2023, the Town of Thurston proposed a local law, entitled Local Law No. 3 of 2023 – A Local Law Regulating the Disposal of Sewage Sludge. This local law was a precursor to – and very much different from - Local Law No. 3 as adopted by the Town on October 18, 2023. (For example, among other things, this original proposal imposed an outright ban on operation of the Facility, explicitly stated that land application of biosolids was prohibited anywhere in the Town, lacked any discussion of disadvantaged communities, did not impose restrictions based on the location of disadvantaged communities, and contained no enforcement/consultation process involving State or local agencies.) The August 14, 2023, proposal is hereinafter referred to as the "Original Proposal," a true and accurate copy of which is annexed hereto and incorporated herein as Exhibit E.

73. The Town categorized this action as Type I under SEQRA and, in EAF Part 1, named only County Planning as an involved agency (and did not name any interested agencies, including DEC and Agriculture and Markets).

74. Although the Town named County Planning as an involved agency, the Town unilaterally declared itself to be lead agency and did not coordinate review with County Planning in accord with the procedures in 6 NYCRR 617.6(b). That is, with respect to the Original Proposal, the Town did not send to County Planning (along with the EAF) a solicitation letter setting forth the Town's intent to serve as lead agency and notifying County Planning that the lead agency would need to be agreed upon within 30 days. *See* 6 NYCRR 617.6(b)(3*).*

75. Additionally, on Part 2 of the Environmental Assessment Form ("EAF"), the Town failed to identify *any* impact from the Original Proposal (including agricultural impacts). A true and accurate copy of the EAF (Parts 1 and 2) for the Original Proposal is annexed hereto and incorporated herein as Exhibit F.

76. The Town Board held a public hearing on the Original Proposal on August 28, 2023.

77. By written submission, dated August 25, 2023, Casella voiced its opposition to the Original Proposal, detailing the reasons why Casella believed the prohibitions on Facility operation and land application of biosolids were infirm. A true and accurate copy of Casella's August 28, 2023, letter is annexed hereto and incorporated herein as Exhibit G.

78. By correspondence, dated September 15, 2023, County Planning issued its recommendation of disapproval of the Original Proposal pursuant to GML 239-m. A true and accurate copy of County Planning's September 15, 2023, disapproval letter is annexed hereto and incorporated herein as Exhibit H.

79. County Planning's letter cites four grounds for disapproval: (1) violation of the State Right to Farm Law, (2) reliance on testing not performed by certified laboratories (which is unacceptable to governmental agencies and hence irrelevant), (3) lack of authority to override State permits, and (4) failure to identify other involved agencies in the SEQRA process.

80. On September 20, 2023, the Town Board held a meeting at which it tabled the Original Proposal, pending a special meeting scheduled for October 4, 2023.

81. At the October 4, 2023, special meeting, the Town Board adopted a resolution "Introducing Amendments to Proposed Local Law No. 3 of 2023, A Local Law Regulating the Disposal of Sewage Sludge." That is, the Town Board introduced Local Law No. 3 – i.e., the law ultimately enacted on October 18, 2023, which is at issue here. *See* Exhibit A. A true and accurate copy of the Town Board's October 4, 2023, resolution is annexed hereto and incorporated herein as Exhibit I.

82. The October 4th resolution notes the preparation of new SEQRA documents (EAF, Parts 1 and 2) and directs counsel to send the revised, re-drafted law and SEQRA documents to County Planning for "informal comments" pursuant to General Municipal Law 239-l(3). *See* Exhibit I.

83. Per the Town's direction, counsel Gary Abraham sent a letter to County Planning, dated October 6, 2023, with the revised, re-drafted Local Law No. 3 and revised SEQRA documents, noting (1) the "comprehensive revisions to the previous draft" (i.e., the Original Proposal) and (2) the one small adverse impact identified in EAF Part 2 (i.e., increased use of chemical fertilizer). This correspondence also asserts that the Town coordinated its SEQRA review with County Planning as an involved agency (which it did not, as explained below) and that the Town Board would vote on approval of the comprehensively revised, re-drafted law at the October 18, 2023, meeting – a mere 12 days from the date of the October 6th letter. A true and accurate copy of counsel Abraham's October 6, 2023, letter to County Planning is annexed hereto and incorporated herein as Exhibit J.

84. Upon information and belief, County Planning did not respond to counsel Abraham's October 6, 2023, correspondence.

85. At the October 18, 2023, Town Board meeting, Casella submitted a 19-page comment letter with attachments explaining the reasons why Casella believed Local Law No. 3 (as revised) to be infirm. A true and accurate copy of Casella's October 18, 2023, comment letter is annexed hereto and incorporated herein as Exhibit K.

86. At its October 18th meeting, the Town Board adopted a resolution approving a SEQRA negative declaration and adopting Local Law No. 3. The October 18th resolution (with exhibits [including EAF Parts 1, 2 and 3]) is annexed hereto and incorporated herein as Exhibit L.

E. Outreach to Commissioner of Agriculture & Markets

87. From the inception of the Town's attempt to ban the use of biosolids, Petitioners were concerned about the immediate adverse impacts on local farming operations in the Town and their business interests, as well as the very real threat of repercussions beyond Town boundaries.

88. Farms in the area (including the substantial farm operation of Dickson) have been relying on the application of biosolids (including sewage sludge) since the 1960s, and that option would no longer be available to them, resulting in loss of productivity and higher costs.

89. There is an additional concern that, if the ban is upheld in the Town, other municipalities will follow suit (as they did with the initial moratorium on new and expanded Part 360 facilities), further prohibiting the use of organics to enhance farming operations throughout Steuben County.

90. Yet another concern is the impact a biosolids land application ban will have on the coordinated plan to reduce organic loading in landfills to comply with the CLCPA. The CLCPA calls for an overall reduction of greenhouse gas emissions (including methane). Consistent with that goal, New York State is in the process of adopting a broad array of standards. Included in those standards are regulations and policies mandating a reduction in the disposal of organics, such as the very same organics that are utilized by the Facility to promote agriculture through making cost-effective organic fertilizer available to local farms.

91. In light of these concerns, Petitioners sought the involvement of Agriculture and Markets immediately after the Town Board officially made its Original Proposal.

92. By letter dated August 23, 2023, Casella reached out to Richard A. Ball, Commissioner of the Department of Agriculture and Markets, to intervene and evaluate the validity of the prohibitions in the Original Proposal under Agriculture and Markets Law 305-a. A

true and accurate copy of Casella's August 23, 2023, letter is annexed hereto and incorporated herein as Exhibit M.

93. In addition, by submissions dated September 10, 2023, and September 15, 2023, respectively, Casella and Leo Dickson submitted formal requests to Agriculture and Markets to review the Original Proposal's compliance with Agriculture and Markets Law 305-a, as the land application sites are located in Agricultural Districts 1 and/or 2 in the Town. True and accurate copies of those formal requests to Agriculture and Markets (without attachments) are annexed hereto and incorporated herein as Exhibit N. (The attachments to these review requests can be found at Exhibits E and F to this Verified Petition and Complaint.)

94. By letter, dated October 2, 2023, Agriculture and Markets acknowledged receipt of Casella's September 10, 2023, review request. A true and accurate copy of the October 2, 2023, letter is annexed hereto and incorporated herein as Exhibit O.

95. By letter, dated October 3, 2023, Agriculture and Markets informed the Town that Leo Dickson's request was under review. A true and accurate copy of the October 3, 2023, letter is annexed hereto and incorporated herein as Exhibit P.

96. Thus, as of at least October 3rd, the Town was fully aware that the validity of its biosolids land application ban (as applied to farm operations in Agricultural Districts) was squarely before Agriculture and Markets for its determination.

97. When the Town later abandoned the Original Proposal in favor of Local Law No. 3, Petitioners again reached out to Agriculture and Markets. Although the specifics of Local Law No. 3 differ significantly from those of the Original Proposal, Local Law No. 3 still has the effect of banning the land application biosolids anywhere in the Town, including on Petitioners' land used in farm operations in Agricultural Districts (i.e., just as did the Original Proposal).

98. Accordingly, Leo Dickson and Casella submitted new review requests to Agriculture and Markets, respectively, on October 11, 2023, and October 17, 2023, to evaluate compliance of Local Law No. 3 with Agriculture and Markets Law 305-a. True and accurate copies of those review requests (without attachments) are annexed hereto and incorporated herein, respectively, as Exhibits Q and R. (The attachments to these review requests can be found at Exhibit L to this Verified Petition and Complaint.)

99. By letter dated January 18, 2024, Agriculture and Markets informed Casella that it was commencing an investigation and section 305-a review of Local Law No. 3 as applied to Leo Dickson's farm operation (i.e., including lands leased by Casella from Dickson and included in that farm operation). A true and accurate copy of the January 18, 2024, letter is annexed hereto and incorporated herein as Exhibit S.

100. Further, correspondence between Agriculture and Markets and the Town demonstrate that the Town was fully aware from the outset that any attempt by the Town to ban land application of biosolids was subject to the jurisdiction of Agriculture and Markets and would be reviewed for compliance with Agriculture and Markets Law 305-a.

101. For example, in a letter, dated September 25, 2023, Agriculture and Markets informed the Town Supervisors of Thurston, Bath and Cameron that the towns' one-year moratoria on new and expanded facilities (i.e., imposed by Local Law No. 1), if extended, could run afoul of Agriculture and Markets Law 305-a. Pertinent here, this same correspondence states that the biosolids land application ban proposed in the Original Proposal (which ban also results from applying Local Law No. 3) would be reviewed for compliance with Agriculture and Markets Law 305-a. A true and accurate copy of the September 25, 2023, letter is annexed hereto and incorporated herein as Exhibit T.

102. Accordingly, there can be no doubt that the Commissioner of Agriculture and Markets has exclusive jurisdiction to determine if local enactments run afoul of the protections accorded farm operations in Agricultural Districts and that the validity of the Town's land application ban was, and remains, squarely before the agency as applied to Petitioners' lands that are utilized for farm operations in Agricultural Districts within the Town.

AS AND FOR A FIRST CLAIM FOR RELIEF – GML 239-m
FAILURE TO REFER AND COMPLY WITH GML 239-m(4)(b)

103. Petitioners repeat and reallege each and every allegation set forth in ¶¶ 1 through 102 as if fully set forth herein.

104. The Town did not refer Local Law No. 3 to County Planning for its recommendation of approval or disapproval as required by GML 239-m.

105. The failure to refer Local Law No. 3 to County Planning per GML 239-m is acknowledged in an e-mail, dated January 19, 2024, from the Town's counsel, Rachel Treichler, to Petitioners' counsel. A true and accurate copy of attorney Treichler's e-mail is annexed hereto and incorporated herein as Exhibit U.

106. Rather, by letter dated October 6, 2023, Town counsel Gary Abraham sought "informal comments" from County Planning pursuant to GML 239-l, as directed by the Town in its resolution adopted on October 4, 2023. *See* Exhibit I (Resolved Clause, Section C); Exhibit J.

107. Counsel Abraham's October 6th letter admits that the Original Proposal was "comprehensive[ly] revised" to produce Local Law No. 3. In other words, this is an admission by the Town that Local Law No. 3 is markedly different from the Original Proposal.

108. Counsel Abraham's October 6th letter also advises that "[t]he Town plans to vote on approval of re-drafted Local Law No. 3of 2023 at its October 18 meeting. We would appreciate your comments on the re-drafted local law by then." Exhibit J.

109. Although the Town had referred the Original Proposal to County Planning for its approval/disapproval recommendation in accord with GML 239-m, the Town did not refer Local Law No. 3 to County Planning for its approval/disapproval recommendation. *See* Exhibit U.

110. Upon information and belief, County Planning did not respond to the Town's October 6th letter (Exhibit J) discussing the comprehensively revised, re-drafted Local Law No. 3.

111. The Town enacted Local Law No. 3 on October 18, 2023, just 12 days after the October 6, 2023, correspondence.

112. By failing to refer Local Law No. 3 to County Planning, the Town violated GML 239-m.

113. Even if the October 6th correspondence (Exhibit J) could be viewed as a referral under GML 239-m (which it is not), the Town violated GML 239-m by failing to await either 30 days or a response from County Planning (within that 30-day window).

114. These GML 239-m violations are jurisdictional defects, not mere procedural irregularities, thus rendering Local Law No. 3 invalid.

AS AND FOR THE SECOND CLAIM FOR RELIEF - SEQRA
A DETERMINATION THAT LOCAL LAW NO. 3 IS INVALID FOR FAILURE TO COORDINATE REVIEW WITH COUNTY PLANNING

115. Petitioners repeat and reallege each and every allegation set forth in ¶¶ 1 through 114 as if fully set forth herein.

116. The Town properly classified the "action" (i.e., adoption of Local Law No. 3) as a Type 1 action under SEQRA. *See* 6 NYCRR 617.4(b)(2).

117. The SEQRA documents for Local Law No. 3 (EAF Part 1) and counsel Abraham's October 6, 2023, letter identify County Planning as an "involved agency" – i.e., an agency that has jurisdiction to fund, approve or directly undertake the action. *See* Exhibits J & L; *see also* 6 NYCRR 617.2(t).

118. Type 1 actions, such as adoption of Local Law No. 3, require coordinated review, the first step of which is to establish the lead agency. 6 NYCRR 617.6(b)(2), (3)(i); 6 NYCRR 617.2(v).

119. 6 NYCRR 617.6(b) sets forth mandatory procedures for establishing lead agency where (as here) there is more than one involved agency.

120. Pursuant to those provisions, at the outset of the SEQRA process, the Town was required to transmit Part 1 of the new EAF for Local Law No. 3 to all involved agencies (here, County Planning by the Town's admission) and notify them that lead agency must be agreed to within 30 days.

121. Upon information and belief, the Town did not send such a "notice of intent to be lead agency" to County Planning relative to Local Law No. 3.

122. While counsel Abraham asserts in his October 6, 2023, letter to County Planning (Exhibit J) that the Town coordinated SEQRA review with County Planning, upon information and belief, there is no documentation demonstrating that the Town ever sent County Planning a "notice of intent to be lead agency" or otherwise legitimately established itself as lead agency in accord with the procedures in Part 617.6.

123. And, while not relevant to Local Law No. 3, upon information and belief, the Town made the same error with the Original Proposal – i.e., the Town failed to send a "notice of intent to be lead agency" to County Planning relative to the Original Proposal.

124. Strict compliance with SEQRA's procedures is required, absent which, the resulting determinations are invalid.

125. Because the Town failed to comply with 6 NYCRR 617.6(b) to establish itself as lead agency in the SEQRA process for Local Law No. 3, the Town's negative declaration and Local Law No. 3 are invalid.

AS AND FOR THE THIRD CLAIM FOR RELIEF - SEQRA A DETERMINATION THAT LOCAL LAW NO. 3 IS INVALID FOR FAILURE TO IDENTIFY AND NOTIFY INVOLVED/INTERESTED AGENCIES

126. Petitioners repeat and reallege each and every allegation set forth in ¶¶ 1 through 125 as if fully set forth herein.

127. As noted, the Town properly classified the action as Type I under SEQRA. *See* 6 NYCRR 617.4(b)(2); and Type 1 actions require coordinated review with all involved agencies. 6 NYCRR 617.6(a)(2), (b)(2), (b)(3).

128. SEQRA also requires that due diligence be exercised in identifying interested and involved agencies. *See* 6 NYCRR 617.3(d).

129. As already noted, an "involved agency" under SEQRA is any agency that has jurisdiction by law to fund, approve or directly undertake the action. If an agency will ultimately make a discretionary decision to fund, approve or undertake some aspect of the proposed action, it is an involved agency. 6 NYCRR 617.2(t).

130. An "interested agency" under SEQRA is an agency that lacks jurisdiction to fund, approve or directly undertake the action but wishes to participate in the review process because of its specific expertise or concern about the proposed action. 6 NYCRR 617.2(u).

131. The Town identified only County Planning as an involved agency in the SEQRA process for Local Law No. 3. *See* Exhibit L (Exhibit A to October 18, 2023, resolution - EAF, Part 1, Section B).

132. The Town did not identify any interested agencies.

133. The Town erred by failing to identify DEC and DOH as interested agencies and by failing to identify Agriculture and Markets as an involved and/or interested agency.

134. More specifically, DEC and DOH are interested agencies by virtue of the enforcement/consultation process created by the Town in Sections VIII.C and IX.D of Local Law No. 3, which provisions impose substantive responsibilities on these State agencies. (County Planning is also an interested agency by virtue of these provisions; but the Town identified County Planning as an involved agency due to its approval authority under GML 239-m and GML 239-l. However, because the Town failed to follow the procedures for coordinated review with County Planning, Local Law No. 3 is invalid, as set forth in the Second Claim for Relief.)

135. The DEC is also an interested agency by virtue of its statutory/regulatory authority over the permitting of biosolids facilities and land application and the control/regulation of PFAS. *See, e.g.,* 6 NYCRR Part 361-2. That is, the Facility holds a Part 360 permit allowing for the land application of biosolids on Part 360-permitted lands (including those of Leo Dickson and Casella), which practice is prohibited by Local Law No. 3. The DEC has also published new requirements and standards in DMM-7 relative to PFAS in biosolids and land application of same. Accordingly, the DEC indisputably has special expertise that would benefit the SEQRA review process, making it an interested agency.

136. Additionally, Agriculture and Markets is, at the least, an interested agency, given its jurisdiction to determine if local enactments are superseded under Agriculture and Markets Law 305-a where such enactments unreasonably restrict farm operations in Agricultural Districts.

137. Specifically, under Agriculture and Market Law 305-a(1), municipalities may not unduly restrict farming operations in Agricultural Districts absent a legitimate showing of a public health threat; and the Commissioner has jurisdiction to bring an action to enforce compliance with

the Agriculture and Markets Law or issue a determination as to whether local regulation is unreasonably restrictive of farming operations in agricultural districts. *See* 6 NYCRR 617.2(t); Agriculture & Markets Law 305-a & 36(1).

138. That is, Agriculture and Markets Law 305-a(1)(c) directs: "[t]he Commissioner, upon his or her own initiative or upon receipt of a complaint from a person within an agricultural district may bring an action to enforce the provisions of [section 305-a]."

139. Under Agriculture and Markets Law 305-a(1)(b), "[u]pon the request of any municipality, farm owner or operator, or a person or entity performing agricultural practices on behalf of a farm operator or owner, the Commissioner **shall** render an opinion to the appropriate government officials as to whether farm operations would be unreasonably restricted or regulated …" (emphasis added).

140. Thus, under these provisions, the Commissioner's jurisdiction over the enforceability of Local Law No. 3 to farm operations in Agricultural Districts is plain, and this makes Agriculture and Markets an interested agency at the very least.

141. Additionally, Casella and Leo Dickson made review requests under Agriculture and Markets Law 305-a, both as to the Original Proposal and the substantially revised, re-drafted Local Law No. 3. *See* Exhibits N, Q, R. Thus, Agriculture and Markets had been involved with the Town's attempt to ban biosolids land application since August/September of 2023. *See generally,* Exhibits M, N, O, P, Q, R, S, T.

142. Once a review request has been made (as is the case here), the Commissioner must issue a determination (i.e., per the mandatory "shall" terminology). *See* Exhibits N, Q, R. And, in accord with its statutory mandate, Agriculture and Markets has confirmed that it will review the

biosolids ban for compliance with Agriculture and Markets Law 305-a as applied to the Leo Dickson farm operation. *See* Exhibits O, P, S.

143. Accordingly, since the Commissioner has jurisdiction to make a discretionary decision as to whether Local Law No. 3 is compliant with Agriculture and Markets Law 305-a, since timely requests were pending before the Commissioner to make that mandatory determination (i.e., of whether a biosolids land application ban in enforceable as applied to the subject farm operations) prior to enactment of Local Law No. 3 (*see* Exhibits N, O, P), and since review requests remain under investigation by the agency, Agriculture and Markets is an involved agency for purposes of SEQRA review of Local Law No. 3.

144. Notably as well, under Agriculture and Markets Law 305-a(1)(b), the Town had the ability to act proactively and seek guidance from the agency regarding Local Law No. 3's compliance with section 305-a. The willingness of Agriculture and Markets to guide municipalities in developing compliant local regulation (i.e., prior to adoption) is reflected in various guidance documents from the agency, as well as in correspondence from the agency to the Town. *See* Exhibits P & T (and citations therein). Moreover, Agriculture and Markets' interest and involvement in the adoption of local laws that restrict agricultural practices in Agricultural Districts is obvious. The Town did not seek any such guidance, which could have been achieved by including Agriculture and Markets as an involved (or interested) agency in the SEQRA process. In actuality, the Town willfully ignored the agency, all the while being fully aware of Agriculture and Market's jurisdiction to determine the validity of a biosolids land application ban under Agriculture and Markets Law 305-a.

145. As already noted, strict compliance with SEQRA's procedures is required.

146. By failing to identify DEC, DOH, and Agriculture and Markets in the SEQRA process, the Town did not exercise due diligence in identifying involved and/or interested agencies, thus violating 6 NYCRR 617.3(d).

147. Because Type I actions require coordinated review under SEQRA, failure to identify Agriculture and Markets as an involved agency and coordinate review with that agency is a fatal procedural defect. *See* 6 NYCRR 617.6(a)(1)(iii), (a)(2), (b)(2), (b)(3); 6 NYCRR 617.3(d).

148. Accordingly, because the Town's SEQRA review is procedurally defective, the Town's negative declaration and Local Law No. 3 are invalid.

**AS AND FOR A FOURTH CLAIM FOR RELIEF – SEQRA
A DETERMINATION THAT LOCAL LAW NO. 3 IS INVALID
FOR FAILURE TO PROPERLY COMPLETE THE EAF AND
TAKE A HARD LOOK AT ADVERSE ENVIRONMENTAL IMPACTS**

149. Petitioners repeat and reallege each and every allegation set forth in ¶¶ 1 through 148 as if fully set forth herein.

150. In reviewing proposed actions, SEQRA requires the lead agency to identify all potentially significant adverse environmental impacts reasonably expected to result from the proposed action, including impacts that are long-term, short-term, direct, indirect and cumulative. 6 NYCRR 617.7(c)(1), (c)(2).

151. Among the criteria that are "considered indicators of significant adverse impacts on the environment" are actions that result in (1) a substantial increase in solid waste production; or (2) a substantial change in the use, or intensity of use, of land, including agriculture, or in the capacity to support existing uses. 6 NYCRR 617.7(c)(1)(i), (viii).

152. Type 1 actions carry a rebuttable presumption that the action is likely to have a significant effect on the environment requiring preparation of an environmental impact statement.

153. For Type I actions, the long EAF is used to identify and then evaluate potential adverse impacts. Part 1 is to be completed by the project sponsor. Parts 2 and 3 are to be completed by the lead agency. Here, the Town is both project sponsor and lead agency (by unilateral designation).

154. The Town's EAF is woefully defective both for its omissions and plainly erroneous attestations, thus rendering the Town's SEQRA review fatally infirm procedurally and substantively. *See* Exhibit L (Exhibit A to Resolution)

155. By way of example, responses in Part 1 of the EAF are limited to Section A, B and C. No responses at all are provided for Part D, and Part E contains a response to only one question of one subsection (E.3.a), with no responses to the many remaining sub-questions.

156. To the extent there are responses in Part 1 of the EAF, there are also patent omissions and errors. Part B – Government Approvals – identifies only County Planning but ignores the jurisdiction of Agriculture and Markets to determine if local regulation of farming operations in Agricultural Districts is unduly restrictive and hence invalid.

157. This error is repeated in Part C of EAF, Part 1. The response in C.1 also states that legislative adoption of the Local Law is the only approval needed to allow the proposed action to proceed. However, the approval/disapproval recommendation from County Planning is also required under GML 239-m; and, under Agriculture and Markets Law 305-a, the Commissioner has jurisdiction to determine the validity of applying local regulation in Agricultural Districts. Thus, the response in C.1 is erroneous.

158. There are other plain errors and arbitrary and capricious responses on the EAF.

159. In Part 2 of the EAF, with the exception of question 8 (impact on agricultural resources), "no" is summarily checked in all categories, with no showing of any consideration of

the individual sub-questions in each category. The sub-questions, however, are intended to guide the evaluation of the overall response.

160. Notably, in summarily checking "no" to questions 3, 4, 6, 13, 14, 16, 17 and 18, the Town ignored: (1) impacts to water resources from the increased use of chemical fertilizer and pesticides, (2) impacts from increased landfilling affecting human health and the environment, among them air impacts from increased methane production, increased trucking of biosolids, or incinerations of biosolids, (3) impacts on recycling goals and strategies, (4) inconsistency with community plans and character (i.e., Agricultural District designation), and (5) impacts on energy consumption (e.g., trucking of biosolids and energy consumption in manufacturing chemical fertilizers).

161. As for question 8 (impacts on agriculture), the Town checked "no or small impact" in all sub-questions, even though (with one exception) it did not complete the relevant Part 1 questions guiding the responses.

162. Moreover, many of the Town's conclusions of "no or small impact" are overtly arbitrary. For example, sub-questions 8.f and 8.g query, respectively, whether the proposed action may result directly or indirectly in pressure on farmland and whether the proposed action is not consistent with adopted farmland protection plans. Plainly, the prohibitions on land application of biosolids will be applied to farms in Agricultural Districts 1 and 2, representing a departure from longstanding practice on which these farms have relied and creating an agronomic and economic hardship. Indeed, the many benefits provided to cropland from biosolids fertilization – e.g., providing essential nutrients for plants in a form that will sustain crop growth through the growing season and soil amendment/enhancement (providing habitats for diverse soil organisms that help fight pests and disease, water retention and/or greater oxygen availability) – will be lost. These

well-documented, obvious adverse impacts warranted (but did not receive any) review in the SEQRA process. Therefore, the Town's "no or small impact" response is arbitrary and capricious.

163. In question 8.h (other impacts), the Town acknowledged the potential for the increased use of chemical fertilizer. The Town, however, summarily concluded that any resulting impacts on the environment would be "comparatively less deleterious to human health than sewage sludge." *See* Exhibit L (Exhibit A thereto, EAF Part 3).

164. The Town's failure to meaningfully consider adverse impacts due to the increased use of chemical fertilizer is evident in Part 3 of the EAF. The sum total of the Town's explanation is two sentences: one asserting that chemical fertilizer is comparatively less deleterious to health than sewage sludge; and the other asserting that there are allegedly alternatives to sewage sludge and chemical fertilizer (which alternatives the Town does not identify), and that application of chemical fertilizer at the proper rate will mitigate adverse impacts. Exhibit L (Exhibit A thereto, EAF Part 3). The Town has provided nothing to substantiate these statements, however, and the host of other impacts raised by Petitioners in their submissions to the Town were not evaluated in the SEQRA process.

165. By ignoring and/or failing to meaningfully evaluate obvious adverse impacts arising from Local Law No. 3, the Town failed to satisfy SEQRA's "hard look" standard (i.e., requiring that the lead agency identify potentially significant impacts, take a hard look at those impacts, and render a reasonable explanation as to evaluation of those impacts in its review process).

166. Efforts to ignore key disputed issues in the SEQRA process have repeatedly been rejected by the courts, and mere cursory examination by the lead agency is insufficient.

167. In short, even if the Town believes that Local Law No. 3 is environmentally beneficial, the Town was not at liberty to dispense with a meaningful evaluation of adverse impacts resulting from the law.

168. Accordingly, the Town's SEQRA review process, being procedurally and substantively defective for failure to properly complete the EAF and identify, meaningfully evaluate and/or make a reasoned elaboration as to significant patent environmental impacts, renders the Town's negative declaration and Local Law No. 3 invalid.

AS AND FOR A FIFTH CLAIM FOR RELIEF –
CONFLICT PREEMPTION - RIGHT TO FARM
A DETERMINATION THAT LOCAL LAW NO. 3 (AS APPLIED)
IS SUPERSEDED BY AGRICULTURE AND MARKETS LAW 305-a

169. Petitioners repeat and reallege each and every allegation in ¶¶ 1 through 168 as if fully set forth herein.

170. The State's Right to Farm law is embodied in Agriculture and Markets Law 305-a.

171. That statute protects farming operations in agricultural districts from unreasonably restrictive local laws, directing: "Local governments, when exercising their powers to enact and administer comprehensive plans and local laws … shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened." Agriculture & Markets Law 305-a(1)(a); *see also* Agriculture & Markets Law 301(11) (defining farm operation).

172. The policy objectives of the Agriculture and Markets Law (Article 25-AA) include "foster[ing] the socio-economic vitality of agriculture in New York." For this reason, the Legislature gave counties the power to create agricultural districts, with farming operation on lands

therein being accorded the benefits and protections of the statute. *See Town of Lysander v. Hafner*, 96 N.Y.2d 558, 563 (2001).

173. Relative to those protections, upon his own initiative or at the request of anyone in an agricultural district, the Commissioner of Agriculture and Markets may issue an order or bring an action to enforce compliance with the Agriculture and Markets Law. Upon request of any municipality, operator or famer owner, the Commissioner shall make a determination as to whether the local regulation is impermissibly restrictive of farm operations and then compel compliance with Agriculture and Markets Law and rules. Agriculture and Markets Law 305-a(1) & 36(1).

174. Requests for a determination of Local Law No. 3's compliance with Agriculture and Markets Law 305-a were made on October 11, 2023, and October 17, 2023. Exhibits Q and R.

175. Agriculture and Markets has asserted that it is the process of investigating the Leo Dickson review request. Exhibit S.

176. Notably, the Commissioner of Agriculture and Markets has invalidated similar town prohibitions on the land application of sewer sludge as being unreasonably restrictive of farm operations. *See, e.g., Town of Bennington,* Determination and Order (Commissioner Richard Ball, June 9, 2016); *see also Village of Lacona v. New York State Department of Agriculture and Markets,* 51 A.D.3d 1319 (3d Dep't 2008); *Inter-Lakes Health, Inc. v. Town of Ticonderoga Town Bd.,* 13 A.D.3d 846 (3d Dep't 2004).

177. Although the Town maintains that land application of sewage sludge results in harm to the public health, its proffered support for that position is invalid on its face and hence insufficient to support Local Law No. 3, as the testing results are not compliant with State testing

protocols and, in any event, show no exceedance of any State standard or any connection to land spreading.

178. For example, the Town's supporting references for Local Law No. 3 rely, in part, on testing results for PFAS by third parties using in-home kits (e.g., Cyclopure, Inc.). DEC regulations, however, require testing by laboratories certified by DOH, thus rendering third-party in-home test results ineffectual to demonstrate any adverse impact. *See e.g.,* 6 NYCRR 360.6(b); 361-2.(e)(1)(ii)(f). Notably, Cyclopure's own website (https://cyclopure.com/product/water-test-kit-pro/) notes: "our lab is not certified; results are for your information only and will not be accepted by government agencies."

179. Even if the testing results relied upon by the Town had come from certified laboratories, however, the testing does not show any exceedance of State standards for public drinking water.

180. Moreover, similar trace amounts of PFAS compounds are ubiquitous in the environment. Thus, even if the testing results are accepted as accurately reporting concentration, the Town has made no showing of any impact to water quality (or other adverse impact) due to land application of biosolids.

181. The Town also cites articles regarding general concerns about PFAS; however, it has proffered no bona fide evidence that land application of biosolids in Steuben County (i.e., due to specific circumstances in Steuben County at the land application sites) has created any impairment of public health and safety (including as to PFAS).

182. Thus, there has been no showing that the DEC's comprehensive regulations and new Program Policy DMM-7 are inadequate to protect public health. This renders the prohibitions in Local Law No. 3 without any foundation, making them arbitrary in the first instance and,

therefore, insufficient to justify such pervasive restrictions on farming operations. *See* NYS Agriculture & Markets, *Guidelines for Review of Local Laws Affecting Nutrient Management Practices (i.e. Land Application of Animal Waste, Recognizable and Non-Recognizable Food Waste, Sewage Sludge and Septage; Animal Waste Storage/Management)* (4/2/15) (applying DEC regulations to evaluate whether local regulation is unreasonably restrictive).

183. Indeed, absent application of biosolids, farmers and operators like Petitioners will lose the many benefits obtained by the addition of organics to the soil. In turn, they will suffer a significant loss of productivity/crop yield, as well as increased costs (due to the need to use chemical fertilizer instead), which costs they will not be able to recoup in any action against the Town and which will jeopardize their continued ability to farm. These significant adverse impacts have been recognized in other jurisdictions. *See, e.g., O'Brien v. Appomattox County,* 213 F. Supp. 2d 627 (W.D. Va. 2002) (enjoining sludge ban; noting the many benefits of biosolids, environmental harms of chemical fertilizers, and the irreparable harm to farmers in terms of increased non-recoverable costs and loss of soil/crop-related benefits that would result if the ban were not enjoined), *aff'd,* 71 Fed. Appx. 176 (4th Cir. 2003).

184. Accordingly, there being no showing by the Town of a public health justification for the biosolids ban in Local Law No. 3, the local law is violative of and superseded by Agriculture and Markets Law 305-a (as applied to Petitioners' farm operations). Thus, application of Local Law No. 3 to Petitioners' farm operations should be declared invalid and enjoined.

185. Local Law No. 3 is also preempted by Agricultural and Markets Law 305-a because it creates a direct jurisdictional conflict with the statute. The enforcement/consultation process in Sections VIII.C and IX.D of Local Law No. 3 (involving DOH, DEC and County Planning) usurps the exclusive jurisdiction of the Commissioner of Agriculture and Markets to determine the

enforceability of local enactments as applied to farm operations in Agricultural Districts. Thus, Local Law No. 3 is fatally infirm on this ground as well and must be enjoined.

AS AND FOR A SIXTH CLAIM FOR RELIEF – CONFLICT PREEMPTION A DETERMINATION THAT LOCAL LAW NO. 3 IS INVALID FOR BEING CONFLICT PREEMPTED UNDER THE CLCPA

186. Petitioners repeat and reallege each and every allegation in ¶¶ 1 through 185 as if fully set forth herein.

187. The CLCPA imposes temporal statewide limits to reduce greenhouse gas emissions in New York State.

188. The land application of biosolids reduces the loading of organics in landfills, which, in turn, reduces the emission of greenhouse gases from landfills, particularly methane.

189. The ban on land application imposed by Local Law No. 3 will result in increasing the disposal of organics in landfills, in direct conflict with the policies and directives of the CLCPA.

190. Accordingly, Local Law No. 3 is invalid as being conflict preempted by the CLCPA.

AS AND FOR A SEVENTH CLAIM FOR RELIEF – CONFLICT PREEMPTION A DETERMINATION THAT LOCAL LAW NO. 3 IS INVALID FOR BEING CONFLICT PREEMPTED UNDER ECL ARTICLE 27 AND ITS IMPLEMENTING REGULATIONS

191. Petitioners repeat and reallege each and every allegation in ¶¶ 1 through 190 as if fully set forth herein.

192. DEC regulations are very detailed and comprehensive as to all aspects of land application of biosolids (land application criteria, testing requirements, application restrictions, monitoring, record keeping and reporting) and the storage of such materials. *See* 6 NYCRR 361-2.4, 2.5, 2.6, 2.7; *see also* 6 NYCRR 360.19(b), 361-3.2(d), 361-3.3(d).

193. Further, DEC has published new testing requirements and standards to further ensure protection of public health and safety as to the potential for PFAS in biosolids. *See generally,* DMM-7.

194. Relative to the operation of organics facilities like the Bonny Hill Facility, DEC's requirements as to testing protocols are also very specific: that is, under Part 360.6(b) and 361-2, all testing must be performed by laboratories certified by the DOH. *See, e.g.,* 6 NYCRR 361-2.4(e)(1)(ii)(f); 6 NYCRR 360.6(b). To the extent DMM-7 waives 6 NYCRR 360.6(b) (certified laboratories and certified methods) for the additional testing required under DMM-7 (i.e., sampling/testing of each biosolid source), the laboratory used must be acceptable to DEC's Division of Materials Management; that is, "DEC will conduct the initial sampling, with samples sent to a research laboratory under contract with DEC." DMM-7, Section V.

195. The testing on which the Town relies for Local Law No. 3 is from in-home test kits utilized by third parties; the Town has provided no testing results from State-certified laboratories (or laboratories approved by DEC) supporting the Town's claim of adverse impact due to PFAS.

196. In fact, the website of the manufacturer of the subject test kits (Cyclopure) acknowledges that the test kit results are for personal information only and not acceptable to governmental agencies due to the laboratory not being certified. *See* https://cyclopure.com/product/water-test-kit-pro/ (Noting: "Our lab is not certified; results are for your information and will not be accepted by government agencies")

197. The Town's testing protocols, therefore, do not meet minimum State standards; rather, they are weaker than State standards and, therefore, are not consistent with State regulation or Program Policy.

198. Thus, while ECL 27-0711 admits to local regulation that complies with the "minimum … requirements" set forth in duly promulgated regulation, the Town's testing is non-compliant.

199. Further, if the Town's in-home test kit results (which do not comply with State law standards or protocols) could effectively invalidate a Part 360 permit, this would render the entire DEC regulatory scheme useless. In other words, there is a direct conflict between the standards and protocols set forth in State regulation and the non-compliant testing performed by the Town.

200. Accordingly, since the basis of Local Law No. 3 is inconsistent with (i.e., does not meet minimum) State standards, Local Law No. 3 is conflict preempted by ECL Article 27, title 7.

201. Local Law No. 3 also directly conflicts with State policies regarding the solid waste management hierarchy set forth in ECL 27-0106(1) and longstanding policies and practices promoted by the DEC in implementing ECL Article 27.

202. ECL 27-0106(1) establishes the State policy of conserving energy and natural resources by (among other things) prioritizing reuse and recycling over disposal/burial in a landfill. Notably, local solid waste management plans must "take into account the objectives of the State solid waste management policy" in order to accomplish the goals set forth in ECL 27-0106. *See* ECL 27-0107.

203. Local Law No. 3 results in imposing a townwide ban on land application of biosolids, preventing beneficial reuse (and redirecting those materials to land disposal) in direct conflict with both ECL 27-0106(1) and the DEC's longstanding policy of promoting beneficial reuse of biosolids.

204. Local Law No. 3 is, therefore, in direct conflict with State policy and, thus, conflict preempted by State law. Local Law No. 3, therefore, must be annulled and its enforcement permanently enjoined.

AS AND FOR THE EIGHTH CLAIM FOR RELIEF – INVALID PROVISIONS A DETERMINATION THAT THE UNILATERAL ATTORNEY FEE CLAUSES AND AGENCY CONSULTATION PROVISIONS OF LOCAL LAW NO. 3 ARE INVALID

205. Petitioners repeat and reallege each and every allegation in ¶¶ 1 through 204 as if fully set forth herein.

206. Even if Local Law No. 3 is held to be valid, the attorney fee provisions (Section VIII.C and IX.D) cannot be sustained.

207. Subject to certain caveats not relevant here, attorney fee shifting is valid only if authorized by statute, contract or court order.

208. There is no such authorization for the attorney fees provisions; therefore, these provisions are invalid and must be permanently enjoined.

209. Further, the agency enforcement/consultation provisions in Sections VIII.C and IX.D (i.e., which create a consultative enforcement process among DEC, DOH and County Planning) usurp the exclusive jurisdiction of the Commissioner of Agriculture and Markets to determine if Local Law No. 3 is superseded as applied to farm operations in Agricultural Districts. Because these provisions cannot be readily severed from Local Law No. 3, the entire law fails. If, however, these provisions can be severed, then these provisions must be annulled and their enforcement permanently enjoined.

WHEREFORE, Petitioners respectfully request that this Court issue a Judgment and/or Order:

1. Declaring that Local Law No. 3 is invalid due to violation of GML 239-m.

2. Declaring that Local Law No. 3 is invalid due to procedural SEQRA violations of failing to coordinate review with County Planning (which the Town identified as an involved agency) and failing to identify and notify other involved and/or interested agencies (i.e., Agriculture and Markets, DEC and DOH) and perform coordinated review with involved agencies;

3. Declaring that Local Law No. 3 is invalid due to procedural and substantive SEQRA violations of failing to properly complete the EAF and failing to identify, take a hard look at obvious adverse environmental impacts and make a reasoned elaboration as to same;

4. Declaring that Local Law No. 3 (as applied to farm operations in Agriculture Districts) is conflict preempted by Agriculture and Markets Law 305-a as an unreasonable restriction on farm operations and for usurping the Commissioner's exclusive jurisdiction to determine compliance of Local No. 3 with Agriculture and Markets Law 305-a;

5. Declaring that Local Law No. 3 is conflict preempted by the CLCPA (i.e., for causing increased landfilling of organics, resulting in increased emissions of greenhouse gases in conflict with the CLCPA's goals and directives);

6. Declaring that Local Law No. 3 is conflict preempted by ECL Article 27 for (1) premising the Local Law on testing results that do not meet minimum State law standards and requirements, and/or (2) for conflicting with the policies of ECL 27-0106 and longstanding State policy implementing same, which prioritize and encourage beneficial reuse over land burial/disposal;

7. If Local Law No. 3 is upheld, declaring that the attorney fee provisions (Sections IX.B and C) and the consultative enforcement provisions (in Sections VIII and IX) are invalid and permanently enjoining enforcement of those provisions (or the entire law, if those provisions cannot be severed);

8. Determining Local Law No. 3 to be invalid and granting preliminary and permanent injunctive relief enjoining enforcement of Local Law No. 3 for being a violation of State law and/or arbitrary and capricious; and

9. For such other and further relief as this Court may deem just and proper.

DATED: Albany, New York
February 15, 2024

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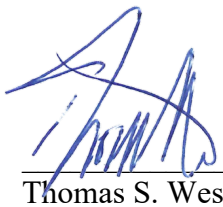
ATTORNEY VERIFICATION

I, THOMAS S. WEST, ESQ., an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under penalties of perjury pursuant to Rule 2106 of the CPLR:

I am the attorney for the Petitioners-Plaintiffs in this action. I have personally reviewed the foregoing Verified Petition and Complaint with my clients, and upon the conclusion of said review as to the facts alleged therein, I believe same to be true, where made upon information and belief. As for all other allegations, Counsel has personal knowledge thereof and believes the within allegations to be true, to my personal knowledge.

This affirmation is being used pursuant to the provisions of the CPLR Section 3020(d)(3) case law, due to the fact that Petitioners-Plaintiffs and their counsel are in different counties, counsel having offices in the County of Albany and Petitioners-Plaintiffs residing in and having offices in the County of Steuben.

Dated: Albany, New York
February 15. 2024



Thomas S. West, Esq.