

# Incinerator Free Brown County (IFBC)

www.incineratorfreebrowncty.com



Respond to:  
*incineratorfreebrowncounty@gmail.com*

February 4, 2013

Lori Elm  
DOLM Office Manager Oneida Land Commission  
Division of Land Management  
PO Box 365  
Oneida WI 54155

RE: Rezoning Property and Conditional Use Permit Request  
N7329 Water Circle Place, Oneida WI 54155

Dear Ms. Elm:

IFBC respectfully submits the attached comments pursuant to the Public Hearing notice. IFBC is an all volunteer grassroots environmental advocacy group established in 2010. IFBC has already established a storied history of supporting waste reduction, reuse, recycling, composting, extended producer responsibility and initiatives to limit dependence on landfills. IFBC has steadfastly maintained a "no incinerator" position since its founding and has joined with hundreds of groups across the globe in resisting initiatives which involve burning or otherwise melting down petroleum based plastics and has routinely been referenced as a leading authority on the subject.

IFBC asks the Oneida Land Commission to carefully consider all aspects of this latest proposal for the Oneida Seven Generations pyrolysis staged plastics incinerator. The issues to consider can be summarized as follows.

## **Proximity Hazards.**

- **Traffic.** The Oneida Turtle School is less than a mile from the proposed site, and the Turtle School playground is on the north side of the school so there's little other than Hwy 54 between the playground and the proposed incinerator. Prior editions of this project involved enormous levels of inbound truck traffic to haul sufficient petroleum based plastic fuel, as well as outbound truck traffic to haul away ashen residue. Outbound haulers must also be capable of sealing the residue to prevent it from spreading to surrounding areas of Oneida land which

Chairman Delgado described to the Press-Gazette as “pristine” in the January 20, 2013, article on this matter. To make matters worse, if this incinerator is to run 24/7, inbound traffic would either have to haul around the clock or triple the number of inbound haulers on Fridays to ensure sufficient petroleum based fuel for weekend operations.

Monday outbound residue hauling will likewise triple corresponding to the Friday inbound hauling. All this truck traffic and possible leak exposures will take place in close proximity to the Oneida Turtle School.

- **Emissions stacks.** Prior disclosures to the DNR (information which the Brown County Circuit Court recently ruled was withheld from the City of Green Bay) reveals 10 emission stacks for this type of facility which Amelia Cornelius (Land Commission Chairwoman and mother of OSGC CEO Kevin Cornelius) described for the January 30, 2013, Press-Gazette as using “the same technology as the proposed Green Bay plant.” DNR records also reveal that 3 of these smokestacks will be 60 feet tall, 1 at 45 feet tall, 3 at 40 feet in height, and 3 at 7.5 feet. The height of these stacks will loom over pristine Oneida lands and cast very long shadows over a children's school and playground. See attached Exhibit 1.
- **Pollutants.** Prior disclosures to the DNR (information which the Brown County Circuit Court recently ruled was withheld from the City of Green Bay) reveals all the smokestacks needed by the facility aren't present merely for decorative purposes. They are there to discharge dioxins (which are currently being removed from the Fox River), which are the natural emissions of melted petroleum based plastics.

### **Operational hazards.**

- **Materials separation.** OSGC's prior Preliminary Draft Materials Separation Plan that it submitted to DNR suffered from many defects. OSGC's prior plan stated an “additional 10 trucks per weekday will be necessary to remove the unacceptable items, end product material, and recyclables.” Although this facility is intended to operate seven days a week, due to the Monday – Friday tipping schedule it will need adequate room to store hundreds of tons for weekend incineration and melting. The following questions arise:
  - What is OSGC's plan to provide for adequate removal of each weekend's accumulation of unacceptable items, end product material, and recyclables?
  - What is OSGC's plan to remove char residue and ash after the pyrolysis fires incinerates/melts the petroleum plastics, because after two years OSGC was completely unable to identify a market or taker for this waste.
  - How will OSGC separate undesirable materials from those to be melted/burned/incinerated?
  - What is the formal staff training plan for safety and emergencies?

- What safety equipment will be present?
- What materials monitoring will OSGC conduct to ensure only petroleum based plastics are melted/burned/incinerated?
- Will OBC question why OSGC plans suddenly shifted from trash to recycled plastics incineration when OSGC previously claimed it had more than enough tons per day to sustain this operation with independent trash haulers and did not require a Tri-County haulers/contract?
- Where are these loads coming from and what is the cost per mile to haul this plastic? This is especially questionable when Outagamie and Brown Counties already have a dedicated and well running recycling program of paper and plastics products.
- What are the costs per ton in getting this feedstock to the new location that will make this operation profitable (since most other OSGC projects have not been)?
- If the main feedstock is now going to be more based on petroleum based plastics, does OSGC need to re-submit it's latest scheme to the DNR for review?
- What if any equipment has already been purchased to date when OSGC was intending to incinerate trash and what changes to the equipment are needed for a different feedstock? How much of the invested money could be lost due to this change?

### **Miscellaneous hazards.**

- **Sourcing.** A significant issue arises when the question is asked where all this petroleum based plastics be obtained. There are two important questions to ask as follows:
  - Can purity of petroleum plastics be guaranteed?
  - Are the petroleum plastics feedstock being imported from out of state?
- **Truthfulness.** OSGC CEO Kevin Cornelius was held by the Brown County Circuit Court to have misrepresented the OSGC incinerator project to the City of Green Bay, thereby justifying the City's rescission of the permit for misrepresentation. There are two legal principles which apply to this situation:
  - **Falsus in Uno, Falsus in Omnibus.** The United States Supreme Court has long upheld the foregoing Latin phrase describing when testimony is partially false, it is considered false in the entirety. “When it is once ascertained that a witness is capable of committing perjury, all he swears to is rejected as false. In reason and in law the rule is the same when a party is found to be capable of forgery: the papers not known to be fabricated must share the fate of those which are proved to be spurious; for every thing is corrupt that comes from a corrupted source. Falsus in uno, falsus in omnibus.”

See *United States v. Castillero*, 67 U.S. 17, 17 L. Ed. 360, 1862 U.S. LEXIS 247, 2 Black 17 (1862).

- **Half truths no different than any other untruth.** Another way of stating the above principle was also succinctly articulated by the U.S. Supreme Court in *Equitable Life Ins. Co. v. Halsey, Stuart & Co.*, 312 U.S. 410 (1941). The Court stated a “statement of a half truth is as much a misrepresentation as if the facts stated were untrue.”
  - **Do you trust your children to OSGC's care?** Given OSGC's loss in Brown County Circuit Court upholding the decision of the Green Bay Common Council for rescinding OSGC's permit because of OSGC misrepresentation, can OSGC representations be trusted regarding the health and well being of Oneida children and adults?
  - **Reputational damage to the Oneida Tribe of Indians of Wisconsin.** The Brown County Circuit Court held the City of Green Bay was justified in rescinding the permit for OSGC's misrepresentations in a widely reported decision. This ruling came down after more than two years of embarrassing publicity incurred by OSGC's botching of the entire incinerator debacle. When will this project and OSGC be stopped from further besmirching the carefully cultivated good neighbor reputation of the Oneida Tribe of Indians of Wisconsin?
- **Motivational disclosure.** The current proposal to site this project in the Town of Oneida is the fifth proposed site. In considering the prior rejections by each of the prior sites (Hobart, Oneida, Ashwaubenon, Green Bay), why would OSGC continue its mad quest to build an incinerator? There are several possibilities:
  - **Debt.** The State of Wisconsin loaned OSGC and OEI (through Mr. Cornelius) 4 million dollars (see attached Exhibits 2 and 3, which are the loan documents) to build an incinerator. If OSGC fails to build any facility, the loans must be repaid sooner.
  - **Risk exposure.** The recent D.C. Court of Appeals decision in *Vann v. U.S. Department of the Interior*, 701 F.3d 927 (D.C. Cir. 2012) creates potential personal liability exposure for members of the Oneida business committee, the land committee, and OSGC. Sovereign immunity now won't protect these persons from being sued individually by anyone who suffer injuries or damages from their official actions. Failing to properly apply government loans unquestionably creates both civil and criminal causes of action regardless what form the contracting entity assumes. Even if the incinerator is constructed, risk exposure for harm it creates still

exists.

For these reasons, IFBC requests the rezoning request be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "John Filcher". The signature is written in a cursive style with a long horizontal stroke at the end.

John Filcher  
Co-Chair, Incinerator Free Brown County

## EXHIBIT 1

### Stack Parameter Summary.

Stack ID	Actual Exhaust Point or Fugitive	Circular or Rectangular	Discharge Direction	Exhaust Obstacle	Diameter or Width (if rect.)	Length (if rect.)	Height	Temp.	Normal Flow Rate	Maximum Flow Rate
			U, D, H	Yes/No	ft (m)	ft (m)	ft (m)	°F	ACFM	ACFM
S01	Actual	Circular	U	No	1.0	--	40	550	945	945
S02	Actual	Circular	U	No	1.0	--	40	550	945	945
S03	Actual	Circular	U	No	1.0	--	40	550	945	945
S11	Actual	Circular	U	No	1.33	--	60	950	11,890	11,890
S12	Actual	Circular	U	No	1.33	--	60	950	11,890	11,890
S13	Actual	Circular	U	No	1.33	--	60	950	11,890	11,890
S21	Actual	Circular	U	No	5.74	--	7.5	90	32,262	32,262
S22	Actual	Circular	U	No	5.74	--	7.5	90	32,262	32,262
S23	Actual	Circular	U	No	5.74	--	7.5	90	32,262	32,262
S31	Actual	Circular	U	No	2.57	--	45	1,832	20,458	20,458

Source: July 12, 2011 WDNR Preliminary Determination 11-JJW- 071

## EXHIBIT 2

CONTRACT LEG FY10-19812

**LEGISLATIVE AWARD  
AGREEMENT  
BETWEEN THE  
WISCONSIN DEPARTMENT OF COMMERCE  
AND  
ONEIDA SEVEN GENERATIONS CORPORATION**

This Agreement is entered into by and between the Wisconsin Department of Commerce ("Department"), and Oneida Seven Generations Corporation ("Recipient").

### RECITALS

**WHEREAS**, 2009 Wisconsin Act 28 authorizes the Department to make an annual grant of \$1,000,000.00 in each year of the 2009- 11 biennium to Oneida Seven Generations Corporation from funds encumbered in the appropriation under section 20.143 (1) (kj) of the statutes in previous years but not disbursed for grants to Oneida Small Business Inc. and Project 2000 from the gaming economic diversification grant and loan program.

**WHEREAS**, the Department under the above authorization will grant funds to the Recipient up to the amount of Two Million and 00/100 Dollars (\$2,000,000.00) with One Million and 00/100 Dollars (\$1,000,000.00) to be made available for the period July 1, 2009 through June 30, 2010 and One Million and 00/100 Dollars (\$1,000,000.00) to be made available for the period July 1, 2010 through June 30, 2011, to be utilized in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants hereinafter set forth, the Department and the Recipient agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the following meanings:
  - a) "Agreement" means this Legislative Award agreement between the Department and the Recipient together with all exhibits and future amendments thereto.
  - b) "Application" means the Legislative Award application and all supporting documents submitted by the Recipient.
  - c) "Department" means the Wisconsin Department of Commerce, and its lawful successors and assigns.
  - d) "Effective Date" means the date this Agreement is executed and signed by the Secretary of the Department.

EXHIBIT 3

CONTRACT #SEP FY10-20205

**STATE ENERGY PROGRAM  
LOAN AGREEMENT  
BETWEEN THE  
WISCONSIN ECONOMIC DEVELOPMENT CORPORATION  
AND  
ONEIDA ENERGY INC.**

This Agreement is entered into by and between the Wisconsin Economic Development Corporation ("WEDC") and Oneida Energy Inc. ("Borrower").

**WITNESSETH**

**WHEREAS**, the WEDC is authorized to award loan funds, for the purpose of economic development pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111-5 and;

**WHEREAS**, the WEDC, relying upon representations in the Borrower's Application, agreed to lend up to Two Million and 00/100 Dollars (\$2,000,000.00) to the Borrower to be utilized in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, the WEDC and Borrower agree as follows:

1. **DEFINITIONS.** For the purposes of this Agreement, the following terms shall have the meanings set forth below:
  - a) "Agreement" means this agreement and the attached Exhibits between the WEDC and the Borrower, together with any future amendments thereto.
  - b) "Application" means the prospect data sheet and other materials submitted by the Borrower for this award.
  - c) "Borrower" or "Sub-recipient" means Oneida Energy Inc., together with its lawful successors and assigns.
  - d) "Collateral" means the property described in Exhibit A.
  - e) "WEDC" means the Wisconsin Economic Development Corporation, together with its lawful successors and assigns.
  - f) "Effective Date" means the date this Agreement is executed by the WEDC.