

RESOLUTION AUTHORIZING (1) TO REQUEST AMICUS CURIAE STATUS IN THE MATTER OF RIVERKEEPER, INC.; CORTLAND-ONONDAGA FEDERATION OF KETTLE LAKE ASSOCIATIONS, INC.; SIERRA CLUB; THEODORE GORDON FLYFISHERS, INC.; and WATERKEEPER ALLIANCE, INC., V. BASIL SEGGOS, in his capacity as Commissioner of the New York State Department of Environmental Conservation, and NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION; and (2) ENTERING INTO A RETAINER AGREEMENT FOR THIS PURPOSE WITH LEGAL COUNSEL

WHEREAS, the City of Ithaca Common Council is concerned about the impacts on its community of the recently adopted New York State Department of Environmental Conservation ("DEC") Clean Water Act General Permit ("General Permit") for Concentrated Animal Feeding Operations ("CAFOs"); and

WHEREAS, CAFO is the legal term for large animal factories, where at least hundreds of animals – in New York, mostly dairy cows – are maintained in confined areas for at least part of the year with food being brought in, and General Permits apply to operations with 300 or more mature dairy cows and/or operations that discharge pollutants into the waters of the State; and

WHEREAS, an average dairy cow produces over 120 pounds of manure per day, as compared to an average household of four people which produces about one pound of sewage waste per day, waste from just one of the smallest CAFOs covered by the General Permit (with 200 cows) is comparable to the amount of sewage produced by a city of 96,000 which is similar in size to the City of Albany (98,000 people in 2016); and

WHEREAS, human waste generated in cities is treated in wastewater treatment plants that operate year-round, whereas dairy cow sewage is usually held in lagoons until it is spread on fields which poses a significant risk to the environment, a risk that is heightened by the fact that many lagoons are un-lined and, thus, can leach pollutants into the groundwater; and

WHEREAS, if not properly managed, stored, and disposed of, waste generated by CAFOs has the potential to cause significant harm to human health and the environment, as improper management of waste from dairy CAFOs is associated with the release of nitrogen, phosphorus, ammonia, and human pathogens, and such releases can contaminate ground and surface water, impact drinking water supplies, and cause algal blooms, fish kills and human illness; and

WHEREAS, the Federal Clean Water Act sets out requirements for dairies and other industrial animal operations for managing animal waste, including: developing and implementing nutrient management plans ("NMPs"), enforceable safeguards against water pollution, review and approval by impartial state experts, and availability of NMPs for public review and comment, and while the New York State DEC is responsible for issuing a General Permit that complies with and implements the Federal Clean Water Act, the General Permit does not satisfy these rules; and

WHEREAS, the City of Ithaca Common Council recognizes the importance of appropriate stewardship over Cayuga Lake, its creeks, streams, waterfalls and watershed, not only as a foundation of natural

beauty, ecological diversity, and personal well-being, but also as a source of clean drinking water and as an economic driver of the community; and

WHEREAS, if the General Permit met the rules set forward by the Federal Clean Water Act requiring disclosure of MNPs for public review and comment, the City of Ithaca is likely to review MNPs to determine their impacts on the Six Mile Creek, Fall Creek, and Cayuga Lake Watersheds, impacts on municipal water sources and water treatment systems, and impacts on environmental and water quality management plans, and the City of Ithaca is likely to provide comments to the DEC as appropriate, and

WHEREAS, Earthjustice has filed a petition challenging the aforementioned General Permit¹; now therefore be it

RESOLVED, that the City of Ithaca will seek amicus curiae status in the matter of Riverkeeper, Inc. et al. v. Basil Seggos and New York Department of Conservation, Index No. 902103-17² and seek consent of the court to submit an amicus curiae brief; and be it further

RESOLVED, that the Mayor of the City of Ithaca is hereby authorized to sign the retainer letter with the Columbia Environmental Law Clinic for such legal representation and services.

¹ <http://earthjustice.org/news/press/2017/environmental-groups-fight-department-of-environmental-conservation-s-toothless-industrial-animal-facility-0>

² RIVERKEEPER, INC.; CORTLAND-ONONDAGA FEDERATION OF KETTLE LAKE ASSOCIATIONS, INC.; SIERRA CLUB; THEODORE GORDON FLYFISHERS, INC.; and WATERKEEPER ALLIANCE, INC., V. BASIL SEGGOS, in his capacity as Commissioner of the New York State Department of Environmental Conservation, and NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION <http://www.courthousenews.com/wp-content/uploads/2017/03/Cows.pdf>



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June 14, 2017

Town of Dryden Agricultural Advisory Committee
Evan Carpenter, Chair
Doug Barton
Kim LaMotte
Jeremy Sherman
Brian Magee
Steve Foote
Jason Leifer, Town Board Liaison
93 East Main Street
Dryden NY 13053

Members of the Town of Dryden Agriculture Advisory Committee:

The Northeast Dairy Producers Association (“NEDPA”) recently became aware of the Town of Dryden’s consideration of a resolution authorizing and engaging the Columbia Environmental Law Clinic to represent the Town’s interests with respect to requesting amicus curiae status in the *Matter of Riverkeeper, Inc.; Cortland-Onondaga Federation of Kettle Lake Associations, Inc.; Sierra Club; Theodore Gordon Flyfishers, Inc.; and Waterkeeper Alliance, Inc. v. Basil Seggos, in his capacity as Commissioner of the New York State Department of Environmental Conservation, and New York State Department of Environmental Conservation* (the *Riverkeeper Lawsuit*).

We understand that the Town Board referred this issue to the Town’s Agriculture Advisory Committee for consideration before the Town Board considers the Resolution on Thursday, June 15th. Given the Ag Committee’s mission – “to provide the Town Board with advice and information about Agriculture in Dryden” – and the Ag Committee’s stated goal – “to support and promote Agriculture and Ag related enterprises in what has traditionally been a farm community,” it is critical that the Ag Committee strongly oppose the proposed Resolution and identify for the Town Board why it is contrary to the best interests of the Town and the agricultural community in the Town and the State of New York.

First, the Town’s rushed consideration of this Resolution is a concern. This is a significant issue facing the state’s regulated livestock industry and signing on for amicus curiae status to this lawsuit should not be taken lightly or rushed. Moreover, the Clean Water Act (CWA) CAFO Permit, the permit being challenged in the *Riverkeeper Lawsuit*, was developed over years of collaborative input from a technical working group that included state and federal agencies, University experts, farmers, civil groups and environmental organizations. When the New York State Department of Environmental Conservation (DEC) released the CWA CAFO Permit a

representative for the Citizens Campaign for the Environmental stated that “[t]his new CAFO permit strikes the right balance in providing New York’s farmers with clear direction on how to farm cleaner and greener, while ensuring they remain competitive in the global market.” Therefore, any notion that any CAFO permit released by DEC was developed without citizen and environmental group input is incorrect.

Substantively, the Resolution is filled with misinformation and anti-production agriculture propaganda. The anti-production agriculture agenda of the Columbia Environmental Law Clinic is clear¹ and NEDPA strongly encourages the Town of Dryden to not sign a Resolution that disparages the Town’s and the State’s agricultural community in such a manner.

The factual inaccuracies appear throughout the Resolution. This letter will address just a few of the Resolution’s incorrect statements.

Comparison of Agriculture Waste Volumes to Human Waste Volumes

Filings in the *Riverkeeper* Lawsuit, and statements included in the Resolution, make the inaccurate comparison of a 200 cow herd producing the same amount of waste produced by a city of 96,000 people. This is an error that is more than 10-fold too high. This significant factual inaccuracy appears to come from a basic lack of understanding of the topic and misrepresentation of a U.S. EPA statement in a fact sheet referenced in the *Riverkeeper* Lawsuit. Specifically, an EPA fact sheet noted that a family of 4 produces about 1 pound of sludge on a *dry weight* basis/day, meaning the dry weight (all water removed) of the residual solids that are left after being separated for liquids and further treatment. The same EPA fact sheet noted that a family of 4 produces 400 gallons of wastewater per day. A review of the scientific literature and a technical analysis comparing urine and feces produced by cows and people concludes that a more accurate comparison of the waste generated by 200 cows would be 9,444 people. The *Riverkeeper* Lawsuit and Resolution make an error that is 10-fold too high, damaging any credibility to the plaintiffs’ assertions in the *Riverkeeper* Lawsuit and the Columbia Environmental Law Clinic’s analysis or purported scientific reasoning.

The implication that production agriculture waste should be managed like human waste in wastewater treatment plants is similarly misguided. Instead of concentrating nutrients that are excreted by humans in a city, permitted CAFOs in New York must have and implement a nutrient management plan that ensures, at a minimum, an adequate land base for nutrient recycling exists. Regular soil tests are performed (and required by the state’s CAFO permits) to confirm that nutrient applications are consistent with the NMP and that nutrient loading is not occurring.

Public Availability of Information and Opportunity to Provide Comments and Oversight

The CWA CAFO Permit that is the subject of the Lawsuit provides for the public availability of the “Annual Nutrient Management Plan” or ANMP. The ANMP contains the critical information included in the farm’s NMP including the number of animals on site, production area details, field specific information and field-specific details related to nutrient management activities (i.e. manure source, application rate, application timing and method, chemical fertilizer recommendations, soil analyses, etc.). The ANMPs for farms applying for a CWA CAFO Permit

¹ See, as just one example, the reference to CAFOs as “animal factories.”

are made publicly available via the DEC's online Environmental Notice Bulletin. In addition, any substantial change to the farm's NMP would require an updated ANMP that is also made publicly available via the online Environmental Notice Bulletin. The public is afforded a 30 day comment period to review and consider the ANMP. Therefore, the Resolution's concern that Towns like Dryden do not have an ability to review a farm's NMP-related plans and provide public comment are simply false. Moreover, the U.S. EPA has recently confirmed that DEC's revised FAQ's regarding the CWA CAFO Permit demonstrates the permit is consistent with the federal requirements. Thus, the Resolution's allegation that the rules required by the Federal Clean Water Act have not been met is false. The Town should not be affiliated with such misrepresentations by signing on to amicus curiae status.

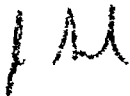
Manure Storage Structures

Manure storage structures in New York State must meet stringent design requirements and specifications set by the United States Department of Agriculture Natural Resources Conservation Service ("NRCS") and incorporated by reference into the New York State Department of Environmental Conservation's permit programs for CAFOs. No CAFO can install an "unlined lagoon" – the permissible forms of lining include earthen (if located in soils with an acceptable permeability that meets all applicable regulations), concrete or synthetic flexible material such as HDPE plastic. The Resolution's assertion that many lagoons are "unlined" and, as a result, "leach pollutants into the groundwater" is without evidentiary support. Moreover, the only reasonable alternative would be daily spreading manure nutrients which reduces a farm's ability to manage weather conditions and crop needs, to name just a few consequences. Vilifying manure storage structures will only result in a net reduction in the stewardship over the Town's and state's natural resources and the Resolution takes the Town in the wrong direction on this issue.

As active members of the Town's agricultural community, we request that the Ag Committee oppose amicus curiae status in the *Riverkeeper* Lawsuit and identify the agricultural community's concerns to the Town Board. Instead of spending time and the Town's limited resources on engaging the Columbia Environmental Law Clinic for amicus curiae status, we would ask that the Town support the already successful efforts of the Town's agricultural community in making environmental stewardship and related activities a priority.

Thank you in advance for your consideration of this very important issue.

Best regards,



Jon Greenwood
Chairman, NEDPA Board of Directors

From: Karl J. Czymmek kjc12@cornell.edu
Subject: No Subject
Date: Today at 2:34 PM
To: russell beck busrec@gmail.com
Cc: Tonya Van Slyke tonya@nedpa.org, Mike Van Amburgh mev1@cornell.edu

Russ, Attached is the EPA fact sheet referenced in the lawsuit. You can see in the second column the language they used to compare to cow manure on a wet basis. They state as fact: "Because an average cow produces over 120 pounds of manure per day..." and "By contrast, according to the US Environmental Protection Agency ("EPA"), the average household of four people produces about one pound of sewage waste per day. Thus, the waste from just one of the smallest of the CAFOs covered by the General Permit (with 200 cows) is comparable to that from a city of 96,000..." The error between the yellow highlighted language above that is directly from the lawsuit versus the language in blue below from the EPA fact sheet is apparent.

A typical family of four generates up to 400 gallons of wastewater per day. After this wastewater has been treated, about one pound of sludge on a dry weight basis is produced.

In a nutshell, our calculations indicate:

1 human makes .4 gallons of urine plus feces per day (from scientific literature).

1 average NYS cow, makes about 75 pounds of milk per day, and excretes 16.8 gallons of urine plus feces (manure) per day (CNCPS)

On a wet basis, 1 cow equals about 42 people, NOT 480 as suggested in the lawsuit.

We also compared total N and P between humans and dairy cows. Since the typical dairy also includes calves and heifers, we included them in another set of calculations. In terms of manure, the calves and heifers add the equivalent of about another 40 mature cows. When we average the wet basis along with the figures for N and P, the cows plus expected calves and heifers is about the same as 9,444 people.

Karl



Sewage Sludge Use and Disposal Rule (40 CFR Part 503) -- Fact Sheet

The Sewage Sludge Use and Disposal Regulation (40 CFR Part 503) sets national standards for pathogens and 10 heavy metals in sewage sludge. It also defines standards (or management practices) for the safe handling and use of sewage sludge. This rule is designed to protect human health and the environment when sewage sludge is beneficially applied to the land, placed in a surface disposal site, or incinerated. The rule was developed in accordance with the 1987 Amendments to the Clean Water Act.

The rule is also the product of EPA's most comprehensive risk assessment to date, in that it considers the full range of potential impacts sewage sludge could have on public health and the environment. It is based on the most current scientific information and is the first rule published by EPA that considers *potential* ecological effects. Although developed by EPA's Office of Water under the authority of the Clean Water Act, this rule is multi-media in nature and seeks to protect surface water, ground water, air, and land.

The scientific research used to develop this rule shows that most sewage sludge can be safely and beneficially used in a wide variety of ways. It can be applied safely to agricultural land, lawns and gardens, golf courses, forests and parks, and is a valuable resource for land reclamation projects. This rule is designed to protect human health and the environment at an equal margin of safety for any of the regulated use or disposal practices. It sets standards for pathogens and limits for 12 pollutants which have the potential for adverse effects, and explains why limits are not needed for 61 other pollutants that were considered. Additionally, it contains a comprehensive set of management practices to ensure that sewage sludge is beneficially used or disposed of properly.

Where Does Sewage Sludge Come From?

- Sewage sludge is a by-product of treating wastewater from homes, businesses and some industries. In some older cities where sanitary sewers are connected to storm sewers, sewage treatment facilities may also receive runoff from streets, parking lots, and yards.
- Wastewater treatment facilities are designed to separate solids from water to allow the water to be safely discharged. They are also designed to treat the solids to reduce the level of disease-causing bacteria, viruses, and parasites so that the remaining solids can be safely and beneficially used.
- Sewage sludge is a slurry that is 80% to 99% water. The rest is a mixture of organic and inorganic solids and dissolved substances. Sewage sludge contains nutrients

(e.g., nitrogen, phosphorus) and pathogens (e.g., bacteria, viruses, and parasites). Some sludges may also contain small amounts of organic chemicals (such as chloroform) and inorganic chemicals (such as iron).

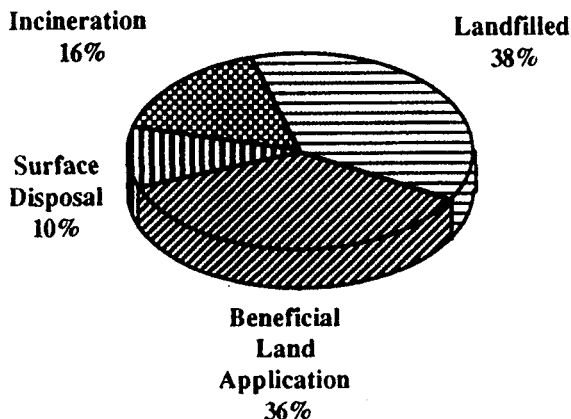
- Sewage sludge must be treated to improve its quality before it can be used or disposed. This treatment involves biological, chemical, physical and/or thermal processes primarily designed to remove water, reduce the level of pathogens, stabilize volatile solids, and make it less attractive to rodents, insects, and other animals.

How Much Sewage Sludge Is There?

- A typical family of four generates up to 400 gallons of wastewater per day. After this wastewater has been treated, about one pound of sludge on a dry weight basis is produced.
- There are approximately 13,000 to 15,000 publicly owned treatment works in the United States which generate 110-150 million wet metric tons of sewage sludge, annually.

How is Sewage Sludge Beneficially Used or Disposed of?

- Sewage sludge has been used with great success on agricultural lands throughout the world for decades. Today, approximately 36% of the United States' sewage sludge is beneficially applied to land, 38% is landfilled at municipal sites, 10% is surface disposed, and 16% is incinerated.



- The numbers are changing, however. The 48% of sludge that is being disposed in landfills or sludge-only disposal sites is decreasing as landfill space has tightened. More and more communities are turning to beneficial applications. New and innovative uses of sewage sludge have been developed in recent years and the science behind established practices has greatly improved.

How Can Sewage Sludge Be Used?

Sewage sludge can be used in many ways. The organic nutrient content as well as its soil enhancing properties make it a practical choice for farmers, landscapers, foresters, and homeowners.

- **Farmland**—Sewage sludge has been beneficially used on farmland for many years. It typically contains \$30 - \$60 worth of nitrogen per ton and is an excellent soil amendment. While it is not a complete replacement for chemical fertilizers, it does do some things chemical fertilizers cannot do. It promotes necessary bacterial activity and improves the structure of soil allowing it to absorb more water, thus reducing dangerous runoff. It is also less expensive than chemical fertilizers.
- **Homes and Gardens**—High quality sludge can be processed (usually composted) into a dry granular substance that is easily handled by landscapers and homeowners. It is also less expensive than commercially available peat moss or top soil. Homeowners and landscapers across the United States - from Philadelphia to Milwaukee to Seattle - have been using sludge derived products for many years. Treated sludge has also been widely used on municipal golf courses and national, historic landmarks such as the grounds of the White House and Mount Vernon.
- **Forests**—Sewage sludge has been used successfully for many years on forested areas to reduce runoff and enhance tree growth. There have been many studies documenting two to three-fold growth increases where trees have been grown with treated sludge.
- **Land Reclamation**—Sewage sludge has also been used with dramatic success to reclaim lands destroyed by strip mining, erosion, and construction. In Pennsylvania, sewage sludge has been used to help reclaim thousands of acres of land at abandoned strip mine sites. Sewage sludge is also being applied to revegetate the side of a severely eroded mountain that

was highly contaminated by a zinc smelting operation in Palmerton, PA.

How Safe Is Sewage Sludge?

- The research conducted for this rule validates the long-standing use of sewage sludge on the land as both safe and beneficial. Sewage sludge is a valuable resource that can be safely recycled back into the land. It has, in fact, been used on farmland for many years with no documented adverse affect on human health.
- The rule contains incentives for communities to produce cleaner sludge and to consider changing from wasteful disposal practices such as landfilling to beneficial projects. The regulation also prescribes how communities may incinerate or otherwise dispose of sludge safely.

Who Is Affected and How?

- The rule includes standards that apply to publicly, privately, and Federally owned facilities that generate or treat sewage sludge, as well as any person who uses or disposes of sewage sludge or septage. These standards consist of pollutant limits, management practices, and operational standards. The regulation establishes pollutant limits for sewage sludge that is applied to the land or disposed of by either placing it in a surface disposal site or by firing it in an incinerator. The regulation also includes requirements for reducing pathogens in sewage sludge that may cause disease. The other requirements of the regulation address the frequency of monitoring, record keeping, and reporting.
- This rule is designed, for the most part, to be self-implementing, meaning that anyone who uses or disposes of sewage sludge must comply with all of the provisions of the regulation whether or not they have a permit. The rule requires compliance with monitoring and record keeping requirements 150 days after the rule is published in the Federal Register. The rule also requires compliance with other standards as soon as possible but no later than 12 months from the date of publication (or 24 months if construction is required).
- EPA intends to include the requirements of this rule in National Pollutant Discharge Elimination System (NPDES) permit applications. Permit application deadlines are being phased in; the first applications being due six months after this rule is published and the rest becoming due over the next several years.