

diOxinS=GenoCide

To the Oneida General Tribal Council:

In **November 2000** OBC passed **Anti-Dioxin Resolution 11-08-00-B** unanimously because Dioxins threaten the future of all Tribal Nations. But now **Oneida Seven Generations Corp.** wants to use Oneida Tribal resources to build a **Dioxin-emitting incinerator** on the Oneida Reservation and to market incinerators to other Tribes, risking indigenous lives & lands at home and abroad.

- OSGC has **lied** about the hazards of their incinerator plans.
- OSGC **hides** information they are supposed to provide us.
- OSGC uses Oneida money to promote a means of **genocide**.
- OSGC claims they only want to build a demonstration model, but their real goal is to incinerate **medical & hazardous waste**.
- OSGC **must be stopped** from treating Oneida Tribal land like a mad scientist's laboratory, from treating Oneida children like guinea pigs, from treating Oneida Tribal resources like a gift card, and treating the Oneida Tribe's reputation like an old doormat for their dirty boots.

It's up to the **Oneida General Tribal Council** to make it very clear:

We **do not** support exposing Native people & lands to Dioxin & other emissions from incinerators that hide behind names like "pyrolysis/gasification," "waste-to-energy" or "recycling." We **must stop OSGC** and protect Turtle Island and all the Human Beings who love her.

At a February 21, 2011 Green Bay Plan Commission meeting, OSGC Project Manager Pete King, III, admitted that among the project's emissions, "**There are some dioxins**[" OSGC's April 27, 2012 revised Permit to Construct Application reveals their pyrolysis/gasification project will emit the following **hazardous air pollutants**:

Dioxins/Furans • Formaldehyde • Acetaldehyde • Arsenic • Lead
• Cadmium • Chromium • Fluoride • Antimony • Mercury •
Nickel • Iron • Copper • Selenium • Chlorides • Hydrogen Sulfide

OSGC might say they only want a 'small-scale' project that won't emit all of the pollutants above, but we **can't** afford to find out later that they broke their promises, and we **can't** allow them to get a foothold for the "full-sized facility" their CEO has stated is their ultimate goal.

Why OSGC must be stopped from building a "Pyrolysis," "Waste-to-Energy," or "Plastics Recycling" plant.

On June 1, 2011 Kevin Cornelius was informed by **WDNR's Waste & Materials Management** that OSGC's Proposed Plan of Operation "mixes 'waste-to-energy' (WTE) under differing applications [and] there are also references to municipal solid waste (MSW) being **incinerated**. [**...C**]urrent operating pyrolysis applications are at **research and testing locations and do not exist on a commercial scale**. We are concerned that **your proposal is for a large scale facility**[.] I cautiously note, in its current form, the information submitted **does not** provide us with a confidence level that would ensure a reasonable expectation of success." (letter from Sally Hronek)

OSGC claims we **must** trust WDNR and EPA to certify & monitor their project for safety, but mining companies make the **exact same claims** about proposed Wisconsin mining, and yet OBC recently **unanimously** supported **Resolution 02-13-13-D** which says: "**the Oneida Tribe is determined to uphold and respect our original instructions to care for and protect our Mother Earth for all time. We are born with the responsibility to leave this place better than we found it, to uphold the next seven generation philosophy, and promote sustainability in our daily decisions**[.]"

We have to make it clear that the Oneida Tribe doesn't want to build incinerators **anywhere** on the Oneida Reservation because that would **dishonor** the meaning of **the Great Binding Law** which gives Oneida People our identity and should direct our enterprises & investments.

On January 17, 2012 the **U.S. Dept. of Justice** announced that Japan's **Marubeni** Corporation "has agreed to pay a \$54.6 million **criminal** penalty to resolve charges related to the Foreign Corrupt Practices Act...for its participation in a decade-long scheme to **bribe** Nigerian government officials to obtain engineering, procurement and construction (EPC) contracts[.]" justice.gov/opa/pr/2012/January/12-crm-060.html

On January 24, 2012 the **PIC Group**, a wholly-owned subsidiary of **Marubeni**, announced it had a "full care, custody and control Operations and Maintenance agreement with **Oneida Energy** for a new biomass gasification project located in Green Bay, WI." picworld.com/media/business-news/pic-to-operate-new-biomass-gasification-plant/

Why OSGC must be stopped from building a "Pyrolysis," "Waste-to-Energy," or "Plastics Recycling" plant.

OSGC is the majority shareholder of Oneida Energy, Inc., and OSGC's CEO Kevin Cornelius is the registered agent of both companies.

wdfi.org/apps/CorpSearch/Advanced.aspx

WHY WOULD OSGC WANT TO WORK WITH A SUBSIDIARY OF A KNOWN CORRUPT COMPANY? HOW DID THEY GET THE JOB?

On January 9, 2013 Brown County Judge Marc A. Hammer decided in **Case No. 2012-CV-2263** that OSGC made **several** misrepresentations of material fact to the public and to elected officials while seeking a Conditional Use Permit from the City of Green Bay.

Court Transcript Pages 90-92:

THE COURT: [...] I'm satisfied that the following misstatements were included in the minutes and on the audio tape. Mr. Cornelius stated there are no hazardous material. I don't think that's true. The system is closed so there is no oxygen. Once it is baked, all the gas is taken off by a, quote, "cherry scrubber," closed quote, so it takes away any kind of harmful toxins that might be in the gas and the rest is burned as natural gas. Anything that is left over will run back through the system. The ash that comes out can be dumped in a landfill or mixed with cement as road base.

Now, the last sentence I'm not satisfied is a misrepresentation. I don't know. I'm satisfied that comments regarding "once it is backed out, all the gas is taken off, it takes away harmful toxins." I'm satisfied these aren't true statements. Mr. Cornelius indicated at the Planning Commission hearing that there are no smokestacks, no oxygen and no ash. I'm satisfied that's a misstatement. There is carbon and ash which actually could have been tested and go right into organic farming. I'm satisfied that's not true. There are no fallout zones. I have no reason to challenge that. There have been some dioxins but no PCB's. This all goes into slag here. I'm not satisfied that is a truthful statement.

Mr. Cornelius in response to a question -- the question was from an alderman, and he said, in the report under emissions, it refers to some particulate matter, also hydrogen chloride, nitrogen oxide, sulfur dioxide, mercury and dioxins. The alderman asked if all of this was in the ash. Mr. Cornelius stated this is all taken out in the process, is all scrubbed out. A lot of this stuff is destroyed when it goes through the energy process at the end. I'm satisfied that's not true based on my interpretation of what was said.

MR. WILSON: And, again, Your Honor, apologize to interrupt. Just so the record is clear, Mr. Cornelius was not the one who made those statements. It was Seven Gens representative but not Mr. Cornelius.

THE COURT: And you are correct. I remember the voice. You're right. [...] I believe those are all the material misstatements that I relied on in making my ruling today.

Why OSGC must be stopped from building a "Pyrolysis," "Waste-to-Energy," or "Plastics Recycling" plant.

Page 8 of the March 12, 2013 Oneida Law Office analysis of my petition says about OSGC's grant funding, "It is not clear if there is a deadline by which operations must commence," **yet** Kevin Cornelius' December 11, 2012 Affidavit states, "[I]n order to qualify for the 1603 Grant, the Facility **must** be producing electricity to the grid by December 31, 2013. [...] Therefore...construction must begin by March 1, 2012 [sic]." They meant '2013,' but either way it's already **too late** for OSGC, and as page 6 says, the latest version would have "little focus on energy output except for use by the plant itself."

That means it's **wrong** to suggest that GTC will trigger OSGC's liabilities when we direct OBC to prevent OSGC from building an incinerator (by any name) anywhere on the Oneida Reservation. OSGC lost their permits and missed their deadlines because they **lied**. Plain & simple.

Given the December 2012 Federal Appeals Court decision, **Vann et al. v. DOI et al.**, which suggests 'Sovereign Immunity' has **limits** and Tribal leaders can be held liable for damages caused by a Tribe's actions, OLO should consider the various liabilities the Oneida Tribe would face if OSGC harms people & land via Dioxin & other toxins.

OLO also included a copy of OSGC's 'Corporate Report Model' but fails to mention that OSGC **has not** provided OBC & GTC access to audits & info as they're required to. **What else don't they want us to find out?**

'**Sovereignty**' shouldn't mean lowering our standards as a Tribe to cash in on hypocrisy. Exploiting the name '**Seven Generations**' while exposing generations to Dioxin deserves condemnation. **The Great Binding Law** wasn't created for the misuse of 'mad men' who have zero regard for those whose lives & land they endanger because they're focused on the next seven paychecks & bonuses. That may sound cynical, but the only way any of this makes sense is that OSGC has been driven by **foolish greed** or desperately needs intervention because they're **incompetent & naive**.

The Oneida Tribe of Indians of Wisconsin **must** stand against schemes that threaten our very existence. **Thank you** for supporting my petition against building an incinerator anywhere on the Oneida Reservation and standing up for those smiling faces we see every day and those whose faces are yet beneath the surface of the ground.

✿ **Sincerely, Leah Sue Dodge** ✿



Oneida Seven Generations Corporation

P O Box 257, Oneida, WI 54155

Phone: 920-347-0500

Fax: 920-347-0504

To: General Tribal Council

From: Oneida Seven Generations Corporation

Date: March 27, 2013

Re: May 5, 2013 General Tribal Council Meeting

On Friday, March 15, 2013 Oneida Seven Generations Corporation was notified of a GTC petition regarding the proposed Plastics-to Oil facility. Oneida Seven Generations was asked to submit information by March 27th. This was the first time we were made aware of this petition and asked for information. On Monday, March 18, 2013, the Oneida Seven Generations Corporation Board determined that it needs more time to complete its due diligence regarding the proposed facility for the former "Tower Foods" location in the HWY 54 Industrial Park. The Board has had insufficient time to complete all of its due diligence and make a decision that would be in the best interest of the Tribe.

However, when we have concluded our due diligence and determined a location within the Reservation boundaries is appropriate, we will gladly present our proposal to the General Tribal Council. We feel it is necessary for a Tribal Corporation to reserve our right to come back at a future date and not exclude the reservation as a place to reinvest in our community.

Background:

In October Oneida Seven Generations Corporation met with the Business Committee, the Oneida Seven Generations Board met with the Oneida Business Committee to discuss the possibility of siting a Plastics-to-Oil facility in the building formerly known as "Tower Foods". Oneida Seven Generations gave an overview of the proposed Plastics-to-Oil facility to the Business Committee. Oneida Seven Generations asked the Business Committee if it would be appropriate to site Plastics-to-Oil in the "Tower Foods" building. Oneida Seven Generations also stated that if there was support to put the Plastics-to-Oil facility in the "Tower Foods" building, Oneida Seven Generations would ask the General Tribal Council if the site was appropriate. Oneida Seven Generations was told that there are processes in place to site the Plastics-to-Oil facility on the reservation. Oneida Seven Generations was told to follow the process.

On December 10, 2012, Oneida Seven Generations went to the Land Commission to ask if the Plastics-to-Oil facility would be able to be sited at the "Tower Foods" building. On January 28, 2013, the Land Commission approved the Plastics-to-Oil facility as appropriate for the "Tower Foods" building.

The approval from the Land Commission was the first step in determining the feasibility of a Plastics-to-Oil facility in the "Tower Foods" building. Oneida Seven Generations followed the tribal process to site the Plastics-to-Oil facility in the "Tower Foods" building. Oneida Seven Generations was still very early in the feasibility of the project prior to the General Tribal Council Petition. In addition to the approval from the Oneida Land Commission, Oneida Seven Generations was going to complete studies to verify the emissions from the Plastics-to-Oil facility, as well as apply for all applicable permits from the appropriate regulatory entities that are entrusted to protect the public health and safety.

Oneida Seven Generations did not receive any questions from the petitioner or the Business Committee about the Plastics-to-Oil facility.

Overview of the Plastics-to-Oil technology:

The proposed Plastics-to-Oil facility would have recycled food grade plastics and convert it to base oil, char ash, and vapor gas, which is similar to propane gas, but cleaner. The base oil was going to be sold to an oil refinery or a reseller of synthetic oil. After the oil was sold it would be converted into diesel, fuel oil, gasoline, and jet fuel. It can also be converted back to plastic. The char ash would be high in carbon and may be sold to the paving industry. The vapor gas would have been used to operate a generator for 8 hours a day that would produce electricity for the "Tower Food" building.

The plastic that was going to be used is a waste product of the paper industry. The plastic if not used in this process would go to a landfill. Once in the landfill it takes several hundred years to break down. Since the plastic source is from food grade plastics, the process does not create any dioxins. The type of plastic needed to create dioxins comes from chlorinated plastics, like PVC pipes. Chlorinated plastics do not make quality oil and would not have been used in the proposed facility. In addition, the EPA passed regulations limiting chlorine in food grade plastics. Heating the food grade plastics does not create harmful dioxins.

The gasification process does emit emissions. The emissions are created from burning the propane-like gas in the generator. The propane-like gas has very little sulfur and is a clean burning fuel. The daily air pollution produced is the equivalent of operating one of the five furnaces at the Turtle school for two hours. So the daily exhaust from the new business will create no more air pollution than operating one of the five furnaces in the Turtle School for two hours.

Financing of the proposed Plastics-to-Oil facility:

The financing for this project would not come from the Tribal budgeting process. There was no request for Tribal contribution for this project. To date the project has received \$2,584,000.00 in grants and Oneida Seven Generations has taken out a low interest loan of two-million dollars that was allocated from the Wisconsin Economic Development Corporation via the United States Department of Energy.

The next phase of the project would require a loan backed by the Bureau of Indian Affairs (BIA). The loan guarantee acts similar to a co-signer. The BIA is the co-signer on the loan. The BIA requires that financing have 20% equity, meaning it cannot all be loans. The Bureau is not requiring the Oneida Tribe to back the loan, nor has Oneida Seven Generations asked the Oneida Tribe to back the loan. For the Oneida Tribe to be legally bound for the loan they must either pass a resolution to take on the debt, sign the loan documents, or they have to take action as a Tribe to "pierce the corporate veil". To date, the Oneida Tribe has not passed a resolution to take on debt and the Oneida Tribe has not pierced the corporate veil. The Oneida Tribe is not contributing any Tribal Funds to the project nor is it taking on the loans.

If the facility was built it would have allowed Oneida Seven Generations Corporation to contribute an estimated one million dollars to the Tribal General Fund annually and it would have created 10-15 jobs for tribal members.

Conclusion:

On Monday, March 18, 2013, the Oneida Seven Generations Corporation Board determined that it needs more time to complete its due diligence regarding the proposed facility for the former "Tower Foods" location in the HWY 54 Industrial Park. The Board has had insufficient time to complete all of its due diligence and make a decision that would be in the best interest of the Tribe. However, in the future, should a location within the reservation boundaries be identified as an appropriate location, we will present the proposed project to the General Tribal Council.

In addition, Oneida Seven Generations was not involved in the General Tribal Council petition process until after the Business Committee voted to have this request on the agenda. Oneida Seven Generations received no requests for information with regards to the Plastics-to-Oil facility or what were the intentions of Oneida Seven Generations.

Oneida Seven Generations remains committed to protecting the environment, creating jobs and developing opportunities that utilize renewable energy, recycling, and the reduction of waste to regional landfills. It is with these objectives that we request more time to conduct our research, scientific studies and continue our due diligence. We feel it is necessary for a Tribal Corporation to reserve our right to come back at a future date and not exclude the reservation as a place to reinvest in our community.


Oneida Tribe of Indians of Wisconsin

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Committee Members
Melinda J. Danforth
Vince DelaRosa
David P. Jordan
Paul Ninham
Brandon Stevens

Memorandum

TO: Oneida Business Committee
FROM: Lynn A. Franzmeier, LRO Staff Attorney 
DATE: March 20, 2013
RE: Legislative Analysis on Petition Regarding Prohibiting Oneida Seven Generations Corporation from Building any Gasification, Waste-to-Energy or Plastics Recycling Plant at N7329 Water Circle Place or any other Location within Oneida Tribal Boundaries

On February 11, 2013, Leah Sue Dodge submitted a petition to the Tribal Secretary's Office to have "the General Tribal Council direct the Oneida Business Committee to stop Oneida Seven Generations Corporation (OSGC) from building any 'gasification' or 'waste-to-energy' or 'plastics recycling' plant at N7329 Water Circle Place, Oneida WI or any other location within Oneida Tribal boundaries."

On February 13, 2013 the Oneida Business Committee (OBC) accepted the receipt of the petition and forwarded it for processing, which would include the completion of the appropriate analyses, which typically includes a legislative analysis. After reviewing the petition and applicable Tribal Law, including the Zoning and Shoreland Protection Law, it has been determined that this petition would not have a legislative effect, therefore a legislative analysis is not necessary at this time.

If you have any questions, please let me know.

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MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel 

DATE: March 12, 2013 - *Corrected*

SUBJECT: Dodge – Petition – Land Use – Oneida Seven Generations Corporation

You have asked for a legal review of the above petition submitted by Leah Sue Dodge. The petition contains the following request.

General Tribal Council directs the Oneida Business Committee to stop Oneida Seven Generations Corporation (OSGC) from building any 'gasification' or 'waste-to-energy' or 'plastics recycling' plant at N7329 Water Circle Place, Oneida, Wisconsin or any other location within the Oneida Tribal boundaries.

The petition contains 82 signatures, of which 79 were verified by the Enrollment Department.

To develop this opinion, this office has reviewed the Constitution of the Oneida Tribe of Indians of Wisconsin, minutes and resolutions of the General Tribal Council and Oneida Business Committee, laws of the Tribe, and various other resources. Citations to specific documents, laws and Internet addresses are included to assist the reader in further researching this subject.

There are two areas impacted by this resolution – land use and corporations. This legal opinion will address each of these separately.

Background – Responsibility for Land Related Decisions

The Constitution of the Oneida Tribe of Indians of Wisconsin authorizes the General Tribal Council, "to veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets of the tribe." *Article IV, Section 1(c)*. Since adoption of the Constitution the General Tribal Council has exercised its powers regarding the land, including delegating that authority to the Executive Committee and ultimately to the Land Committee, now Land Commission. This section will review those delegation actions.

Since 1941 the Oneida Tribe has had some law or policy statement regarding the land within the Reservation. Ordinance No. 1 – Lands was adopted by the General Tribal Council on February 28, 1941. This law created the Land Committee with three members appointed by the Executive

Committee to make recommendations regarding land assignments. The Land Committee recommendations were approved by the Executive Committee.

The General Tribal Council discussed land acquisition and the priority over the years. The first official policy statement regarding the land occurs in 1977 by adoption of resolution # GTC-1-8-77-B.

Whereas, land now held by the Oneidas will be the foundation of tomorrow's Oneida Tribal people.

Now Therefore be it Resolved, that the General Tribal Council of the Oneida Tribe of Indians of Wisconsin instruct the Business Committee to secure the future of the Tribe through the maintenance and reacquisition of all Oneida lands, including those lands now designated as the Sacred Heart Center.

Three months later, the General Tribal Council adopted resolution # GTC-4-16-77-B. This resolution directed that, "...an Oneida Tribal land office be established, and that adequate staff be provided to maintain all land records for the Tribe." The purpose of this resolution was to identify adequate support for the Land Committee in processing land transactions.

In 1980, the Oneida Business Committee re-recognized the responsibilities of the Land Committee and the expansion of the committee from three members to seven members. This resolution identified that the terms of office would continue to be staggered from one- to three-year terms. In 1981 and for successive years thereafter, the Oneida Business Committee adopted resolutions requesting the Bureau of Indian Affairs to approve a self-governance contract for the provision of land services. In addition, the Oneida Business Committee adopted updated rules for land assignments. Finally, in the following year the General Tribal Council set aside funding for the purpose of land acquisition.

In 1986, the General Tribal Council adopted resolution # GTC-1-6-86-A. This resolution identified that, "...the Land Committee shall be involved in all land purchases for the Oneida Tribe and upgrade and develop Tribal fee land, and Tribal Trust Land."

These land related responsibilities were formally established under Tribal law by adoption of resolution # BC-5-29-96-A adopting the Real Property Law. This law codified prior General Tribal Council directives. In addition, the Oneida Business Committee adopted the law in accordance with delegated authority of the General Tribal Council and in compliance with the procedures adopted by the General Tribal Council as set forth the Administrative Procedures Act.

Most recently, the General Tribal Council considered a petition to change the appointment of Land Commissioners by the Oneida Business Committee to election by the membership. The petitioner identified reason for this proposed change as the Land Commission being equally as important as Land Claims Commission, Gaming Commission. Resolution # GTC-5-14-05-A, adopted by the General Tribal Council, directed that Land Commissioners be elected positions and directed, "...the Oneida Business Committee request a special election as timely as possible to fill the board with elected seats after going through the APA process."

The actions of the General Tribal Council, beginning in 1941, identify a desire to have land related decisions made by an independent entity. And, the last action of the General Tribal Council in 2005 directing that Land Commissioners be elected by the membership confirms this long term position by creating a level of independence to the elected body. As a result, actions directly affecting the land, such as purchase and leasing, are delegated by the General Tribal Council fully to the Land Commission. The General Tribal Council has retained two processes regarding these decisions – the first is selection of Land Commissioners during the election processes, and second is removal of elected officials under the Removal Ordinance.

Background – Corporations

The Constitution of the Oneida Tribe of Indians of Wisconsin authorizes the creation of corporations in Article IV, Section 1(h).

To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the tribe, any of the forgoing powers [as set forth in this Section], reserving the right to review* any action taken by virtue of such delegated power.

* As defined by resolution # GTC-12-69, “review” means to change or amend.

Since adoption of the Oneida Business Committee has created corporations to act in a business capacity for the Tribe. The following is a brief listing of corporations. The list may not include all prior corporate entities of the Tribe.¹

- 1984: *Oneida Airport Hotel Corporation* – created in 1984 and still in operation. This corporation was created to develop and manage a hotel which began under a Rodeway Inn franchise logo and now operates under a Radisson Inn franchise logo. The corporation also purchased and operates the Wingate.
- 1988: *Oneida Enterprise Development Authority* – created in 1988, purpose redirected in 1995, dissolved in 2004, re-chartered and purpose redirected in 2004, and still in operation. This corporation originally began as the enterprise to develop the Tribe’s convenience stores. The corporation then developed the Einstein mobile phone business after which it was dissolved. The re-chartered corporation is delegated responsibility for development of land claims related business activities in the State of New York.
- 1993: *Oneida Airport Business Development Corporation* – created in 1993 and dissolved in 1999. This corporation was created to manage lands of the Tribe. All assets were returned to the Tribe and all leases were transferred to the Oneida Seven Generations Corporation to manage.
- 1994: *Oneida Construction Corporation* – created in 1994 and dissolved in 1998. This corporation was created to act as a general contractor and subcontractor in construction projects. All assets were returned to the Tribe upon dissolution.
- 1994: *Oneida Nation Electronics* – created in 1994 and all shares purchased by Oneida Seven Generations Corporation, still in operations as a subsidiary corporation. This

¹ For example, it is not clear if the Utilities Commission was a corporate entity, or simply an independent government agency.

corporation was created to act in partnership with Plexus to create computer electronics, the corporation continues limited involvement in the technology industry through a partnership with a third party vendor.

- 1995: *Oneida Seven Generations Corporation* – created in 1995 and still in operation. This corporation was created as a commercial land management company, now holds several master ground leases, created subsidiary corporations to manage partnerships and loans related to the construction of facilities of managed properties, and operates a construction company.
- 2007: *Oneida Total Integrated Enterprises* – created in 2007 and still in operation. This corporation was created to receive the assets of an ongoing business (TN&A) and continues to manage and increase governmental contracting opportunities under a federal minority business program.
- 2009: *Oneida Golf Enterprise* – created in 2009 and still in operation. This corporation was created to manage the Thornberry Creek Golf Course business and related property.
- 2012: *Oneida ESC Group, LLC* – created in 2012 and still in operation. This corporation is the next generation of Oneida Total Integrated Enterprises to manage the succession of the federal minority contracting opportunities.

In addition to the above, the Tribe is the sole owner of Baybankcorporation that operates Bay Bank under federal and state banking regulatory authority.

Finally, the Tribe was issued a federal corporate charter under the Indian Reorganization Act. This charter is not utilized by the Tribe for various legal reasons, including issues surrounding sovereign immunity.

All corporations of the Tribe are granted authority by the Oneida Business Committee adopting a corporate charter to act in a business-like manner. In addition, all corporation retain the sovereign immunity of the Tribe for their actions. In relation to land leased to the corporation by the Tribe, the corporation is prohibited from encumbering or otherwise pledging the land as collateral without express permission from the Tribe. Corporations are expected to report on their activities four times a year – Annual and Semi-Annual General Tribal Council meetings and twice to the Oneida Business Committee. At least one of those reports must include the annual audit conducted by the corporation. All corporations are expected to return profits to the Tribe, except in cases where the Oneida Business Committee has authorized the corporation to retain the profits in order to build the business.

Corporations are created for the purposes of carrying out business in an environment that the Tribe would likely not be successful. In some circumstances, businesses are more comfortable doing business with other business entities, not governments. In addition, there are times when the Tribe desires to protect the assets of the Tribe as a whole and creates a corporation to limit liabilities to the corporate assets (excluding the land). Finally, sometimes a corporation is able to move quicker regarding business decisions than the Tribe.

The Oneida Seven Generations Corporation, as identified above, was created by the Oneida Business Committee to manage commercial lands owned by the Tribe. This action was taken in accordance with the authority delegated by the General Tribal Council on August 30, 1969, to

the Oneida Business Committee. Further, it is consistent with the 1982 action directing that the Oneida Business Committee focus on legislative actions. Finally, it is consistent with multiple discussions and directives of the General Tribal Council regarding the development of enterprises and diversification.

A corporation, once created, begins taking actions which create commitments with financial institutions, vendors, other business partners, to name a few. The Oneida Seven Generations Corporation, as identified in a 2008 legal opinion, carries approximately \$8 million in loans leases on approximately 15 different commercial properties, and over three corporate business partnerships. The complexity of unwinding these relationships or changing the authority of the corporation should be considered prior to any action being taken.

Unlike actions affecting the land identified earlier in this opinion, there is no legislation currently in place regarding corporations. Opinions regarding General Tribal Council, and even Oneida Business Committee, actions have generally revolved around liability issues. Two recent actions occurred regarding petitions submitted in 2008 and in 2011.

In 2008 a petition submitted by Madelyn Genskow requested the General Tribal Council to consider a resolution which called for financial disclosures, names of persons or entities with financial interests and conducting a financial audit by an external auditor. Primarily this petition was the result of an earlier interaction between the corporation and the Treasurer involving access to financial information related to a specific business transaction by the corporation. The legal opinion identified that shareholders of corporation (i.e. the Tribe) have access to certain information as defined in Tribal law and the corporate charter. The result of this petition was adoption of resolution # GTC-11-15-08-B, *Directing Review of Corporate Charters*.

This resolution directed the Oneida Business Committee to review all corporate charters to require consistent and greater amounts of information. This resulted in the Oneida Business Committee adopting amendments to all corporate charters, specifically resolution # BC-1-26-11-A amending the charter of Oneida Seven Generations Corporation.² A copy of these reporting requirements is attached to this memo.

2011 Petition – Corporate Activities

In 2011, Madelyn Genskow filed a petition regarding the impact of the actions of Oneida Seven Generations Corporation on tribal government relations. The corporation was, and remains, involved in starting a pyrolysis plant. The plant would use household waste, excluding recyclable materials, to create multiple by-products – electricity, re-usable char, and the capturing of various gases to name a few. The new process was originally proposed on tribal land behind the Brown County Waste Transfer Station that was physically close to the waste materials. Because access to the site was being negatively impacted by demands from the Village of Hobart, the corporate considered moving the proposed plant to Water Circle Drive Industrial Park.

² The charter for Baybankcorporation was not included in this series of amendments as a result of external banking regulatory authorities. However, the bank board has been notified of the format and substantially complies with the reporting requirements.

The corporation's primary goal of the proposed plan was sale of the energy by-product on the electrical grid. The Water Circle location was problematic because it was outside the electrical grid for which contracts had already been negotiated. The contracts with the alternative grid were not beneficial to the corporation and connection with the proposed grid was too expensive.

The third proposed site for the plant was the Packerland Industrial Park owned by the Tribe located in Ashwaubenon. Although the plant would have been within the zoned activities and was designed to fit in with the existing business designs, the Village of Ashwaubenon expressed concerns about the appropriateness of the 'fit' of the proposed plant in this area. In addition, residential property owners in the area also began expressing their concerns.

The petition was presented at a General Tribal Council meeting in May 2011. After lengthy discussion regarding the proposed project, the following motion was made.

...motion that Seven Generations provide documented answers on a complete financial report and audit to the General Tribal Council at the July 2011 semi-annual GTC meeting and that the GTC will carry out this motion to determine whether or not to retain Seven Generations Corporation[.]

Upon request of the chair, a parliamentarian opinion identified that the motion would be out of order for two reasons. First, that the motion is not clear regarding what would be reported to the General Tribal Council. Second, that the motion appeared to affect the continued existence of the corporation. It was recommended that the General Tribal Council could direct the Oneida Business Committee to dissolve the corporation in order to comply with the corporate charter and the complexities of dissolving the financial and contractual agreements the corporation had entered into over the course of its existence. The Chair ruled the motion out of order.

After a brief discussion, a motion to accept the report delivered by the corporation at the meeting. An amendment to the motion requiring, among other things, the Treasurer and Chief Financial Officer to present a report on their opinion of the validity of the project, was accepted and failed to pass. The General Tribal Council ultimately just accepted the report.

In light of these public issues, the corporation accepted an offer from the City of Green Bay to locate the plant in the city's industrial zone. A conditional use permit was issued to the corporation to begin the process of gathering final federal approvals and other applicable agencies. At the conclusion of the conditional use permit period, the City of Green Bay declined to issue a permanent permit because the City Council felt that it had been misinformed regarding the construction aspects of the plant. The corporation challenged this decision and lost that challenge at the trial court level. At the time of this opinion, the corporation was still in the process of deciding whether it would appeal this decision.

The corporation then revised the proposed plant plans, focusing on oil recovery and utilizing partially refined waste plastics with little focus on energy output except for use by the plant

itself. The proposed site is in the Water Circle Industrial Park.³ The corporate board has authorized consideration of the site with a formal decision to be made upon confirmation of zoning and permitting approvals. At the time of drafting this opinion, the Land Commission, after public comments, has approved a zoning variance in accordance with the Zoning Ordinance.

Corporate Loan for Project

The corporation appears to have two sets of loans and a grant for the purposes of construction of the plant – federal Bureau of Indian Affairs Office of Indian Energy and Economic Development, a loan from the Wisconsin Economic Development Corporation, and a State of Wisconsin energy grant. This office has rendered an opinion regarding the liability to the Tribe arising out of the federal loan guaranty of the approximately \$24 million loan. This is a federal guaranty of a private lender loan to Oneida Seven Generations Corporation in the event of default. To the extent that funding has been obtained and used by the corporation, the corporation would be responsible for paying back those funds. The corporation has also obtained a state grant for \$2 million and a loan from the state for \$2 million. The corporation is responsible for carrying out the activities for which the grant was given, failure to do so would require the corporation to repay the grant.

Analysis

This petition requests the General Tribal Council to consider action that would direct the Oneida Business Committee to stop Oneida Seven Generations Corporation from building a pyrolysis plant on the Reservation. As identified above, the General Tribal Council does not have authority to affect decisions regarding allocation or zoning of land within the Reservation because it fully delegated land use authority. Further, it is not within the authority of the Oneida Business Committee to take actions affecting allocation or zoning of land within the Reservation because the General Tribal Council delegated that authority to the Land Commission and the Oneida Business Committee codified that delegation in the Real Property Law and Zoning Ordinance.

However, it is within the authority of the General Tribal Council to direct the Oneida Business Committee, within its capacity as the shareholder of all the shares in the corporation, to take certain actions. The retained authority in the charter adopted by the Oneida Business Committee limits these actions by the General Tribal Council and Oneida Business Committee.

The charter for Oneida Seven Generations Corporation identifies that the shareholder, as represented by the Oneida Business Committee, appoints members to the corporate board, can remove those members for certain activities, and can dissolve the corporation. However, the

³ The Industrial Park is home to the Little Bear Development Center, a U.S. Post Office, the Nori Damrow Food Distribution Center, the vacant Tower Foods building, a solar panel array and a water tower. The Oneida Farmer's Market temporarily used part of the green space next to Little Bear Development Center during construction of the round-about at Seminary and State Highway 54. It is not clear if this is intended to be a long term location.

charter can be amended by the Oneida Business Committee to allow further ability to direct the actions of the corporation.

As identified in the 2008 legal review of the Genskow petition regarding financial disclosures, taking action that allows the Oneida Business Committee greater authority to direct the corporation's actions may result in greater liability to the Tribe for the debts and expenses of the corporation. Even if the action were limited to prohibiting construction and operation of a pyrolysis plant, there are liabilities tied to this restriction.

Oneida Seven Generations Corporation has two outstanding funding sources for the pyrolysis plant – a state grant and a federal guaranty of a private loan. Both of these funding sources would be in default if the corporation is unable to complete the project. Although nothing in this petition suggests that the corporation cannot operate a plant at all, the corporation is limited via the state funding to operations within the State of Wisconsin. It is not clear if there is a deadline by which operations must commence; however, it is presumed that the lending sources will not wait indefinitely for the plant to begin operations. Action by the General Tribal Council, and subsequently by the Oneida Business Committee, may result in liability for repayment of these funds by the Tribe because its actions were so close to operations of the corporation that there is no significant difference between the two.

Conclusion

The petition calls for action that is within the authority of the General Tribal Council to take if no part of that action affects land use, zoning or land allocation. Although it would be clearer for the General Tribal Council to direct the Oneida Business Committee to amend the corporate charter for Oneida Seven Generations Corporation to prohibit the development or operation of a pyrolysis plant within the Reservation. Further, because the motion would affect no prior actions of the General Tribal Council, only a simple majority vote is needed.

However, caution is recommended in taking this action as there may be liability arising out of existing loan agreements, expenditures and contracts entered into by the corporation. Any action taking prohibiting the corporation may result in liability being transferred to the Tribe for becoming too involved in corporate activities.

If you have further questions, please contact me.

CORPORATE REPORT MODEL

The Secretary or other designated reporting officer of the Corporation shall file reports with the Oneida Business Committee and General Tribal Council in accordance with this Article. Reports shall be prepared at least annually to coincide with the annual meeting of General Tribal Council, with other reports quarterly to the Oneida Business Committee or as required by the Business Committee as the shareholder/member of the corporation.

Section 1: Narrative Report

- (A) Definition: Narrative report is defined generally as contextual and non-financial information reported with financial information in order to provide understanding of the corporation's business done, market position, strategies, performance and future expectations. The Narrative report should include topics and information covering four broad categories of information, including 1) Market overview; 2) Strategy and Structure of the Corporation; 3) Management of value of the Corporation; and 4) Performance of the Corporation over the reporting period.
- (B) Components of Report: Narrative reports should include, but are not limited to, at a minimum, the following components in a comprehensive means for easy distribution and understanding:
- a. Explanation of the core of the Corporation's business practices and market overview.
 - b. Explanation of the Corporation's current place within the market.
 - c. Explanation of the outlines of strategies by the Corporation for improved value in the market.
 - d. Explanation of the Corporation's relative performance vs. competitors and identification of key competitors within the market.
 - e. Explanation of any material changes or developments in the market or nature of business the Corporation is primarily engaged in since the last reporting period.
 - f. Identification of the primary goals and targets of the Corporation and progress made towards accomplishment of the same.
 - g. Identification of key elements for success in strategies given, including risks, resources and relations available and needed in order to successfully fulfill outlined strategies.
 - h. Identification of medium (two to five year) and long (greater than five year) prospects and sustainability of the Corporation given present status, strategies and risks.
 - i. Explanation of market growth(if any) experienced by the Corporation, identifying sources of growth (i.e. organic growth through market share increase, volume of business increase, acquisition of competition or other assets, etc.).
 - j. Summary of the assets of the Corporation, including but not limited to its financial, physical, employee, customer, brand or intellectual property, and supply assets.
 - k. Summary and status update of any pending legal action to which the Corporation is a party and any relevant government regulation to which the Corporation may be subject.
- (C) Report Due Date: Narrative reports are due in time for the annual meeting of General Tribal Council generally held in July of each year, meaning it should be submitted no later than May 31st of each year unless GTC changes its meeting date or some other date is issued by the Business Committee.

- (D) Narrative Report Access: The Narrative report is one submitted to the Business Committee and General Tribal Council of the Oneida Tribe. It is considered a public report and shall be made available to the public through the office of the Secretary and/or the Oneida website or other available means.

Section 2: Financial Report

- (A) Financial Report Defined: The Financial report is the formal record of the financial activities of the Corporation. Such statements shall be presented in a structured and understandable manner consistent with Generally Accepted Accounting Principles (GAAP).
- (B) Financial Report Content: the Financial report shall include information in the following broad categories including but not limited to: 1) an executive summary or broad overview; 2) a balance sheet of the Corporation's financial position listing assets and liabilities; 3) income statement reporting the income, expenses and general profit over the reporting period; 4) statement of retained earnings; and 5) statement of cash flow.
- (C) Financial Report Due: Financial Reports are due quarterly to the Oneida Business Committee with copies to the Oneida Treasurer and Chair of the Oneida Audit Committee and as otherwise demanded by the Oneida Business Committee as the representative owner of the Corporation.
- (D) Financial Reports are subject to an annual audit by auditors from the Oneida Tribe or by third party auditors as hired by the Oneida Tribe at the Corporation's expense detailing the fairness and accuracy of the financial reports. The audit reports shall be submitted as attachments to the financial reports as they are done and completed with each applicable reporting period.
- (E) Financial Report Access: Financial reports are proprietary and considered confidential information owned by the Oneida Tribe of Indians of Wisconsin, to be retained by the Secretary's office. Financial reports are accessible only to those authorized officers, officials and personnel of the Oneida Tribe of Indians of Wisconsin with a legal or legitimate need to know such report information. They may be disclosed with permission of the Corporation's Board and/or the Owner for economic solicitation purposes or as demanded by the Owner.

Section 3: Disclosure Report

- (A) Disclosure Report Defined: Disclosure reports financial and familial relationships and connections between the Corporation and other entities, as well as members of the Corporation's Board and key management personnel. Any financial or legal relationship, ownership interest, or any blood kinship within the Corporation and its financial practices or partnerships shall be detailed in a structured and easy to understand format.
- (B) Disclosure Report Content: The Disclosure report shall include, but not be limited to, the following detailed information:
 - a. Names and title of all of the Corporation's Board members' names, time in the position, and date when position shall be up for renewal or replacement (if applicable).
 - b. Names and title of all of the Corporation's key management personnel, with length of service in that position, and if under contract, when that position is up for renewal or expiration of the contract term.
 - c. Summary of any financial or familial relationship between any of the people in part a. or part b. in this Section, as well as any relationship, financial or familial with any current member of the Oneida Business Committee or any member of any regulatory body within

Oneida such as a board committee or commission charged with regulating the Corporation's industry or activities.

- d. Names of any other person, whether it be a business in any legal form or an individual, doing business with the Corporation for purposes of mutual enterprise (i.e. including but not limited to: joint ventures; membership in an LLC together; acquisition as a subsidiary; partnership).
 - e. Summary of the financial transactions or relationship between those listed in d. above in this Section and the Corporation, including the purpose of the mutual enterprise, legal relationship, or other connection between the Corporation, its Board or its key management personnel and this other named entity or person.
- (C) Disclosure Report Due: An annual report to the Oneida Business Committee is due concurrently with the narrative report, as well as whenever there is a change to the Corporation's Board membership, turnover to key management personnel, or a business venture creating a new partnership, LLC, subsidiary, or any other legal entity connected to the Corporation for any purpose.
- (D) Disclosure Report Access: Disclosure reports are proprietary and considered confidential information owned by the Oneida Tribe of Indians of Wisconsin, to be retained by the Secretary's office. Disclosure reports are submitted to the Oneida Business Committee and accessible only to those authorized officers, officials and personnel of the Oneida Tribe of Indians of Wisconsin with a legal or legitimate need to know such report information.

Oneida Tribe of Indians of Wisconsin

Post Office Box 365



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

Phone: (920) 869-2214



Oneida, WI 54155



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

DATE: March 25, 2013

FROM: Larry Barton, Chief Financial Officer

TO: Tina Danforth, Treasurer
Oneida Business Committee

RE: **Financial Impact of Petition – Stop Oneida Seven Generations Energy Projects**

I. Background

Under consideration is a Petition which would seek to “stop Oneida Seven Generations Corporation from building any “gasification” or “waste-to-energy” or “plastics recycling” plant at N7329 Water Circle Place, Oneida, WI or any other location within Oneida Tribal boundaries.”

II. Executive Summary of Findings

This Petition is in reference to the efforts of the Oneida Seven Generations Corporation to construct a pyrolysis plant, in which recycled plastics would be heated in an oxygen free environment in a process wherein one result is a form of oil available for resale. While locations which were within the boundaries of the Oneida reservation have been considered for the project, there is no plan currently approved to build within the Reservation.

III. Financial Impact

There is no direct financial impact to the Tribe regarding the adoption of this Petition. Oneida Seven Generations Corporation has obtained a grant and a federal guaranty of a private loan for its funding sources. There is no loan guaranty obligating the Oneida Tribe. The Petition does not seek to bar Oneida Seven Generations Corporation from completing any energy projects off the Reservation.

IV. Recommendation

The Finance Department does not make a recommendation in regards to course of policy in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that General Tribal Council has sufficient information to render a decision.