



Via the email to RRR@biohitech.com and R4DEP@dec.ny.gov

June 19, 2020

Rensselaer Resource Recovery, LLC
80 Red Schoolhouse Road
Suite #101
Chestnut Ridge, NY

Re: Comments on Rensselaer Engineered Fuels Proposed Municipal Solid Waste Processing Facility (also known as “BioHiTech”)

Dear Rensselaer Resource Recovery, LLC:

I am writing to you on behalf of Riverkeeper, Inc., a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries, and protecting the drinking water supply of nine million New York City and Hudson Valley residents. For more than 50 years, Riverkeeper has stopped polluters, championed public access to the river, influenced land use decisions, and restored habitat, benefiting the natural and human communities of the Hudson River and its watershed.

We thank you for providing us with the opportunity to comment on Rensselaer Engineered Fuels Proposed Municipal Solid Waste Processing Facility (also known as “BioHiTech”), a project that will be located on the BASF Manufacturing Plant State Superfund site. As correctly identified by the New York Department of Environmental Conservation (“DEC”), the proposed BioHiTech project will be located on an industrial parcel near a potential Environmental Justice area and is subject to a Public Participation Plan pursuant to DEC’s Commissioner Policy on Environmental Justice and Permitting (“CP-29” or “Environmental Justice Policy”).¹

Below we respectfully submit Riverkeeper’s comments on the proposal and the associated public participation plan. We urge Rensselaer Resource Recovery, LLC and the City of Rensselaer Planning Commission as Lead Agency to acknowledge the woeful deficiencies in the Environmental Justice process and to rectify the error through proper consideration of the communities’ concerns and the reopening of the SEQRA process for the preparation of the full environmental impact statement.

¹ Commissioner Policy 29, Environmental Justice and Permitting (March 19, 2003), https://www.dec.ny.gov/docs/permits_ej_operations_pdf/cp29a.pdf (“CP-29”).

I. Cumulative Environmental Impacts in Rensselaer

To fully understand the context of the environmental justice concerns, the Applicant must recognize the existing environmental burden that the City of Rensselaer already bears. Rensselaer is a city of 3.5 square miles located on the banks of the Hudson River, across from the City of Albany, with a population of roughly 9,300 people.² Despite its relatively small geographic size, Rensselaer is home to the Dunn Construction and Demolition Landfill, a major Amtrak hub, and the Rensselaer Cogeneration gas-fired power plant. The combined effects of these form an overwhelming assault on the health and well-being of Rensselaer residents.

Rensselaer community members have long complained about the excessive dust and odor from the Dunn landfill, located directly next to their local school.³ Emissions from construction and demolition landfills like Dunn not only produce odor problems, but also can create major health impacts on the surrounding community, including nausea, headache, vomiting, breathing abnormalities, nosebleeds, depression, and personality changes.⁴

The residents face further impacts from the noise and emissions of the many idling Amtrak diesel trains at the Rensselaer station and railyard spewing hazardous levels of air pollutants into the area,⁵ and additional emissions from the Rensselaer Cogen power plant. The impacts from the proposed BioHiTech facility would only contribute further to the existing burden on the health and wellbeing of Rensselaer residents.

II. Inadequate Public Participation

The environmental justice concerns are further exacerbated in Rensselaer by the complete failure to properly inform community members of BioHiTech's potential impacts. At the onset, the Applicant and city officials had described the project as "a mere composting facility," which reduced community scrutiny.⁶ The Rensselaer Planning Commission then issued a negative declaration. DEC stated "grave concerns" regarding the Commission's environmental review process including its "failure to conduct a proper coordinated review with DEC" and its determination that BioHiTech will not have significant impacts "notwithstanding the numerous

²*About the City*, City of Rensselaer, <https://rensselaerny.gov/about-city> (last visited June 19, 2020).

³ Tom Ellis, *Dunn Landfill – Stinks up the School; Parents and Residents Protest*, Save the Pine Bush (Dec. 1, 2019), http://www.savethepinebush.org/News/2019_12-01/Dunn_Landfill_Stinks.html; Lucas Willard, *DEC Announces Steps to Reduce Odors at Dunn Landfill*, WAMC (Mar. 21, 2019), <https://www.wamc.org/post/dec-announces-steps-reduce-odors-dunn-landfill>.

⁴ Debra R. Reinhart and Timothy G. Townsend, *Control of Odors from Construction and Demolition Debris Landfill*, report no. 0232004-04, at 11 (2004), https://www.researchgate.net/profile/Debra_Reinhart/publication/260387938_Control_of_Odors_from_Construction_and_Demolition_CD_Debris_Landfills/links/572cab5d08aee02297597766/Control-of-Odors-from-Construction-and-Demolition-C-D-Debris-Landfills.pdf.

⁵ Brian Nearing, *Fumes from Diesel Trains an Issue at Rensselaer Station*, Times Union (Mar. 20, 2013), <https://www.timesunion.com/business/article/Fumes-from-diesel-trains-an-issue-at-Rensselaer-4367896.php>; Kenneth C. Crowe II, *Rail Yard to Reduce Emissions in Face of Resident Complaints*, Times Union (July 17, 2014), <https://www.timesunion.com/local/article/Rail-yard-to-reduce-emissions-in-face-of-resident-5629748.php>.

⁶ See Kenneth C. Crowe II, *\$35 Million Trash Treatment Site Eyed for Rensselaer*, Times Union (May 10, 2018), <https://www.timesunion.com/news/article/Rensselaer-sees-35-million-biotech-plant-as-12904167.php>.

impacts identified in the SEQRA record.”⁷ The letter states that “it is unclear how the City of Rensselaer could have determined that the Project does not involve at least one potential significant adverse impact” and urged the City to reopen the SEQRA process to correct these errors.⁸ The failure of both the Planning Commission and the Applicant to provide a full environmental impact statement to the community poses a major barrier to their ability to fully understand the potential impacts of this project contrary to DEC’s Environmental Justice Policy, whose goal is to “promote fair involvement of all people in the DEC environmental permit process.”⁹

The Applicant has then continued its blatant disregard of its requirements under CP-29, and has not implemented an effective Public Participation Plan. Its public participation efforts seem lackluster at best with limited notification to the public and limited access to relevant documents, contrary to the mandate that stakeholders be identified and information shall be “presented in an easy-to-read, understandable format.”¹⁰ It is only after the second meeting on June 4, 2020, that the applicant finally responded to the community’s ask for an easily accessible online document repository for the project—and another requirement of CP-29. Even for this current comment period, the notification was buried within the meeting notice and only briefly mentioned at the end of the meeting. Many community members were left unclear on the existence of the comment period, the topic for which comment was solicited, and how to submit comments. The Applicant must offer additional public meetings and provide the community additional opportunity to comment with adequate notice to enable meaningful public participation and fulfill the purpose of CP-29.

III. Project Poses Risk of Significant Environmental Impacts

Further, in light of the risk of significant potential environmental impacts from the project, the Applicant must complete a full environmental impact statement to provide the Rensselaer community with critical information necessary for their engagement with the proposal. With the limited information currently available, Riverkeeper is particularly concerned about BioHiTech’s disposal of leachate and process water, and its siting on top of a hazardous waste site.

Leachate from municipal solid waste has long been recognized as a source of groundwater and surface water pollution, and is subject to significant controls.¹¹ Leachate may contain a host of pollutants including dissolved organic matter, inorganic macro components, heavy metal, and xenobiotic organic compounds.¹² Studies have found that acidic leachate in the

⁷ Letter from Keith Goertz, DEC Regional Director to the Honorable Richard Mooney, Mayor of Rensselaer 1 (Nov 26, 2019).

⁸ *Id.* at 6-7.

⁹ CP-29 at 1.

¹⁰ *Id.* at 8

¹¹ Peter Kjeldsen et al., *Present and Long-Term Composition of MSW Landfill Leachate: A Review*, 32 *Critical Reviews in Environmental Science and Technology* 297, 297-98 (2002), <https://cues.rutgers.edu/bioreactor-landfill/pdfs/15-Kjeldsenetall2002CritRevEnvSciLandfillLeachat.pdf>; See also Components of A Modern Municipal Solid Waste Landfill’s Environmental Containment System, DEC, <https://www.dec.ny.gov/chemical/23719.html> (last visited June 19, 2020) (discussing the many components of landfill containment systems).

¹² Kjeldsen et al., at 298.

early stages of decomposition is likely to contain high concentrations of all these materials.¹³ The Applicant has proposed that leachate and process water would be discharged directly into the Rensselaer municipal sewage systems, or if that is not possible, collected for treatment offsite.¹⁴ It is important to note that Rensselaer's sewage system is not necessarily designed to handle this additional landfill leachate, and that the Rensselaer combined sewage system is subject to frequent overflow events where untreated sewage is released directly into the Hudson River. Most likely this will result in some discharge of untreated leachate directly into the Hudson River. This risk at least merits more study to understand the impacts as a foundation for establishing mitigation measures.

The environmental impacts of the leachate are heightened when taken in the context of the existing contamination on the site. The proposal sites the BioHiTech facility directly on top of an existing hazardous waste site, the former BASF Manufacturing Plant. The property is a state Superfund site undergoing active remediation, with identified contamination in its soil, groundwater, and the sediment of the adjacent Hudson River from dye waste containing chlorinated solvents, primarily chlorobenzenes, and metals.¹⁵ While the site's on-land hazardous waste has been buried and capped, the remediation in Hudson appears to be ongoing. Not only will the leachate potentially add to the contamination in the Hudson, but the construction and location of this enormous facility presents risks that the cap will be disturbed, enabling the migration of buried contaminants. Such a risk to the community of Rensselaer is unacceptable and must be studied and addressed by the Applicant.

IV. Conclusion

In conclusion, there are significant environmental justice concerns in the area of the proposed project, which is subject to DEC's CP-29 Environmental Justice Policy. The requirements under CP-29 have not been met and the Applicant's execution of its Public Participation Plan is entirely inadequate. Further, additional environmental assessment is needed to provide the public with critical information to facilitate their engagement with the proposal in light of the significant environmental risks posed by the project as proposed. Thus, Riverkeeper urges the Applicant and the City of Rensselaer to provide a full environmental impact statement for the site through reopening the SEQRA process and hold additional opportunities for public comment on the proposal to fulfill the mandate of CP-29.

We appreciate the opportunity to make comments on this proposal. Thank you for your careful consideration of these comments.

¹³ *Id.* at 287.

¹⁴ Rensselaer Engineered Fuels, Engineering Report 11 (June 28, 2019).

¹⁵ DEC, Fact Sheet: BASF Manufacturing Plant Site (June 2018), <http://www.dec.ny.gov/data/der/factsheet/442027cubegins.pdf>; Nicholas Buonanno, *Rensselaer Plant Cleanup Subject of Meeting*, The Record (Feb. 13, 2016), https://www.troyrecord.com/news/renselaer-plant-cleanup-subject-of-meeting/article_f70b6b5d-e0ae-5be9-9bd7-2f90cc3bb946.html.

Sincerely,

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