



November 29, 2021

Via Email to Comment.HughesRoxbury2021@dec.ny.gov

Kate Kornak
NYS Department of Environmental Conservation
1130 North Westcott Road
Schenectady, NY 12306

Re: Comments on Draft Scoping Document for Hughes Energy, LLC's Proposed Municipal Solid Waste Processing Facility in Roxbury, NY (DEC App. No. 4-1248-00321)

Dear Ms. Kornak:

I am writing to you on behalf of Riverkeeper, Inc., a member-supported watchdog organization dedicated to the protection and restoration of the Hudson River from source to sea, which safeguards drinking water supplies, through advocacy rooted in community partnerships, science and law. 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 the Draft Scoping Document ("Scope") for Hughes Energy, LLC's ("Hughes" or the "Applicant") proposal for a municipal solid waste processing facility (the "Proposed Project") located in Roxbury, NY, pursuant to the State Environmental Quality Review Act ("SEQRA"), N.Y. E.C.L. §§ 8-0101, *et seq.* and 6 NYCRR Part 617.

Hughes proposes to build a new waste-processing facility that utilizes novel technology on an undeveloped lot just over 1,500 feet from the Schoharie Reservoir and Creek, which is an essential part of New York City's drinking water system that serves 9.5 million people within NYC and the Hudson Valley. The operations of this proposed facility would also increase truck traffic to this highly sensitive area. Regardless of the Applicant's purported benefits, the facility's chosen location alone demands the most stringent review of any and all potential impacts of the proposal to protect not only the local community and wildlife, but also all those who that rely on NYC drinking water.

In our review of the draft scoping document, Riverkeeper was disappointed in the Applicant's barebones submittal and eager dismissal of the potential significant impacts identified by NYS Department of Environmental Conservation ("DEC") in its positive declaration. We respectfully demand that the DEC require significant modifications to the draft scope to ensure a proper environmental review is conducted under SEQRA. The below comments will discuss the complete inadequacy of the scoping document, Applicant's improper dismissal of potential

impacts from the scope, and provide a number of items that must be included in the final scoping document at a minimum.

Proposal Background

The Hughes proposal encompasses a new waste processing facility in the Town of Roxbury, NY comprised of a 115,000 sf processing building and 9,500 sf administrative office and maintenance shop. Hughes projects that it will receive roughly 565 tons of waste a day, for a total of 176,400 ton/year. Hughes estimates that the total incoming and outgoing truck traffic would total almost 60 trucks a day with additional employee car traffic in this rural area. The proposed project would require additional construction including a new commercial driveway entrance from State Route 23, on-site wells for their water supply, and a new connection to the Town of Prattville sanitary sewer system.

The Applicant claims it plans on sourcing municipal solid waste and agricultural waste from within a 50-mile radius of the facility through contracts with local private waste haulers. The waste will then be broken down using pressurized steam within an autoclave to ultimately produce fiber pellets from the organic materials, separating out the recyclable and inorganic non-recyclable waste. As acknowledged by the Applicant in its August 19, 2021 public meeting, these pellets may be sold as fuel.

Hughes also asserts that its proposed facility and novel technology are associated with environmental benefits. Though these comments do not attempt to assess these claims and the viability of its technology, we note that this technology is fairly new and has not been implemented on a commercial scale in the United States. In addition, during the August 19th meeting, the Applicant represented that their facility would be replacing an existing waste transfer station, and correspondingly adjusted its projected impacts based on the existing use. However, it is important to recognize that within the application there is no mention of the existing transfer station.

The Scoping Document is Wholly Inadequate and Fails to Fulfill its Purpose

Based on the deficient draft scoping document, it appears that Hughes fundamentally misses the purpose of the scoping process. As defined in 6 NYCRR § 617.2,

(ag) *Scoping* means the process by which the lead agency identifies the potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS **including the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed** and the identification of irrelevant issues. *Scoping*, which is not limited to the analysis of potentially significant issues identified in the EAF, **provides a project sponsor with a written outline of topics that must be considered** and provides an opportunity for early participation by involved agencies and the public in the review of the proposal. (emphasis added).

The draft scope is critical not only because it guides the preparation of the Environmental Impact Statement (“EIS”), but it also forms one of the bases for judging the legal sufficiency of an EIS. 6 NYCRR § 617.9(a)(2).¹ While elimination of irrelevant issues is part of the scoping process, it should not be the focus of the document. It should instead focus on determining the content that should be included in the EIS, to ensure that all necessary elements are reviewed. The draft scoping document should consider the required content of an EIS, as listed in 6 NYCRR § 607.9, in addition to those for the scoping document in 6 NYCRR § 617.8.

However, it appears that Hughes erroneously fixated on the elimination of topics in its draft scope. In Section 4.0, Hughes quotes 6 NYCRR § 617.8, “[T]he goal of this Scoping Document is to focus on potentially significant adverse impacts and eliminate consideration of impacts that are irrelevant or not significant.” By using almost half its 7-page draft scope to eliminate topics from consideration, Hughes has interpreted this sentence out of context from the larger SEQRA regulatory scheme. The core of the scoping document was left at a meager two pages—so vague and generalized that it simply cannot provide anyone with a meaningful understanding of what will be in the EIS nor fulfill the basic requirements of 6 NYCRR § 617.8(e), as listed below.

The final written scope should include:

- (1) a brief description of the proposed action;
- (2) the potentially significant adverse impacts identified both in Part 3 of the environmental assessment from and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;
- (3) the extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;
- (4) an initial identification of mitigation measures;
- (5) the reasonable alternatives to be considered;
- (6) an identification of the information or data that should be included in an appendix rather than the body of the draft EIS; and
- (7) a brief description of the prominent issues that were considered in the review of the environmental assessment form or raised during scoping, or both, and determined to be neither relevant nor environmentally significant or that have been adequately addressed in a prior environmental review and the reasons why those issues were not included in the final scope.

¹ “The lead agency will use the final written scope . . . to determine whether to accept the draft EIS as adequate. . . . A draft EIS is adequate with respect to scope and content for the purpose of commencing public review if it meets the requirements of the final written scope”

The Applicant has provided empty statements such as, “Additional new information will be obtained related to the design and effectiveness of recommended noise control measures contained in the Noise Assessment.”² The scope does not provide any detail regarding what new information is required or how it will be obtained. Likewise, it states, “This section will include a description and evaluation of reasonable alternatives that are feasible considering the objectives and capabilities of the Applicant.”³ While the no-action alternative is listed, the scope also includes evaluation of the “feasibility of an alternate site and Facility design.” Unfortunately, no real identification of these potential alternative designs is provided to provide the reader with an understanding of what will be evaluated.

The Scoping Document Erroneously Dismisses Potentially Significant Impacts

DEC identified four potential significant impacts in its Positive Declaration: traffic, noise, odor, and water resources. In the draft scope, Hughes attempts to eliminate three of these four impacts and “recommends” only the inclusion of noise impacts. For traffic, odor, and water resources, Hughes essentially claims no further study is necessary because (1) all required studies were provided to the agencies and (2) it is in compliance with the law. Neither of these explanations is sufficient.

To the first point, it is likely true that the Applicant provided the agency with all information that has been required thus far. However, it is after review of that information in the application that DEC issued its Positive Declaration. Merely repeating the information provided does not refute DEC’s concerns. Hughes acknowledges that potential odor impacts have been identified, and that it has proposed several odor control measures. Hughes then states, “Odor concerns were never raised in any of NYSDEC’s [Notice of Incomplete Applications (“NOIS”)]; therefore, impacts on odor are not significant and not recommended for inclusion in the EIS scope.”⁴ It is irrelevant whether the NOIA’s mentioned odor, a complete application has no bearing on the outcome of the review of that application.

To the second point, the Applicant’s reasoning essentially claims that if it is following all other relevant regulations, then there are no significant impacts under SEQRA. If this were true, then SEQRA would be entirely redundant and serve no purpose. For example, the scoping document asserts that there is no potential for water impacts because the Facility is located beyond the 1,000-foot limiting distance as required by New York City’s Watershed Rules and Regulations, and the Applicant has submitted a Storm Water Pollution Prevention Plan and construction permit application. Notwithstanding the agencies’ ongoing review of its submittals, the SEQRA environmental review seeks to determine if these measures are adequate to prevent potential environmental impacts. This point is further supported by the NYC Department of Environmental Protection (“NYCDEP”) and Watershed Inspector General’s scoping comments, which both emphasize the need to include water impacts in the scope.

² Scoping Document at § 5.1.3.

³ Scoping Document at § 5.1.5.

⁴ Scoping Document at § 4.3.

Therefore, assessment of traffic, odor, and water resources must be included in the draft scope because Hughes has not provided a valid reason for eliminating the potential impacts reasonably identified in the Positive Declaration.

The Scoping Document Must Include the Following Items at a Minimum

5.1.2 Description of Proposed Action

The scoping document must include a full description of the proposed action, including any plans for the Greene-Del Waste Transfer Station (“Greene-Del”).

It is entirely unclear how the Greene-Del site will be incorporated into Hughes’ proposal. While Hughes discussed the existing waste transfer station extensively during its August 19th public meeting, Greene-Del is only briefly mentioned once in the EAF as an adjoining waste facility and omitted from the scoping document. The proposed Hughes site (Tax Parcel 113.-1-25) is on a separate parcel from Greene-Del (Tax Parcel 114.-1-11) and appear to have separate owners based on Delaware County’s tax maps.⁵ If Hughes intends to use the Greene-Del property, the proposed action must describe how the site will be used; whether operations will cease or change; if any construction or remediation will occur on the site.

Also presented in the August 19th meeting, the Applicant indicated it hopes to expand its operations in the future with this proposed Facility serving as a model and training location. Therefore, the project description and proposed scope should incorporate discussion and analysis of any anticipated expansions as well. 6 NYCRR § 617.9(b)(5)(iii)(d).

In addition, the scoping document should provide a thorough description of the incoming waste stream and its origins, as well as, the use and destination of the end product. This is especially relevant because this information is directly tied to Hughes’ claim that this facility will advance the Climate Leadership and Community Protection Act emission goals.⁶

The description should include all the bulleted items currently listed under this section of the draft scope, such as the purpose of the project, and the public needs and benefits. It is critical that both social and economic impacts are taken into account. 6 NYCRR 617.9(b)(5)(i). To note, Section 1.0 of the draft scope does not currently satisfy all the items listed in Section 5.1.2.

5.1.3 Evaluation of Potential Significant Adverse Impacts

Generally

The scoping document must include all potential impacts identified within the Positive Declaration and also assess other potential impacts. As discussed above, the Applicant has not provided any sufficient reasons to exclude traffic, odor, or water resource impacts. While not exhaustive, DEC should also consider addition of the following potential impacts to the scope:

⁵ Delaware County C.O.M.I.T., <https://spatial.vhb.com/comit/> (last accessed Nov. 29, 2021).

⁶ Andrew Millspaugh, Reply to NYSDEC’s NOIA dated March 3, 2021 (March 30, 2021).

- Land Impacts – This is relevant as the land will certainly be disturbed due to construction. The scope should include identification and locations of any proposed changes to the topography of the land, including excavation. It should also identify the source and type of any fill material to be used. Due to the ongoing turbidity challenge facing NYC’s drinking water system—as outlined in the Watershed Inspector General’s comments—activities that disturb the soil and geology of the watershed also have implications on water resource impacts.
- Land Use and Community Character – The proposed site for the Facility is an undeveloped lot in a rural area near many state forests.⁷ Even accounting for the adjacent waste transfer station, the operation will be a significant increase in industrial activity in this area and impacts on the community character should be considered. The Catskills and Roxbury are known for their beauty, which attracts second homes and part-time residents who play a significant role in the local economy.⁸
- Visual Resources – For the same reasons listed above, the proposed facility will add a new large industrial complex to a relatively rural area surrounded by state forests. Aesthetic impacts are of particular concern in this area, where seasonal visitors and residents contribute substantially to the local economy.
- Air Quality – Assessment of air quality impact both on and off-site should be included in the scope. This topic is particularly relevant due to the Applicant’s claims that this facility will advance the Climate Leadership and Community Protection Act emission goals by reducing an estimated 8,632 metric tons of CO₂e per year.⁹ Assessment of the downstream impacts of burning the produced fuel pellets should be included to determine whether the facility actually provides a benefit or merely shifts the impact to another location.
- Aquatic Life – The Schoharie Creek is a warm water fishery with bass and walleye.¹⁰ In addition to impacts on water resources, the potential impacts on the aquatic life and ecosystem should be assessed.

For all potential topics, the scope should include an assessment of short-term, long-term and cumulative impacts. If the Greene-Del waste transfer station will remain in operation, the cumulative impact of two operational waste facilities in the area should be considered in combination.

Traffic Analysis

The scope should also incorporate the following topic within their traffic analysis:

⁷ EAF at Question E.3.h.

⁸ Town of Roxbury Comprehensive Plan 28, <http://roxburyny.com/wp-content/uploads/2010/08/ComprePlan.pdf> (2010).

⁹ Millspaugh, *supra* note 6.

¹⁰ NYSDEC, Public Fishing Rights Maps: Schoharie Creek and East Kill, https://www.dec.ny.gov/docs/fish_marine_pdf/pfrschoharie.pdf.

- The scoping document should include a discussion of the impacts of increased road salt application for high traffic volumes during winter deicing operations. Locally and regionally, long-term deposition of salt on road surfaces has resulted in roadside habitat degradation, wildlife kills, drinking water quality impacts, and corrosion of automobiles and infrastructure. Studies of the environmental impacts of road salt on aquatic systems have shown that it degrades drinking water quality in rural and suburban areas, which could have severe impacts within the Schoharie Watershed. A significant concern for water quality protection is the impact of road salt on reservoir and stream buffer areas. Exposure to salt compromises soil structure and inhibits erosion control. Degrading soils and vegetation in buffer areas between roads and watercourses compromises the retention and processing of pollutants in stormwater runoff and diminishes the functions of buffer zones to protect surface waters and reservoirs.

Water Resources

In addition, the following items should be added to the assessment of water resources in particular:

- The DEIS must provide a discussion of potentially significant localized flooding under the Proposed Action. The Applicant proposes that “potential impacts due to construction within the 100-year flood zone are irrelevant and not recommended for inclusion in the EIS Scope” because some of the proposed infrastructure is sited outside of the 100-year floodplain. This assumption is based on the submission of an insurance rate map to NYSDEC and the Applicant citing itself in Part 2 of the EAF by asserting that “no, or small impact may occur” for all evaluated potential impacts. Impacts within the 100-year flood zone notwithstanding, the Applicant also concedes that the Proposed Action may result in development on lands subject to flooding. However, the Applicant provides no support for proposing that “no, or small impact[s]” may change flood water flows that contribute to flooding or require modification of existing drainage patterns.

The Proposed Action would result in the addition of six acres of impervious surfaces and the reduction of 1.4 acres of forest and 4.7 acres of meadow. This significant change in site imperviousness has the potential to generate localized flooding as stormwater runoff will be directed to “a federal wetland and Class A Stream to the northwest and to Johnson Hollow Brook to the east.” These streams and the wetland ultimately drain to Schoharie Reservoir, which is part of the unfiltered drinking water supply for 9.5 million New York City and Hudson Valley residents. Runoff-driven water quality impacts to the Schoharie Reservoir can pose human health risks in addition to disrupting the reservoir’s physical, chemical and biological processes.

Despite the Applicant’s claim that stormwater directed offsite will be equal to or less than under pre-development conditions, the DEIS must provide details to support that claim, including details regarding proposed pre- and post-development stormwater volume and velocity as well as pollutant loadings in runoff from the industrial project site.

- The DEIS should address potential impacts to stream and wetland buffers and propose mitigation for disturbances as appropriate. The Proposed Action would disturb 40 feet of streambank and 0.076 acres of wetlands on the project site. Although the Proposed Action will not encroach on the buffer to the unnamed tributary, it is unclear how disturbance to both the stream and the wetland will be accomplished without disturbance to their buffers as well when accessing the water resources.

Vegetated stream and wetland buffers provide transitional areas that intercept stormwater from upland habitat before it reaches wetlands or other aquatic habitat. Water quality benefits of buffer zones include reducing thermal impacts (shade), nutrient uptake, providing infiltration, reducing erosion, and restoring and maintaining the chemical, physical and biological integrity of water resources. Buffers also filter sediment, pesticides, heavy metals and other pollutants from stormwater, and reduce nutrient loadings to wetlands by uptake in vegetation and denitrification. Buffers also store water and reduce peak runoff velocities during storm events in addition to providing habitat for flora and fauna and corridors for wildlife to migrate between larger sections of habitat.

For these reasons, permanent and temporary disturbances of stream and wetland buffers should be mitigated to restore buffer functions in order to protect the functions and values of their water resources. The DEIS should identify any disturbance to stream and wetland buffers and propose mitigation for these resources.

- The Proposed Action requires approvals from NYCDEP for siting of the solid waste facility, creation of impervious surface, and connecting to the Town of Prattsville sewer system. In addition, EAF Section D. *Project Details* proposes that construction of ± 9 acres will be completed in a single phase. Disturbances greater than five acres at one time require written approval from NYCDEP according to the NYC Watershed Rules and Regulations. 10 NYCRR § 128-3.9(b)(3)(i). This requirement should be included in the list of agency approvals in the Draft Scope and EIS as was also noted in NYCDEP’s comments.
- Assessment of contaminants, especially for poly- and perfluoroalkyl substances (“PFAS”), in the Facility’s process water should be added to the scope. PFAS are a class of chemicals that have been associated with a host of negative health outcomes.¹¹ These chemicals are persistent “forever” chemicals that do not breakdown in the environment and bioaccumulate. PFAS are ubiquitous in many consumer goods, with one study finding PFAS in 46% of fast food wrappers.¹² As a result, PFAS in municipal solid waste landfill leachate is a known issue.¹³ Many wastewater treatment plants are not equipped to remove PFAS and discharge PFAS in its effluent.¹⁴ Therefore, it is essential to assess

¹¹ *Basic Information on PFAS*, US EPA (Dec. 6, 2018), <https://www.epa.gov/pfas/basic-information-pfas>.

¹² Laurel A. Schaidler et al., *Fluorinated Compounds in U.S. Fast Food Packaging*, 3-4 *Environ. Sci. Technol. Lett.* 105–111 (2017), <https://doi.org/10.1021/acs.estlett.6b00435>.

¹³ Amila O. De Silva et al., *PFAS Exposure Pathways for Humans and Wildlife: A Synthesis of Current Knowledge and Key Gaps in Understanding*, <https://setac.onlinelibrary.wiley.com/doi/10.1002/etc4935>; New York State Association of Counties, *PFAS & Your Local Landfill: Managing Risk and Preparing for Regulations* 6, <https://www.nysac.org/files/PFAS%20%20Landfills.pdf>.

¹⁴ De Silva, *supra* note 14.

the composition of the Facility’s process water, particularly since it proposes a direct connection to the Town of Prattsville waste water treatment plant. In addition, the scope should include a feasibility assessment of an on-site water treatment system for all wastewater generated by the Facility to mitigate any potential contaminants of concern, such as PFAS, in its process water.

- Finally, Riverkeeper believes assessment of impacts from increased storm events must also be considered. In addition, climate change impacts must be explicitly incorporated into the mitigation measures discussion, 6 NYCRR § 617.9(b)(5)(i).

5.1.4 Description of Mitigation Measures

To the extent possible, the scope should list out all specific mitigation measures in consideration. This should include any mitigation measures already incorporated into the proposal—such as those mentioned in Section 4.3 Potential for Significant Odor Impacts of the existing scope—and listed Noise mitigation measures. If additional impacts are incorporated into the draft scope, mitigation measures for those impacts should also be listed in this section including, but not limited to mitigation measures proposed in these comments. Any prior assessment of mitigation measures can be incorporated by reference so long as the source is identified.

5.1.5 Description of Reasonable Alternatives

Similar to mitigation measures, the scope must provide a detailed description of all alternatives that will be considered. The scope’s current description of “an alternative site and Facility design” is unhelpful and provides no real understanding of the options to be considered. Consideration of any real alternatives that may minimize impacts are much appreciated and should be listed and described. If the Applicant is not considering alternative locations or designs, this statement should be removed.

* * *

In conclusion, Riverkeeper urges the DEC and the Applicant to incorporate the above comments into the scoping document to ensure the project undergoes a comprehensive environmental review as required under SEQRA.

Thank you for your consideration.

Sincerely,



Victoria Leung
Staff Attorney
Riverkeeper, Inc.