

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

SENECA LAKE GUARDIAN, INC., SENECA FALLS ENVIRONMENTAL ACTION COMMITTEE, WATERLOO CONTRACTORS, INC., d/b/a WATERLOO CONTAINER COMPANY, ABSOLUTE AUTO REPAIR, INC., VALERIE SANDLAS, and HEATHER BONETTI,

Plaintiffs,

-against-

SENECA MEADOWS, INC. and THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Defendants,

COMPLAINT

Index No.:

Seneca Lake Guardian, Inc., Seneca Falls Environmental Action Committee, Waterloo Contractors, Inc., d/b/a Waterloo Container Company, Absolute Auto Repair, Inc., Valerie Sandlas, and Heather Bonetti (“Plaintiffs”), by and through their attorneys, Whiteman Osterman & Hanna LLP and the Law Office of Douglas H. Zamelis, allege as follows:

INTRODUCTION

1. Plaintiffs bring this action to enjoin Defendants Seneca Meadows, Inc. (“SMI”) and the New York State Department of Environmental Conservation (“NYSDEC” and, collectively, “Defendants”) from actions that authorize, encourage, or facilitate the continued operation of the solid waste landfill and associated facilities known as the Seneca Meadows Landfill (the “Landfill”) owned and operated by SMI, located in Seneca Falls, New York, and to cause the immediate abatement of the persistent, noxious odors emanating from the Landfill.

2. For years, SMI has been operating the Landfill in a negligent, intentional, wrongful, and/or illegal manner that caused and continues to cause noxious, offensive odors to emanate to

property owned or otherwise occupied by Plaintiffs and/or members of Plaintiff organizations, creating a nuisance, substantially interfering with the Plaintiffs' rights, and violating the New York State Environmental Conservation Law ("ECL").

3. NYSDEC is charged with administering and enforcing the ECL, but has refused and failed to remedy the harm to Plaintiffs and the members of the organizational Plaintiffs, as well as their local communities, caused by the Landfill. NYSDEC continues to entertain an application for a modified permit that would authorize the expansion and continued operation of the Landfill (which would otherwise reach its maximum capacity at the end of 2025) until approximately 2040 (the "Landfill Expansion"), all in violation of Plaintiffs' right to clean air and a healthy environment, as guaranteed by Section 19 of Article I of the New York State Constitution (the "Green Amendment").

4. Accordingly, Plaintiffs bring this Complaint to enjoin and abate the nuisance created by SMI's continued operation of the Landfill and its intended operation of the Landfill Expansion. Plaintiffs further seek a declaratory judgment that SMI's operation of the Landfill with NYSDEC's participation, along with NYSDEC's failure to remedy the harm caused by the Landfill and their facilitation of the Landfill's continued operations, is depriving Plaintiffs of their constitutional right to clean air and a healthful environment. Plaintiffs also seek an injunction to prevent NYSDEC from issuing the permit for the Landfill Expansion.

JURISDICTION AND VENUE

5. This Court has personal jurisdiction over SMI because SMI is incorporated in the State of New York and maintains its principal place of business in New York.

6. This Court has personal jurisdiction over NYSDEC because NYSDEC is a governmental agency created and existing under the laws of the State of New York, with its principal office in the City and County of Albany and State of New York.

7. This Court also has jurisdiction over this action pursuant to CPLR 3001.

8. Venue is proper in the New York State Supreme Court of Albany County pursuant to CPLR 503, as Defendant NYSDEC's principal office is located in Albany County.

PARTIES

9. Plaintiff Seneca Lake Guardian, Inc. ("SLG") is a domestic not-for-profit environmental organization, organized and existing under the laws of New York.

10. SLG's mission is to preserve and protect the health of the Finger Lakes, its residents and visitors, its rural community character, and its agricultural and tourist related businesses. The members of SLG include more than 1,200 individuals who live throughout the Finger Lakes Region and include all of the other Plaintiffs. Some of SLG's members live, own property, or operate businesses in proximity to the SMI Landfill and are adversely affected by persistent, noxious landfill odors emitted from SMI's waste disposal activities.

11. Plaintiff Seneca Falls Environmental Action Committee ("SFEAC") is a 501(c)(3) charitable organization with offices located at 54 Cayuga Street, Seneca Falls, New York 13148.

12. SFEAC's mission is to draw attention to environmental concerns within the Town of Seneca Falls and the broader Finger Lakes region. The majority of SFEAC's members reside in the Town of Seneca Falls.

13. Waterloo Contractors, Inc. d/b/a/ Waterloo Container Company ("WCI") is a domestic business organization, organized and existing under the laws of New York. WCI is a

member of SLG and owns property and has a principal place of business at 2311 Route 414, Waterloo, New York 13165.

14. WCI is engaged in the packaging, distributing, and shipping of wine bottles, caps, corks, and closures and employs approximately 75 people. WCI is located directly across NYS Route 414 from the Landfill owned and operated by SMI. The SMI Landfill is visible from and dominates the view from WCI's property. WCI's customers, visitors and employees are repeatedly adversely affected by noxious landfill odors emitted from SMI's waste disposal activities and generation and treatment of leachate; truck traffic entering, unloading and exiting the landfill; noise from vector controls at the Landfill; and vectors from the Landfill, particularly gulls which leave droppings on WCI facilities and vehicles belonging to WCI's customers, visitors, and employees.

15. Absolute Auto Repair, Inc. ("Absolute") is a domestic business corporation, organized and existing under the laws of New York, with a principal place of business at 2375 Route 414, Waterloo, New York 13165.

16. Absolute is a vehicle repair and maintenance business located south of the Landfill on Route 414. The SMI Landfill is visible from Absolute's property. Absolute's employees and customers are repeatedly adversely affected by the noxious landfill odors emitted from SMI's waste disposal activities and generation and treatment of leachate; truck traffic entering, unloading and exiting the landfill; noise from vector controls at the Landfill; and vectors from the Landfill, particularly gulls which leave droppings on the Absolute facilities and vehicles belonging to Absolute's customers, visitors, and employees.

17. Plaintiff Valerie Sandlas is a member of SLG and a founding member of SFEAC and resides at 2 Greenbelt Circle in Seneca Falls, New York, with her husband.

18. Mrs. Sandlas first began detecting odors at her home in 2015 and has since then complained to the SMI odor hotline dozens if not hundreds of times. When Mrs. Sandlas first learned of the hotline and began calling it regularly, an inspector was sent from SMI to her home to verify her complaints. More recently, the inspectors sent in response to Mrs. Sandlas's complaints take an hour or more to arrive and often do not get out of their vehicles to verify the presence of odors. Mrs. Sandlas has occasionally contacted NYSDEC's Region 8 office to complain about the odors. In May 2017, Mrs. Sandlas developed a septic infection, was diagnosed with pneumonia, and was advised by an ER physician that she "had the lung of a smoker," despite not smoking. When Mrs. Sandlas goes outside to jog, walk, or ride throughout Seneca Falls, she develops headaches and red eyes, but these symptoms dissipate when she spends the winter months in Florida. Mrs. Sandlas was a member of Calvary Lutheran Church for 25 years; however, due to the church's close proximity to and impacts from the Landfill, she was forced to leave and find a new place of worship further away from the Landfill. Mrs. Sandlas's everyday use and enjoyment of her home, neighborhood, and church have been diminished due to the persistent, noxious odors coming from the Landfill.

19. Plaintiff Heather Bonetti is a member of SLG and resides at 76 Garden Street in Seneca Falls, New York.

20. Mrs. Bonetti was born, raised and educated in Seneca Falls and has been employed as a teaching assistant in Waterloo Schools her entire career. Mrs. Bonetti first became aware of the Landfill in 1999, when she began detecting unpleasant odors in her home and around her community. Mrs. Bonetti has complained to the SMI odor hotline many times, but none of her complaints were followed up on or verified by SMI or its inspectors. On at least one occasion, Mrs. Bonetti complained to the hotline about odor at the Waterloo Middle School, however the

complaint was never verified by SMI. On at least one occasion, the odors at Waterloo Middle School were so bad that the Superintendent complained to Town of Seneca Falls officials. Mrs. Bonetti's students are distracted and sickened by the odors often enough that she considers the odors troublesome and disruptive. Mrs. Bonetti's everyday use and enjoyment of her home, neighborhood, and workplace have been diminished due to the persistent, noxious odors coming from the Landfill.

21. Upon information and belief, Defendant SMI is a corporation duly organized and existing under the laws of the State of New York, with offices at 1786 Salcman Road, Waterloo, New York 13165. SMI owns and currently operates the Landfill pursuant to a Part 360 solid waste management facility permit and a Title V Clean Air Act permit issued by NYSDEC, and a Town of Seneca Falls Chapter 185 Landfill Permit.

22. Upon information and belief, Defendant NYSDEC is a governmental agency created and existing under the laws of the State of New York, with its principal office at 625 Broadway, Albany, NY 12233, in the City and County of Albany and State of New York. NYSDEC is responsible for permitting, regulatory oversight, and enforcement of the Landfill.

THE LANDFILL'S HISTORY AND OPERATIONS

23. The Landfill, located at 1786 Salcman Road in Waterloo, New York, receives municipal and industrial solid waste from all regions of New York State, several other states, and Canada.

24. SMI owns and currently operates the Landfill pursuant to NYSDEC Part 360 Permit #8-4532-00023/00001-0 (the "Part 360 Permit"), NYSDEC Title V Permit #8-4532-00023/00001-0 (the "Title V Permit"), and a Town of Seneca Falls Chapter 185 Landfill Permit.

25. Operations at the Landfill include, but are not limited to, tipping, covering, compacting, cell construction, hauling, leachate collection and storage, and equipment operations and maintenance. A gas collection and control system within the Landfill collects and conveys gas from the Landfill to a Landfill Gas to Energy Facility owned and operated by an affiliate of SMI located across Route 414.

26. The Landfill is made up of six individual smaller landfills: the Existing Landfill with AB Overfill; the Southeast Landfill; the Southeast Bump-out; the Western Expansion Landfill; the Northern Expansion; and the Tantalio Waste Disposal Area which is a Class 4 Inactive Hazardous Waste Disposal Site.

27. The Landfill is currently expected to reach its maximum permitted capacity at the end of 2025, and its current Part 360 Permit expires December 31, 2025.

28. On or about July 20, 2020, SMI submitted an application to NYSDEC to renew and modify its existing Part 360 Permit to allow for the Landfill Expansion, including vertical and horizontal expansion.

29. Specifically, SMI is proposing to construct approximately 47 acres of new landfill liner area, increase waste capacity by approximately 46.6 million cubic yards, increase the height of the Landfill by 69.5 feet, and, perhaps most critically, extend its operations for a period of at least 15 years (the “Landfill Expansion”), i.e., until 2040.

30. Shortly thereafter, NYSDEC declared itself lead agency for purposes of conducting environmental review of the proposed Landfill expansion under the State Environmental Quality Review Act (“SEQRA”) and issued a Positive Declaration requiring the preparation of a Draft Environmental Impact Statement (“DEIS”).

31. On or about December 9, 2022, NYSDEC issued a Draft Scoping Document identifying issues to be addressed in the DEIS.

32. On August 2, 2023 and September 21, 2023, as part of its compliance with NYSDEC's Environmental Justice and Permitting Policy, SMI hosted public participation meetings during which the community raised numerous concerns about the environmental and health impacts of the noxious odors emitted from the Landfill.

33. Individual Plaintiffs attended and participated in these meetings.

34. On or about January 27, 2023, SLG submitted comments on NYSDEC's Draft Scoping Document raising odor related concerns that must be addressed in the DEIS.

35. The concerns raised by SLG to be addressed in the DEIS included, but were not limited to: examination of a "no action" alternative which evaluates environmental impacts and benefits of the Landfill closing in 2025; identification of options to reduce the need for landfill capacity altogether, including quantification of landfill capacity across the State and accounting for out-of-State garbage imported to the Landfill; evaluation of odor impacts from the Landfill's ongoing operation compared to its closure; analysis of odor complaints to determine whether they are related to decomposition gas or another source; analysis of the general impacts odors are having on the community; examination of options to objectively evaluate odor issues, such as technology like the Nasal Ranger, Barneby box, or mask scentometer, or by having a DEC or third-party odor inspector respond to complaints; and consideration of field and lab olfactometry, electronic noses with chemical sensors, atmospheric dispersion modeling, and gas chromatography/mass spectrometry to identify odor sources and intensity.

36. NYSDEC was required to issue a Final Scoping Document for the DEIS within 60 days of receipt of the Draft Scoping Document, i.e., by February 7, 2023, however, a Final Scoping Document has not yet been issued by NYSDEC.

THE LANDFILL'S IMPACTS ON PLAINTIFFS

37. The persistent and noxious odors emanating from the Landfill interfere with Plaintiffs' everyday reasonable comfortable use and enjoyment of their property, including their homes and businesses, and interferes with their reasonable use and enjoyment of their schools, recreational facilities, and places of worship, among others.

38. Over the last decade, hundreds of verified odor complaints have originated from within the surrounding communities, including from sensitive receptor sites such as nursing homes and schools, as well as from the homes and businesses of Plaintiffs and/or members of organizational Plaintiffs.

39. The Climate Justice Working Group of NYSDEC recently identified three census tracts located within the Town of Seneca Falls as meeting the criteria for being a "disadvantaged community" under the Climate Leadership and Community Protection Act.

40. Proximity to active landfills is one indicator of environmental burden and climate change risk that the Climate Justice Working Group relied upon in formulating the criteria, based upon evidence that "[l]andfills are known to produce a mixture of odorant and irritant air pollutants" and "odors and presence of waste may affect the health and quality of life."

41. Of the three identified disadvantaged communities, the one with the highest combined "environmental burden" score happens to be the census tract that hosts the Landfill.

42. Plaintiffs, their families and visitors, members of the Plaintiff organizations, and the officers, employees, and customers of the Plaintiff businesses are sickened and nauseated by

the foul and noxious odors emanating from Landfill operations on a frequent, sometimes daily basis, rendering them unable use and enjoy their property.

43. However, the health impacts experienced by individual Plaintiffs and members of the Plaintiff organizations go beyond mere nausea; indeed, some of the worst health outcomes in Seneca County appear to be concentrated in the same geographic area as the Landfill.

44. The Emissions Inventory from SMI's [website](#) includes many Hazardous Air Pollutants (HAPS) that are known or suspected human carcinogens, including benzene, toluene, ethyl benzene, xylene, and dimethyl benzene. In addition to fugitive emissions, upon information and belief, more of these same compounds are released by SMI to the atmosphere as byproducts of incomplete combustion from flaring landfill gas.

45. The New York State Department of Health has recently identified a lung “cancer cluster” in the vicinity of the Landfill that cannot be attributed to typical lung cancer causation factors, e.g., statistics regarding cigarette smoking and/or radon exposure.

46. By letter dated September 29, 2023, the Director of the Seneca County Health Department, noting numerous complaints relating to landfill gas odors in the community, wrote to NYSDEC to request that the Final Scoping Document for the DEIS for the Landfill Expansion include the precise identification and measurement of the chemical constituents of landfill gas from the Landfill, and that such information be submitted to the New York State Department of Health Bureau of Toxic Substances Assessment for analysis.

47. Upon information and belief, NYSDEC has failed to even respond to the Director of the Seneca County Health Department, much less provide information concerning the specific air contaminants present in the odorous ambient air, and the potential connection between these air contaminants and the cancer cluster.

48. NYSDEC's disadvantaged communities dataset also reports that the census tract containing the Landfill is in the 98th percentile in all of New York State with respect to the percentage of persons in the population having one or more disabilities. The tract also ranks in the 90th percentile for average annual age-adjusted emergency department visits for chronic obstructive pulmonary disease, and it is tied with its adjacent tracts for having the highest incidences of low birthweight births and premature deaths in Seneca County.

49. The Landfill also negatively impacts tourism to the area.

50. Proximity to the Landfill is linked to the disappearance of a substantial number of tourism-related jobs in Seneca County over the past two decades, with all 197 Accommodation and Food Services jobs that were within 2 kilometers of Seneca Meadows in 2002 gone by 2009, and zero jobs in this industry have returned to the area since that time.

51. The Landfill negatively impacts the housing market.

52. The real estate submarket within which the Landfill is located is characterized by relatively weak demand, middling home prices, high rates of poverty, lack of substantive job growth, and a vacancy rate that increased nearly sevenfold between 2011 and 2021.

53. Overall, the Landfill Expansion is inconsistent with the Town of Seneca Falls Comprehensive Plan and local priorities related to natural resource protection and environmentally sustainable economic development.

NYSDEC'S FAILURE TO ADDRESS ODORS FROM THE LANDFILL

54. In 2017, NYSDEC renewed SMI's Part 360 Permit for a duration of only 8 years instead of the 10 years SMI had sought, with an expiration date of December 31, 2025.

55. The renewed Part 360 Permit issued to SMI incorporated 7 new special conditions intended to control the nuisance odors from the Landfill, including the instatement of an On-Site Monitor employed by NYSDEC.

56. Despite the 7 new special conditions, the Landfill continued on a frequent and sometimes daily basis to emit odors which unreasonably interfere with the comfortable enjoyment of life and property by Plaintiffs.

57. Odor Investigation Checklists prepared by SMI and obtained from NYSDEC confirm that from February of 2018 through November of 2021, SMI employees responded to and confirmed citizen odor complaints approximately 452 times.

58. On numerous occasions (e.g., July 1, 2020; July 13, 2020; July 22, 2020; and March 19, 2021), when SMI employees were reportedly confirming citizen odor complaints in and around Seneca Falls and Waterloo, the NYSDEC On-Site Monitor indicated on Daily Inspection Reports that odors were “NI” meaning not inspected.

59. Thus, the additional special conditions and NYSDEC On-Site Monitor are ineffective in controlling nuisance odors from the Landfill.

60. NYSDEC’s regulations at 6 NYCRR § 200.1(d) define “[a]ir contaminant or air pollutant” as “[a] chemical, dust, compound, fume, gas, mist, *odor*, smoke, vapor, pollen or any combination thereof” (emphasis added).

61. 6 NYCRR § 200.1(g) defines “[a]ir pollution” as “[t]he presence in the outdoor atmosphere of one or more contaminants in quantities, of characteristics and of a duration which are or may be injurious to human, plant or animal life or to property *or which unreasonably interfere with the comfortable enjoyment of life and property*” (emphasis added).

62. 6 NYCRR § 211.1 provides that “[n]o person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, *or which unreasonably interfere with the comfortable enjoyment of life or property*. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, *odor*, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others” (emphasis added).

63. Condition 28 of SMI’s Title V Permit incorporates, word-for-word, the provisions of 6 NYCRR § 211.1.

64. SMI has caused or allowed persistent and noxious odors to migrate from the Landfill in such quantity, characteristic, and duration that such emissions have and continue to unreasonably interfere with the comfortable enjoyment by Plaintiffs of life or property in clear violation of 6 NYCRR § 211.1 and Condition 28 of SMI’s Title V Permit.

65. A September 2023 audit by the Office of the New York State Comptroller (the “Audit”) identified weaknesses in several aspects of NYSDEC’s Air Pollution Control Permitting Program and its oversight of permitted facilities like the Landfill which “reduce its ability to ensure compliance with the Program and protect the State’s air from harmful pollutants.”

66. NYSDEC has authority to bring enforcement action against SMI for violations of the ECL and implementing regulations; yet, upon information and belief, to date NYSDEC has never issued a Notice of Violation to SMI in connection with odor from the Landfill.

67. The findings of the Audit, coupled with NYSDEC’s refusal and failure to enforce against SMI for violations of the ECL, indicate NYSDEC is unreliable when it comes to protecting the community from harmful air pollutants.

68. NYSDEC's failure to bring enforcement against SMI for its violations of the ECL and implementing regulations have resulted in the continuation of persistent and noxious odors from the Landfill which unreasonably interfere with Plaintiffs' comfortable enjoyment of life or property and violate Plaintiffs' right to clean air and a healthful environment under the Green Amendment.

69. Furthermore, any approval of SMI's proposed Landfill Expansion by NYSDEC would continue and exacerbate the existing nuisance experienced by Plaintiffs, as well as the substantial interference to the rights of the public at large, in violation of the Green Amendment.

AS AND FOR A FIRST CAUSE OF ACTION
(Private Nuisance Against SMI)

70. Plaintiffs repeat and reallege the allegations contained herein.

71. SMI, through repeated and continuing intentional and unreasonable acts and omissions have caused persistent, noxious and offensive odors which substantially and unreasonably interfere with Plaintiffs' everyday comfortable enjoyment of their lives and property.

72. The persistent, noxious, and offensive odors have caused Plaintiffs to refrain from spending time outside their business and properties and have interfered with the conduct of business by the business Plaintiffs.

73. The persistent, noxious, and offensive odors have caused Plaintiffs to sustain actual damages, including direct or consequential, damages.

74. SMI's acts and omissions with respect to the odors are intentional in nature because SMI knows or is substantially certain that the odors are occurring, and SMI has failed to prevent them from occurring.

75. SMI's acts and omissions are unreasonable in nature because reasonable steps can be taken to reduce the severity of these impacts.

76. SMI's acts and omissions constitute a private nuisance and SMI has actual notice of the nuisance and reasonable opportunity to abate it.

77. SMI's acts and omissions have proximately caused and will continue to cause harm and damages to Plaintiffs, warranting injunctive relief requiring SMI to immediately abate the nuisance.

AS AND FOR A SECOND CAUSE OF ACTION
(Public Nuisance Against SMI)

78. Plaintiffs repeat and reallege the allegations contained herein.

79. SMI, through repeated and continuing intentional and unreasonable acts and omissions have caused persistent, noxious, and offensive odors which substantially and unreasonably interfere with Plaintiffs WCI and Absolute's conduct of their respective businesses at their properties located in close proximity to the Landfill.

80. SMI, by not controlling vectors, such as gulls, has caused gulls to roost and defecate on WCI's and Absolute's property, disgusting employees and customers and unreasonably interfering with the conduct of business.

81. WCI has been unable to expand its business operations at its property as a result of the noxious odors and roosting of gulls on its property.

82. The persistent, noxious, and offensive odors and the roosting of gulls have caused Plaintiffs WCI and Absolute to sustain actual economic damages, including direct or consequential economic damages, which are not common in the community.

83. SMI's acts and omissions with respect to the odors and vectors are intentional in nature because SMI knows or is substantially certain that the odors and vectors are occurring, and SMI has failed to prevent them from occurring.

84. SMI's acts and omissions are unreasonable in nature because reasonable steps can be taken to reduce the severity of these impacts.

85. SMI's acts and omissions constitute a public nuisance and SMI has actual notice of the nuisance and reasonable opportunity to abate it.

86. SMI's acts and omissions have proximately caused and will continue to cause harm and damages to Plaintiffs WCI and Absolute, warranting injunctive relief requiring SMI to immediately abate the nuisance.

AS AND FOR A THIRD CAUSE OF ACTION
(For a Declaratory Judgment Against SMI that SMI's Failure to Abate the Odors Violates Article I §19 of the New York State Constitution)

87. Plaintiffs repeat and reallege the allegations contained herein.

88. The Green Amendment guarantees "[e]ach person shall have a right to clean air and water, and a healthful environment."

89. The protections the New York Constitution guarantees to the citizens of New York also apply to actions of private entities whose conduct and operations are inextricably entwined with governmental functions.

90. The Landfill's source of authority for operation comes from the State, since SMI can only operate pursuant to a permit issued by NYSDEC.

91. The Landfill is highly controlled, overseen and regulated by NYSDEC, as SMI is required to comply with State solid waste laws, regulations, and policies, and is subject to onsite monitoring, thereby making it difficult to discern whether SMI or the State itself is responsible for compliance at the Landfill.

92. NYSDEC's regulation, oversight, and onsite monitoring of the Landfill constitutes meaningful participation in the Landfill's operation.

93. SMI's acts and omissions are so entwined with governmental policies and are so governmental in nature that they constitute governmental action; and such action violates Plaintiffs' constitutional right to clean air and a healthful environment.

AS AND FOR A FOURTH CAUSE OF ACTION
(For a Declaratory Judgment Against NYSDEC that Failure to Remedy the Harm Caused by the Landfill Odors Violates Article I §19 of the New York State Constitution and Enjoining NYSDEC from Approving the Landfill Expansion)

94. Plaintiffs repeat and reallege the allegations contained herein.

95. The Green Amendment guarantees "Each person shall have a right to clean air and water, and a healthful environment."

96. 6 NYCRR § 211.1 provides as follows:

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.

97. Condition 28 of SMI's Title V Permit incorporates, word-for-word, the provisions of 6 NYCRR § 211.1.

98. SMI has caused or allowed persistent and noxious odors to migrate from the Landfill in such quantity, characteristic, and duration that such emissions have and continue to unreasonably interfere with the comfortable enjoyment of life or property in clear violation of 6 NYCRR § 211.1 and Condition 28 of SMI's Title V Permit.

99. NYSDEC has authority to enforce against SMI for violations of 6 NYCRR § 211.1 and the Title V Permit.

100. By failing to enforce the requirements of law, rules, regulations and Condition 28 of SMI's Title V Permit, NYSDEC has allowed persistent and noxious odors to migrate from the Landfill in such quantity, characteristic, and duration that such emissions have and continue to unreasonably interfere with the comfortable enjoyment of life or property, in violations of Plaintiffs' right to clean air and a healthful environment under the Green Amendment.

101. 6 NYCRR § 360.19(i) provides "[t]he owner or operator of a facility must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by DEC."

102. SMI has caused or allowed persistent and noxious odors from the Landfill which unreasonably interfere with Plaintiffs' comfortable enjoyment of life or property, constituting a nuisance.

103. NYSDEC has authority to take enforcement action against SMI for violations of 6 NYCRR § 360.19(i).

104. By failing to enforce the provisions of 6 NYCRR § 360.19(i), NYSDEC has allowed persistent and noxious odors from the Landfill which substantially and unreasonably interfere with Plaintiffs' comfortable enjoyment of life or property, constituting a nuisance, in violation of Plaintiffs' right to clean air and a healthful environment under the Green Amendment.

105. NYSDEC also has a legal duty to deny issuance of a permit for the proposed Landfill Expansion and to prevent SMI from continuing the nuisance alleged herein.

106. SMI's proposed Landfill Expansion will cause increased harm to Plaintiffs, continuing and exacerbating the nuisance and violating Plaintiffs' rights under the Green Amendment.

107. By reason of this constitutional violation, Plaintiffs seek a declaratory judgment that NYSDEC's actions and failures to act violate Plaintiffs' right to clean air and a healthful environment guaranteed by the Green Amendment. Additionally, this Court should enjoin NYSDEC from issuing a permit for the Landfill Expansion.

WHEREFORE, Plaintiffs respectfully request this Court award the following relief: (1) order the immediate abatement of odors and vectors affecting Plaintiffs as alleged herein; (2) declare that Defendants SMI and NYSDEC are violating Plaintiffs' constitutional rights under the Green Amendment in Article I §19 of the New York State Constitution to clean air and a healthful environment by failing to remedy the harm caused by the Landfill and facilitating the Landfill's continued operations; (3) enjoin NYSDEC from approving the proposed Landfill Expansion; (4) award Plaintiffs' damages, attorneys' fees, costs and disbursements, together with (5) such other and further relief as this Court deems just and proper.

Dated: Albany, New York
March __, 2024

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