

Mather Heights Neighborhood Association

Clean Water Action Council of Northeast Wisconsin

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Incinerator Free Brown County
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March 16, 2012

The Honorable Mayor Schmitt and City Council Members
Green Bay City Hall
100 N. Jefferson Street
Green Bay, WI 54301

Re: Request for action on Oneida Seven Generation Corporation's Conditional Use Permit

Dear Mayor Schmitt and City Council Members,

We submit these comments in support of the Mather Heights Neighborhood Association (MHNA) and over 900 local residents that have signed a petition to oppose the construction of Oneida Seven Generations Corporation's pyrolysis/gasification facility in Green Bay. (Exhibit A, petition signatures and summary sheet)

We believe Oneida Seven Generations Corporation (OSGC) misrepresented the true nature of its incinerator project by presenting false and misleading information to the public and the City of Green Bay for the dual purposes of gaining public acceptance of the project and obtaining a conditional use permit from the City. The following were some of the actions taken by OSGC in pursuing this scheme upon the public and City officials:

1. On December 29, 2010, OSGC sent a flyer to Ashwaubenon and Hobart residents saying there would be no smokestacks. (Exhibit B, flyer dated 12/29/10)
2. On February 10, 2011, www.kalihwisaks.com reported on OSGC statements that the plant would have a closed system that will contain all gases. (Exhibit C, "Myths vs. Facts..." article)
3. During the summer of 2011, OSGC made presentations to neighborhood groups, including MHNA. In these presentations, OSGC represented there would be no stacks. MHNA President, Robert Heroux, reported that during the first two meetings MHNA had with OSGC, OSGC represented there would be no stacks and that OSGC would not use tires. (Exhibit D, Robert Heroux's letter summarizing MHNA's contact with OSGC.)
4. OSGC sent an undated letter to Brown County residents containing a detailed rendering of their proposed facility during the summer of 2011. Despite the specific details contained in the OSGC

rendering, the image omitted all emission stacks. (Exhibit E, An Open Letter to Brown County Residents)

5. At the September 21, 2011 Green Bay City Council meeting, OSGC President, Kevin Cornelius affirmatively represented to the council "...there are no smokestacks...". (See Exhibit F, Excerpt from Green Bay City Council Minutes, 9/01/11.)
6. Stacks are similarly absent from the image rendering submitted to the City of Green Bay in the *Conditional Use Permit Application*. (Exhibit G, drawing submitted in *Conditional Use Permit Application*.)
7. In a close chronological correlation to the council approval of the conditional use permit. OSGC President Kevin Cornelius told the Green Bay Press-Gazette, "There are no smokestacks" in the article reporting approval of the conditional use permit. (See Exhibit H, Green Bay Press-Gazette article 'Gasification Plant Gets Green Bay Council OK' dated March 3, 2011)
8. OSGC President, Kevin Cornelius, told the Green Bay Press-Gazette there would be no smokestacks and no emissions. "It's a closed looped system," he claimed. (Exhibit I, Green Bay Press-Gazette article _____ dated _____.)
9. During the period that OSGC representatives misrepresented to the public and city officials there would be no stacks, OSGC and its representatives were preparing and submitting an application to the DNR that revealed 10 emission stacks, the purpose of each of which was to convey emissions out of the proposed gasification incinerator into the ambient air outside of the facility. (Exhibit J, DNR Reports 10 Stacks.)
10. In May, 2011 OSGC indicated to the WDNR if there were additional problems with combustion odors, they could be mitigated through increasing the stack heights to disperse the odors. Again while telling the public and city officials there would be no smokestacks, OSGC prepared and submitted a plan that included raising the height of stacks to disperse the problem over a greater area. (Exhibit K, *Oneida Recycling Solutions Plan of Operations*, page 8.)
11. Contrary to OSGC's continuing misrepresentations to neighborhood groups and the media that there would be no emissions from this gasification incinerator, even as late as September ____, as noted in the aforementioned newspaper article dated _____, OSGC had already identified and disclosed to the WDNR the expected and potential emissions in May, 2011. These emissions included nitrous oxide, carbon monoxide, particulate matter, volatile organic compounds, sulfur dioxide, and formaldehyde. (Exhibit L, *Oneida Recycling Solutions Plan of Operations*, page 7.)
12. It is apparent OSGC had additional knowledge that emissions would result from the project because OSGC submitted an *Amended (Air) Application Report* to the WDNR which listed over 17 air toxins being produced and emitted by the facility. Yet this information was never released to the public by OSGC and OSGC continued its public stance of, "No smokestacks, and no emissions." (Exhibit M, Table 3, Proposed Facility HAP Emissions.)

13. At the same time OSGC was telling neighborhood groups, such as MHNA, it would not use tires (as previously reported in #3,) OSGC listed tires as a fuel source in the May, 2011, *Oneida Recycling Solutions Plan of Operations*. (Exhibit N, Future Emissions from the 'closed loop system.')

As outlined above, during the permitting process, the public was misled by OSGC's misstatements and OSGC's omissions regarding the nature of this facility. It is also apparent that OSGC withheld the truth and made affirmative statements about the facility to the City of Green Bay and the City Council. When council members remark that they are surprised to hear there are smokestacks at the facility and that there will be air emissions from its operation, it is clear that they too were misled by OSGC.

As a result of OSGC's misrepresentations that formed the basis for the Council's approval of the project's conditional use permit, that permit is voidable, or subject to revocation. OSGC had a duty to provide accurate information to the Council and city officials when seeking its conditional use permit. It is our opinion they have failed to meet that obligation.

A permit obtained by misrepresented or incorrect information is voidable and can be undone by the municipality when it is discovered. Accordingly, we ask the Council to revoke, rescind, or vacate the Oneida Seven Generation Corporation's conditional use permit.

Alternatively, the Council should direct the City Attorney and other City staff to take all necessary enforcement measures to ensure that OSGC builds a facility without emission stacks. OSGC sought approval for a facility having no stacks and no emissions. OSGC should be limited to construction of such a facility.

Sincerely,

Joseph Watermolen
Vice-President
Mather Heights
Neighborhood Association

Dean Hoegger
President
Clean Water Action Council
of Northeast Wisconsin

The Citizens of
Incinerator Free
Brown County

cc: Oneida Tribe Business Committee, Edward Delgado, Chairman
cc: Midwest Environmental Advocates