

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ONTARIO

**RICHARD VANDEMORTEL AND DEB
VANDEMORTEL, on behalf of themselves and all
others similarly situated**
3098 Johnson Road
Geneva, NY 14456

SUMMONS

Index No.:

Plaintiffs,

v.

**NEW ENGLAND WASTE SERVICES OF NEW
YORK, INC.**
25 Greens Hill Lane
Rutland, Vermont 05701

CASELLA WASTE SYSTEMS, INC.
25 Greens Hill Lane
Rutland, Vermont 05701

Defendants.

TO THE ABOVE NAMED DEFENDANTS

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiffs designate Ontario County as the place of trial.

The basis of the venue is residences of the plaintiffs and CPLR § 503(a).

Plaintiffs reside at 3098 Johnson Road, Geneva, NY 14456

Dated this 17th day of September, 2019.

MICHAELS & SMOLAK, P.C.

By: s/Jan M. Smolak

Jan M Smolak

Attorney(s) for Plaintiffs

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**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ONTARIO

**RICHARD VANDEMORTEL AND DEB
VANDEMORTEL, on behalf of themselves and
all others similarly situated**

COMPLAINT

Plaintiffs,

Index No.:

v.

**NEW ENGLAND WASTE SERVICES OF
NEW YORK, INC., and CASELLA WASTE
SYSTEMS, INC.**

Defendants

CLASS ACTION COMPLAINT

Plaintiffs, Richard VanDeMortel and Deb VanDeMortel, by and through their attorneys, complain of the Defendants and allege as follows:

INTRODUCTION

1. Plaintiffs, Richard VanDeMortel and Deb VanDeMortel and a putative class of their neighbors (collectively "Plaintiffs") bring this class action against Defendants **NEW ENGLAND WASTE SERVICES OF NEW YORK, INC.** and **CASELLA WASTE SYSTEMS, INC.** ("Defendants"). Defendants operate the Ontario County Landfill (the "Landfill") located at 1879 Route 5 and 20, Stanley, State of New York, County of Ontario,

which releases noxious odors onto Plaintiffs' property causing damages through negligence, gross negligence and nuisance.

PARTIES

2. At all times relevant hereto, Plaintiffs, Richard VanDeMortel and Deb VanDeMortel have resided and intend to remain at 3098 Johnson Road, Geneva, State of New York, County of Ontario. Plaintiffs are individuals domiciled in New York; therefore, Plaintiffs are citizens of the State of New York.

3. Defendant New England Waste Services of New York, Inc. ("NEWSNY") is a domestic business corporation, with its Registered Agent, C T Corporation System, located at 28 Liberty Street, New York, New York, 10005.

4. Defendant Casella Waste Systems, Inc. ("Casella Waste") is a foreign business corporation incorporated in the State of Delaware, with its principal place of business located at 25 Greens Hill Lane, Rutland, Vermont 05701. Casella Waste may be served with process through its registered agent C T Corporation System, located at 28 Liberty Street, New York, New York 10005.

5. Upon information and belief, Defendants and its agents have, at all times relevant hereto, operated, maintained, and financed the Landfill located at 1879 Route 5 and 20, Stanley, State of New York, County of Ontario.

6. Upon information and belief, both Defendant entities are commonly owned and controlled and share a common Chief Executive Officer, Principal Executive Office, and Registered Agent.

7. Defendant corporations are agents, joint employers, and/or alter egos of each other with respect to their interests in, and operation and maintenance of, the Landfill.¹

JURISDICTION AND VENUE

8. Plaintiffs designate Ontario County as the place of trial. The basis of the venue is residence of the plaintiff and CPLR § 503(a).

9. This cause of action seeks recovery for injuries to Plaintiffs' real property resulting from Defendants' wrongful and tortious actions and omissions.

10. Defendants' discrete and wrongful tortious actions and omissions occurred within the last three years.

11. Defendants' tortious actions and omissions are ongoing and recurring, and Plaintiffs' damages are ongoing.

12. This cause of action is brought within the applicable three-year statute of limitations. *See* CPLR § 214 and/or CPLR § 214-c.

GENERAL ALLEGATIONS

13. Defendants' Landfill is among the largest in New York.

14. Most of the waste deposited into the Landfill derives from outside Ontario County.

15. The Landfill is permitted to accept thousands of tons of waste per day.

16. Materials deposited into the Landfill include, but are not limited to, municipal solid waste, biosolids, construction and demolition debris, industrial waste, and wastewater treatment plant sludge.

¹ Hereinafter, each Defendant will be referred to collectively as "Defendants." Each collective reference to "Defendants" is a distinct factual allegation that each individual Defendant has engaged in the acts, omissions, or events described.

17. The materials deposited into Defendants' Landfill decompose and generate byproducts, including leachate and landfill gas, an odorous and offensive byproduct of decomposition which generally consists of hydrogen sulfide, methane, carbon dioxide, and various other compounds.

18. Landfill gas from landfills that contain construction and demolition debris can be especially odiferous given the high content of hydrogen sulfide, which is known to have a characteristic "rotten-egg" smell.

19. Plaintiffs' property has been and continues to be physically invaded by noxious odors.

20. The noxious odors which entered Plaintiffs' property originated from the Landfill.

21. At all times relevant hereto, the Landfill has been managed and operated exclusively by Defendants pursuant to a lease agreement with Ontario County.

22. These odors caused by the Landfill have been and continue to be dispersed across all public and private land in the class area.

23. A properly operated, maintained, and managed landfill will collect, capture and destroy leachate and landfill gas from the landfill in order to prevent it from escaping into the ambient air as fugitive emissions.

24. Defendants have failed to adequately collect, capture, and destroy landfill gas they generate at the Landfill to prevent fugitive emissions and to otherwise prevent odors from the Landfill from invading the homes and property of Plaintiffs and the Class.

25. Defendants have failed to sufficiently manage, collect, capture, and destroy the leachate they generate at the Landfill.

26. Objectionable odors and emissions from the Landfill have been the subject of frequent complaints from residents in the nearby residential area.

27. More than 90 households have contacted Plaintiffs' counsel documenting the odors they attribute to the Landfill, which have diminished their property values and interfered with their use and enjoyment of private property.

28. Plaintiffs Richard and Debra VanDeMortel reported that "[t]he odor is so strong at certain times – late in the night and first thing in the morning. It smells of rotten eggs and ammonia!"

29. Plaintiffs reported further that the odors from the Landfill substantially interfere with their use and enjoyment of their home because, *inter alia*, "[w]e really cannot sit outside at night. Going for an early morning walk is no longer possible, and we no longer hang laundry out."

30. Defendants' odors have caused Plaintiffs and the Class to suffer from physical discomfort that has manifested itself in many ways, including but not limited to headaches, nausea, sleeplessness, eye irritation, and nose irritation.

31. Defendants are required to control odorous emissions by, among other things, following proper landfilling practices, utilizing adequate landfill cover, limiting and/or pre-treating biosolid waste, and installing, operating, and maintaining a sufficient landfill gas collection system to capture and destroy landfill gas.

32. Among the various tasks necessary to properly operate an adequate landfill gas collection system is ensuring that excess liquid does not get into the system and interfere with its effectiveness and/or efficiency.

33. Defendants have failed to adequately control their odorous emissions, in ways including but not limited to an inadequate landfill gas collection system; the failure to prevent landfill gas collection wells from becoming “watered in,” including by utilizing adequate drainage systems; inadequate preparation for wet weather conditions; inadequate preparation for high wind conditions; inadequate wellhead vacuum; inadequate monitoring; inadequate and/or improper cover and covering practices; inadequate and/or improper lining practices; inadequate collection and management of leachate; excessive intake of biosolids and sewage treatment sludge without adequate gas and leachate collection and extraction systems; excess intake of construction and demolition materials without adequate gas and leachate collection and extraction systems; failure to pre-treat biosolid sludge; and inadequate use of odor neutralizing systems and products.

34. Defendants’ well documented pattern of failing to control their emissions is demonstrated by the following:

- a) Numerous residents have lodged complaints with state and local authorities including but not limited to the New York Department of Environmental Conservation (DEC);
- b) Numerous residents have lodged complaints directly with Defendants and to the DEC;
- c) The DEC has issued numerous Notices of Violation because of Defendants’ failure to properly operate the landfill. These failures included exposed waste outside of the working area of the landfill, inadequate daily cover, improper leachate collection and management, fugitive off-site litter, improper solid waste in unlined areas, improper mixing of stormwater with solid waste and leachate, and defective geomembrane lining.
- d) Numerous reports have been produced documenting the Landfill’s odorous emissions, including a report through a consulting firm hired by Ontario County, which concluded that Defendants’ Landfill caused the noxious odors.

33. The foul odors emitted from the Landfill are offensive, would be offensive to a reasonable person of ordinary health and sensibilities, and have caused property damage, including by interfering with the ability of Plaintiffs and the Class to use and enjoy their homes and property.

35. The invasion of Plaintiffs' property and that of the Class by noxious odors has reduced the value of that property and has interfered with the use and enjoyment of that property.

36. Ontario County is home to a wide range of commercial and recreational activities, including but not limited to agriculture, tourism, education, medicine, retail, dining, lodging, and the wine industry.

37. Plaintiffs are a limited subset of individuals in Ontario County, and the Class Area, that includes only owner/occupants and renters of residential property who live within the Class Area and fit within the Class Definition. *See, infra*, at ¶ 43.

38. Participants in Ontario County's commercial and recreational activities ("the Public"), which include business owners, employees, commuters, tourists, visitors, customers, students, patients, and others, are not all owner/occupants and renters of residential property, and not all members of the Public reside within the Class Area or otherwise fit within the Class Definition.

39. Members of the public, including but not limited to businesses, employees, commuters, tourists, visitors, customers, clients, students, and patients, have experienced and been harmed by the fugitive noxious odors emitted from the Landfill into *public* spaces; however, unlike Plaintiffs and the Class, members of the public who are outside of the Class

Definition have not suffered damages in the form of diminished property values and/or loss of use and enjoyment of their *private* property. For example:

- a. On December 31, 2018, Casella Waste Management Systems, Inc. General Manager Mark Clinker reported to an Ontario County official that Defendants received two complaints “from passerby due to some odors that were present at the landfill on 5 & 20 near Manor.”
- b. On January 4, 2019, the Finger Lakes Times published a letter to the editor from a concerned citizen who stated that she experienced a “horrifying and appalling” odor on her property that also impacted a local restaurant called Bagels and Cakes and the local Walmart the following day.
- c. On May 20, 2019, counsel received a complaint from a putative class member named Judy Mahoney-Benzer, who reported that “the strong odor of sewage gasses is so strong it forces you back inside,” but noted that “driving by [the Landfill] is so much worse.”
- d. On April 17, 2019, putative class member Shari Cardinale Bruzee reported that the Landfill “has become a regular nuisance. I always kept my window open in my room (even winter), and I can no longer do that. My business is here and *my clients now complain daily*. We often cannot be outside to play, work, garden or swim now because the smell can be gagging at times.” [emphasis added].
- e. On April 16, 2019, putative class member Ruri Chappell reported her concern that it is “[v]ery sad that Geneva is labelled as ‘Smelly garbage Town.’ It is a beautiful town but odor is destroying our reputation!”

40. The nuisance impacts from Defendants’ odors affect the Public at-large, but the Public does not suffer damages of the same kind as Plaintiffs and the putative class, in the form of diminished property values and/or loss of use and enjoyment of their private property

41. Despite knowing about the serious harm they were causing to Plaintiffs and the putative class, Defendants have failed to take adequate steps to abate the invasion of Plaintiffs’ property by noxious odors from the Landfill, which remain recurring.

42. Defendants knowingly, negligently, intentionally, recklessly, and grossly failed to properly maintain and/or operate the landfill and caused the invasion of Plaintiffs' property by noxious odors on frequent, intermittent and ongoing reoccurring occasions.

CLASS ALLEGATIONS

A. Definition of the Class

43. Plaintiffs bring this action individually and on behalf of all persons as the Court may determine to be appropriate for class certification, pursuant to CPLR § 901. Plaintiffs seek to represent a Class of persons preliminarily defined as:

All owner/occupants and renters of residential property within the area enclosed by a geographic boundary consisting of:

The intersection of County Road 20 and County Road 23 proceeding **East** along County Road 23 to McIvor Road; **Continue East** on McIvor Road to Pre Emption Road (a/k/a County Road 6); **South** on Pre Emption Road to W North Street; **East** on W North Street to Genesee Street; **South** on Genesee Street to Castle Street (a/k/a S Route 14); **East** on Castle Street to Linden Street; **South** on Linden Street to Seneca Street (a/k/a N. Route 14); **West** on Seneca Street to S Main Street; **South** on S Main Street to Snell Road; **West** on Snell Road to Pre Emption Road; **South** on Pre Emption Road to Lake to Lake Road (a/k/a Billsboro Road); **West** on Lake to Lake Road to Goose Street (a/k/a Town Line Road); **North** on Goose Street to Tileyard Road; **Northwest** on Tileyard Road to Goose Street; **North** on Goose Street to Route 5 and 20; **East** on Route 5 and 20 to County Road 20; **North** on County Road 20 to starting point at the intersection of County Road 20 and County Road 23. (**Ex. 1**, Class Boundary Map).

The definitional boundary is subject to modification as discovery will disclose the location of all persons properly included in the Class ("Class Members"). Plaintiffs reserve the right to propose one or more sub-classes if discovery reveals that such subclasses are appropriate.

44. This case is properly maintainable as a class action pursuant to and in accordance with CPLR § 901 in that:

- a. The class, which includes thousands of members, is so numerous that joinder of all members is impracticable;
- b. There are substantial questions of law and fact common to the class including those set forth in greater particularity herein;
- c. The claims of the representative parties are typical of the claims of the class;
- d. Questions of law and fact such as those enumerated below, which are all common to the class, predominate over any questions of law or fact affecting only individual members of the class;
- e. A class action is superior to any other type of action for the fair and efficient adjudication of the controversy;
- f. The relief sought in this class action will effectively and efficiently provide relief to all members of the class;
- g. There are no unusual difficulties foreseen in the management of this class action; and
- h. Plaintiffs, whose claims are typical of those of the Class, through their experienced counsel, will zealously and adequately represent the Class.

B. Numerosity

45. The Class consists of more than one thousand members and therefore is so numerous that joinder is impracticable.

C. Commonality

46. Numerous common questions of law and fact predominate over any individual questions affecting Class Members, including, but not limited to the following:

- a. whether and how Defendants wrongfully, negligently, knowingly, intentionally, recklessly, and grossly failed to maintain and operate the landfill;
- b. whether Defendants owed any duties to Plaintiffs;

- c. which duties Defendants owed to Plaintiffs;
- d. which steps Defendants have and have not taken in order to control the emission of noxious odors through the maintenance and operation of the Landfill;
- e. whether and to what extent the landfill's noxious odors were dispersed over the class area;
- f. whether it was reasonably foreseeable that Defendants' failure to properly maintain and operate the landfill would result in an invasion of Plaintiffs' property interests;
- g. whether the degree of harm suffered by Plaintiffs and the Class constitutes a substantial annoyance or interference; and
- h. the proper measure of damages incurred by Plaintiffs and the Class.

D. Typicality

47. Plaintiffs have the same interests in this matter as all the other members of the Class and their claims are typical of all members of the Class. If brought and prosecuted individually, the claims of each Class Member would require proof of many of the same material and substantive facts, utilize the same complex evidence including expert testimony, rely upon the same legal theories and seek the same type of relief.

48. The claims of Plaintiffs and the other Class Members have a common cause and their damages are of the same type. The claims originate from the same failure of the Defendants to properly maintain and operate the landfill.

49. All Class Members have suffered injury in fact as a result of the invasion of their property by Defendants' release of noxious odors, causing damage to their property.

E. Adequacy of Representation

50. Plaintiffs' claims are sufficiently aligned with the interests of the absent Class

Members to ensure that the Class' claims will be prosecuted with diligence and care by Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the interests of the Class and do not have interests adverse to the Class.

51. Plaintiffs have retained the services of counsel who are experienced in complex class action litigation and in particular class actions involving neighborhood environmental concerns, including the emission of noxious odors. Plaintiffs' counsel will vigorously prosecute this action and will otherwise protect and fairly and adequately represent Plaintiffs and all absent Class Members.

F. Class Treatment Is the Superior Method of Adjudication

52. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint because:

- a. Individual claims by the Class Members would be impracticable as the costs of pursuit would far exceed what any one Class Member has at stake;
- b. Little or no individual litigation has been commenced over the controversies alleged in this Complaint and individual Class Members are unlikely to have an interest in separately prosecuting and controlling individual actions;
- c. The concentration of litigation of these claims in one action will achieve efficiency and promote judicial economy; and
- d. The proposed class action is manageable.

53. The prosecution of separate actions by or against individual members of the Class would create the risk of (i) inconsistent or varying adjudications with respect to individual members of the Class, which could establish incompatible standards of conduct for the party opposing the Class; and (ii) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not

parties to the adjudications or substantially impair or impede their ability to protect their interests.

54. Notice can be provided to members of the Class by U.S. Mail and/or publication.

CAUSE OF ACTION I

PUBLIC NUISANCE

55. Plaintiffs restate allegations 1 through 54 of this Complaint as if fully rewritten herein.

56. The public has certain rights, including the right to breathe uncontaminated and unpolluted air on public properties and rights of way without unreasonable interference from private actors. *Mount Pleasant v. Van Tassell*, 7 Misc. 2d 643, 646, (Sup. Ct. 1957); *NAACP v. AcuSport, Inc.*, 271 F. Supp. 2d 435, 448 (E.D.N.Y. 2003); *D'Amico v. Waste Mgmt. of N.Y., LLC*, No. 6:18-CV-06080 EAW, 2019 U.S. Dist. LEXIS 50323, at *10 (W.D.N.Y. Mar. 25, 2019).

57. The noxious odors, which entered Plaintiffs' property and the surrounding public properties and rights of way originated from the landfill maintained and operated by Defendants.

58. The noxious odors invading Plaintiffs' property are indecent and offensive to the senses of Plaintiffs and individuals with ordinary sensibilities and obstruct the free use of Plaintiffs' property so as to substantially and unreasonably interfere with the comfortable enjoyment of life and property.

59. Defendants owed and continue to owe a duty to the public to prevent and abate the interference with, and the invasion of, the free use and enjoyment of public spaces.

60. Defendants owed and continue to owe a duty to Plaintiffs to prevent and abate the interference with, and the invasion of, the private interests of the Plaintiffs.

61. By failing to reasonably repair and maintain its landfill, Defendants have wrongfully, negligently, and intentionally caused an unreasonable invasion of Plaintiffs' interest in the use and enjoyment of their property.

62. As a foreseeable, direct and proximate result of the foregoing conduct of Defendants, Plaintiffs suffered damages to their property as alleged herein.

63. Apart from the property damage incurred by Plaintiffs and the Class, Defendants' emissions have substantially interfered with rights common to the general public, including the right to uncontaminated and/or unpolluted air.

64. Plaintiffs suffered and continue to suffer special harm relating to the use and enjoyment of their land and property, and decreased property values—damages of a different kind than those suffered by the public at-large.

65. Plaintiffs did not consent to the invasion of their property by noxious odors.

66. By causing noxious odors produced and controlled by Defendants to physically invade Plaintiffs' land and property, Defendants knowingly, wrongfully, negligently, and intentionally created a nuisance which substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their property.

67. Whatever social utility provided by the landfill is clearly outweighed by the harm suffered by Plaintiffs and the putative class, who have on frequent occasions been

deprived of the full use and enjoyment of their properties and have been forced to endure substantial loss in the value of their properties.

68. Defendants' substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property constitutes a nuisance for which Defendants are liable to Plaintiffs for all damages arising from such nuisance, including compensatory, exemplary, and punitive relief since Defendants' actions were, and continue to be, intentional, willful, and made with a conscious disregard for the rights of Plaintiffs.

CAUSES OF ACTION II AND III

NEGLIGENCE AND GROSS NEGLIGENCE

69. Plaintiffs restates allegations 1 through 68 of this Complaint as if fully rewritten herein.

70. Defendants owed Plaintiffs, as neighboring landowners, a duty of care with regard to their operation of the landfill.

71. Defendants negligently and improperly constructed, operated, and maintained the landfill such that it has caused the invasion of noxious odors onto Plaintiffs' homes, land, and property on occasions too numerous to mention.

72. As a direct and proximate result of Defendants' negligence and gross negligence in constructing, operating, and maintaining the Landfill, Plaintiffs' property, on occasions too numerous to mention, has been invaded by noxious odors.

73. As a further direct and proximate result of the foregoing conduct of the Defendants, Plaintiffs suffered damages to their property as alleged herein.

74. The invasion and subsequent damages suffered by Plaintiffs were reasonably foreseeable by the Defendants.

75. By failing to properly construct, operate, and maintain the Landfill, Defendants failed to exercise the duty of ordinary care and diligence, which they owes to Plaintiffs, so noxious odors would not invade Plaintiffs' property.

76. A properly constructed, operated, and maintained landfill will not emit noxious odors into neighboring residential areas.

77. By failing to adequately construct, operate, and maintain the Landfill, Defendants have negligently, recklessly and intentionally caused the invasion of Plaintiffs' property by noxious odors.

78. Defendants knowingly breached their duty to exercise ordinary care and diligence when they improperly maintained and operated the Landfill and knew, or should have known, upon reasonable inspection that such actions would cause Plaintiffs' property to be invaded by noxious odors.

79. As a direct and proximate result of the failure of Defendants to exercise ordinary care, Plaintiffs' residence was invaded by noxious odors causing and constituting damage to their property.

80. The conduct of Defendants in knowingly allowing conditions to exist which caused noxious odors to physically invade Plaintiffs' property constitutes gross negligence as it demonstrates a substantial lack of concern for whether an injury resulted to Plaintiffs' property.

81. Defendants' gross negligence was knowing, intentional, and made with a reckless disregard for the property of Plaintiffs, which entitles Plaintiffs to an award of compensatory, exemplary, and punitive relief.

PRAYER FOR RELIEF

Plaintiffs incorporate by reference as if fully set forth herein each and every allegation in the Complaint.

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, prays for judgment as follows:

- A. Certification of the proposed Class pursuant to CPLR § 901;
- B. Designation of Plaintiffs as representative of the proposed Class and designation of their counsel as Class Counsel;
- C. Judgment in favor of Plaintiffs and the Class members and against Defendants;
- D. Award Plaintiffs and the Class members compensatory and punitive damages, and attorneys' fees and costs, including pre-judgment and post-judgment interest thereupon;
- E. Award Plaintiffs and the Class members injunctive relief not inconsistent with Defendants' state and federal regulatory obligations;
- F. An Order holding that entrance of the noxious odors upon Plaintiffs' property constituted a nuisance;
- G. Such further relief both general and specific that the Court deems just and proper.

Respectfully Submitted:

s/Jan M. Smolak

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