



NEW YORK STATE SENATOR

George D. Maziarz

Comments by Senator Maziarz on 2009 Re-Draft New York State Hazardous Waste Facility Siting Plan

GEORGE D. MAZIARZ November 18, 2009

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Thank you to everyone here tonight, community members and elected officials for coming here tonight to once again defend your community and the Great Lakes, and hold a state agency accountable for being in violation of State law for over 22 years.

This Re-draft State Hazardous Waste Siting Plan is serious stuff for the Town of Porter, the County of Niagara, and the whole northwest corner of the state that drains into Lake Erie and Lake Ontario. Chemical Waste Management (CWM), the only commercial hazardous waste landfill in New York State and only commercial hazardous waste facility licensed to accept PCBs in the entire Northeast U.S., is in the Town of Porter.

This should make it serious stuff for everyone because 1) the Great Lakes are 90% of the surface fresh water in the U.S. and 2) according to the U.S.

Environmental Protection Agency, all landfills eventually leak.

This draft Plan is also the *fourth attempt* by the Department of Environmental Conservation to comply with the 1987 State Hazardous Waste Management Act. The language in this one is more diplomatic. For example, the previously explicit preference to expand the existing landfill and the declaration that the Great Lakes would be a good site left no doubt that you were talking about Chemical Waste Management in Niagara County. That has been removed from this Plan, and I appreciate that.

Some of the factual errors, and the tortuous, convoluting justifications are removed, and that's good to see.

The insulting declaration that New York City has more hazardous waste than we do because of the filters at its manholes is gone.

And I also appreciate that you've gone out of your way to set off in large print the assessment that the projected need for disposal does not justify a new landfill in New York at this time.

Nevertheless, in spite of your attempts to produce a thoughtful, rational, perhaps even comforting document for the citizens of Niagara County and Western New York, you have produced yet another fatally flawed draft Siting Plan for Hazardous Waste Management.

You will continue to produce one fatally flawed Plan after another as long as you continue to twist and violate the spirit, intention, and mandates of the 1987 Act that compels the production of this Siting Plan in the first place.

Much is flawed and inaccurate in this Plan, but in my brief comments here, I want to focus on two critical aspects of the 1987 Act. One aspect concerns the impetus for New York's Hazardous Waste Management Act. The other concerns the mandates, intention, and spirit of the 1987 Act.

As long as DEC continues to ignore, violate, dance around, and see the issue through a distorted lens, you will continue to produce flawed plans.

First the history. In the Introduction of your current Plan, you state that the impetus for the 1987 Act was the Legislature's concern about an amendment to the federal Superfund law that required states to assure 20 years of hazardous waste treatment or disposal before the Environmental Protection Agency would cooperate on remedial clean-up activities.

That might have been the impetus for the Legislature to engage the issue of hazardous waste management, but that was absolutely not the impetus for the heart of New York's 1987 Act. This clarification is critical because it is the assumption on which the draft Plan should be based. The 1987 Act was always about the landfill in Porter.

My predecessor Senator John Daly was the author of the 1987 Act and the chair of the New York State Joint Legislative Commission on Toxic Substances and Hazardous Waste.

Senator Daly had long tried to get the State to pay attention to the unchecked expansion of the landfill at Porter and close it. The federal requirement provided a timely and high-profile opportunity for that to happen.

The early and accurate history of the hazardous waste management saga in New York State is meticulously reviewed in a March 1989 report produced by Senator Daly's Joint Legislative Commission. It is called *Hazardous Waste Facility Sting in*

New York State: The Evolution of a Promising Public Policy.

It recounts an incident that took place locally that makes clear that the main impetus for 1987 Hazardous Waste Management Act was the landfill in Porter, the recognition that landfill disposal had to stop, and the necessity of geographic and equitable distribution of any future management facilities.

In the fall of 1986, while attending a ceremony on hydroelectric legislation in western New York, Governor [Mario] Cuomo was questioned by local residents about the unchecked expansion of one of the two secure hazardous waste landfills in the region. He responded by offering the services of his special counsel in aiding concerned citizens to fight the proposed expansion. With this development, the legislature began to see a renewed interest in the siting issue, and amendments to the [1976] statute finally appeared within reach.

The previous 2008 Draft Plan inaccurately reported that the impetus for the 1987 Act was the State's belief "that it was necessary to achieve self-sufficiency for the management of hazardous waste generated within the State". Nothing could be further from the truth.

Now, the 2009 Re-re-re-Draft tells a different story and wants us to believe that a Superfund Amendment was at the center of the content of the 1987 Act.

The record makes clear that there has never any doubt that the 1987 Act was aimed at phasing out landfill disposal all together as a way to manage hazardous waste, period, with Porter at the core of the law's intent.

And that brings me to the second critical aspect I want to speak to: the mandates, intention, and spirit of the 1987 Act.

Chapter Four of this draft Plan states that the law "specifically requires that the status of hazardous waste land disposal *be considered.*" This is just plain factually wrong.

I don't know how many times or how else I can say this. The words are right there in the law. It mandates that DEC produce a Plan that phases out the landfilling of *untreated hazardous waste*. **Only treated waste is eligible for landfill disposal.**

What does "treated" mean? New York State law tells us. "Treatment" of hazardous waste is "any method, technique, or process including neutralization, designed to *change the physical, chemical, or biological character or composition* of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage,

or reduced in volume.”

The Joint Commission’s 1989 Report that I referred to earlier defines treatment as **“wastes that have been detoxified to the extent that they no longer pose a significant threat to public health or the environment”** (p. 21).

The 1987 law doesn’t say “Feel free to ignore the State’s legal definition of treatment.” No, it clearly tells DEC to produce a plan to: *Stop landfilling, period.*

The 1987 law doesn’t say, “Put the stuff in state-of-the-art containers and call that treatment.” We were using state-of-the-art containers in 1987, too, so the law is clear in its words and intention: *Stop landfilling, period.*

The 1987 law doesn’t say, “Feel free to ignore the law’s provisions when a weaker federal definition comes out that says that containers can be called ‘treatment.’” Stricter state law always trumps federal law, and the words and the intention of the 1987 law are clear: *Stop landfilling, period.*

The 1987 law doesn’t say, “Just *consider* landfilling.” The mandate of the law is clear: *Stop landfilling, period.*

The 1987 law doesn’t say, “Find a way to combine the one existing landfill that keeps the waste forever with all the small, transient operations that really do *treat* hazardous waste so you can claim equitable geographic distribution.” It tells DEC very clearly: *Stop landfilling, period.*

And the 1987 law doesn’t say, “Stall for 22 years to avoid compliance with the law’s mandates and instead, continue to grant expansions and renew operating permits for the only landfill in the state, and assist with its proposal for a new adjacent landfill. It tells DEC, in no uncertain terms, to: *Stop landfilling, period.*

In 2004, I sponsored a bill that became law. It said that until DEC complied with the 1987 law and completed the state hazardous waste siting plan, no application for a new or expanded landfill could be considered complete.

Since then, Chemical Waste Management and DEC have continued to do preparation work for an expanded landfill, but that darn siting plan needs to be completed before the application could officially move forward. So now, the DEC has issued yet another draft Hazardous Waste Siting Plan. Like the first and the second and the third, DEC continues to try to fool us with a Plan that again distorts and twists the words, the intention, and spirit of the 1987 Act to set the stage for a landfill expansion.

Commissioner Grannis says that our insistence that State Law be honored is a local issue, not a state issue.

He said at his confirmation hearing that New York was somehow obliged to continue taking the stuff.

He called our civic duty of holding DEC accountable to state law “a classic *Not In My Backyard* issue. How do you feel about that? Like you, I am outraged! This Re-Draft Plan continues to avoid the issue that is at the heart of the 1987 Act. Produce a plan to phase out the landfilling of hazardous waste that has not been biologically or chemically changed to a benign state.

Burying untreated waste in canisters doesn't count as treatment, but DEC keeps trying to make it so.

Combining the one landfill with all the other hazardous waste management facilities, no matter how small and transient, doesn't count as equitable and geographic distribution, but DEC keeps trying to make it so.

And ignoring or explaining away existing State definitions and laws does not allow DEC to choose to not comply with them, but DEC keeps trying to make it so.

Two years ago, DEC issued a call for proposals to incinerate hazardous waste from a General Electric site. This first call received only one, high-priced response because of equipment availability at the time. Commissioner Grannis understood this, but rather than reissuing the call for incineration, DEC issued an expanded call that received a proposal to landfill the stuff at Porter. I complained and Commissioner Grannis said that he had no choice, *he had to follow the state law* for issuing and accepting proposals. Commissioner Grannis, you do not get to choose which state laws you will follow. How is it you can choose to comply with one but not another?

If DEC finalizes this draft plan, it can consider CWM's application complete for another landfill adjacent to its current facility that, according to DEC's calculations, will allow thousands of trucks to keep hauling hazardous waste into the community and past the Lewiston-Porter schools for decades, and then it will be there forever. A finalized State Siting Plan would allow the process to go forward to dig up the soil of on very troubled land with a legacy of WWII Manhattan Project disposal of radioactive waste and toxic chemicals.

I don't care how “state of the art” any landfill operation is. State of the art is meaningless when you're talking about increased cancer rates, canisters that eventually leak and an increased risk to 90% of the fresh surface water in the United States.

And it's meaningless when it is counter to existing state law.

I don't care what political party is in the governor's office. The four draft plans have been issued by both democratic and republican administrations.

Four times DEC has drafted plans, and four times it had failed. The first got thrown out by a Supreme Court judge. The second disappeared after public

outrage. The third was shelved for the same reason. And now here's the fourth, as miserable as the others.

Why? Because DEC is in its *third decade* of violating the 1987 Hazardous Waste Management Act that tells the DEC to do what?? *Stop landfilling, period!!*

I will continue to fight as hard as I can to stop the dumping of hazardous waste in Western New York, in the heart of our beautiful county, in the midst of our good communities, and just upstream from the Great Lakes. I will work as hard as I can to spare all New York communities of the fear of being next.

I urge Commissioner Grannis to withdraw this fatally flawed plan and finally, comply with the 1987 Hazardous Waste Management Act.