

0800 5/11/20 Board members -

please review for
Executive Session on 5/11
June

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April 27, 2020

Nicholas Pontzer, Esq.
Goldberg Segalla
1200 Crossroads Building, 2 State Street
Rochester, NY 14614

RE: CNY Scrap Processing, LLC & Carrier Salvage & Recycling, LLC
vs. Town of Sterling and Bruce Applebee

Dear Mr. Pontzer:

Please consider this narrative statement regarding activities and noise at the Central New York Scrap Processing (hereinafter "CNY") business at 14725 State Route 104, in Sterling, New York. I believe the information here is generally responsive to your request for a description of activities the Carriers would expect to engage in on a typical Saturday at the facility.

The Carriers believe the CNY property is zoned for agricultural use, and they understand their activities are generally in line, in terms of noise, with activities that would typically occur around a farm. In terms of adjoining residences, Google Earth indicates the nearest house to the west is around 750 feet away. The nearest house to the east is at least 1000 feet away, on the south side of Route 104. And, there may be another residence around 450 feet through some woods to the north.

As Google Earth confirms, there are not many residences in the immediate vicinity of the facility, and the Carriers report that they have never directly received any complaints from any of the neighbors about noise. The Carriers are aware, of course, that there seems to be one adjoining property owner who has made various complaints about their activities. However this person or these people seem to have some personal animosity toward the Carriers as opposed to legitimate complaints shared by other nearby landowners.

On a typical Saturday, three employees will be working at CNY. This is down from the pre-lawsuit days, when five or six employees would have been working at CNY. On a typical Saturday, these employees spend most of their time engaging in the following activities: answering phones, book keeping or other administrative tasks, interacting with customers (i.e. discussing sales), unloading trucks/vehicles with various items containing scrap metal, weighing vehicles with the scrap metal and or scrap metal itself

Every customer that sells items to CNY must be verified and every transaction must be documented. Per New York State law, any time a piece of scrap is sold to or purchased by a facility like CNY, the purchaser/recipient must present some form of identification – usually a driver's license. The licenses or other forms of identification are then scanned and the transaction is recorded in a database maintained by CNY.

Saturdays are a big day for sales/purchases of scrap metal items brought in by "residential" customers – people who ordinarily work during the week, but take advantage of off-work hours to dispose of old vehicles and household items like washing machines, hot water heaters, or children's toys. In addition to customers who bring their items to the CNY facility, the Carriers will also go out on the road and pick up items for customers who lack the means to move/deliver these items to the Carrier. When that happens, the customers will typically follow the Carriers to the CNY facility. Customers who sell items to the Carriers are paid based on the weight and composition of an item, so when the Carriers pick something up, it is necessary for customers to come in and be present when the item is weighed.

Items typically delivered or acquired from residential customers are generally referred to in the metal recycling industry as "tin," which is understood to mean items that contain materials other than (recyclable) metal. These items are received on practically any day, but on Saturdays more customers seem to bring "tin" to CNY. All of it is ultimately received and accumulates in piles behind the fence, which is located approximately 116 feet from Route 104.

On occasion, the piles of tin are moved or pushed by the Carrier staff using a front end loader or a crane to make room for other customers to bring in their tin. The Carriers advise that pushing piles of tin around the facility is one of the activities that produces the most noise at their facility, on Saturday or any other day. On the busiest days, the Carriers estimate that they will typically push or move a pile of tin around once an hour.

Recently, in order to gauge for himself how noise generated at CNY facility might affect their neighbors, Kevin instructed his sons to move a pile of "tin" while walked west along Route 104. About halfway to the nearest house to the west of the facility, Kevin reports he could only faintly hear any noise emanating from the facility, a noise he likens to "a car running in your driveway." Kevin also relates that he has spoken to both of the closest neighbors (to the east and west) and they have "no issues" with noise on the Carrier property. He would invite anyone interested in assessing noise generated at CNY to conduct a similar "test."

By way of comparison or putting any noise generated at CNY in proper context, Kevin also relates that on occasion he will carry on conversations with CNY customers while they are in the parking area in front of the fence. He can do this without any difficulty even while other CNY employees are behind the fence moving scrap around, cutting metal or engaging in other activities. However, when tractor trailers go by on route 104, some 75 - 100 feet away, he has to stop talking and wait for traffic to pass. The obvious point is that within anywhere up to or beyond 50-100 feet from Route 104, the traffic on the road generates at least as much or more

noise than typical activities at CNY.

Receiving moving scrap received from customers is only one aspect of the operation at CNY. Once the scrap comes on site, it must be "processed" and made ready for sale by the Carriers. This entails cutting up items into smaller, more manageable pieces so the metal can be taken off site and sold by the Carriers to facilities at the "end" of the recycling chain.

In addition to cutting larger items into more manageable pieces, the Carriers also "clean" and separate items. Cleaning may entail removing all fluids from vehicles as well as other potentially hazardous items, such as a shock absorber, which contains compressed gas.

In order to cut larger items down to a manageable size, the Carriers use either a shear or a torch. Some items, such as a set of aluminum bleachers, may require disassembly (removing nuts and bolts) "by hand." All processing typically occurs behind the fence, at least 240 feet from the roadway, and at least 500 feet from any adjoining residences.

As noted previously, the Carriers believe the actual scrap processing they do generates less noise than simply moving around the piles of scrap brought to the facility by their customers. Employees do not wear earplugs or other protective devices because the noise involved simply doesn't warrant them.

A shear is a hydraulically powered cutting device, like an oversized pair of scissors, mounted behind an excavator. Kevin states that the noise generated by a shear is "probably a bit louder than a push mower." The Carriers currently have one shear of their own, and they will occasionally rent larger shears for large, off-site jobs such as cutting down old bridges or demolishing old buildings.

Torches used by the Carriers to process scrap are gas-powered, and Kevin states that the noise generated by a torch is "very minimal, probably less than a push mower." These torches are powered by propane and oxygen, and quite commonly seen at auto repair shops, farms, maintenance garages, and construction sites

Once the scrap metal is "processed," it is then loaded onto the Carrier vehicles and delivered to facilities where it is "milled" or melted down for reuse. In terms of noise generation, this aspect of the Carrier's business is somewhat similar to the receipt of items at CNY.

The Carriers would like to point out that theirs is a heavily regulated industry. They have frequent interactions with DEC officials to ensure that their operation is clean, safe, and fully-compliant with any regulations. As you are probably aware, when the Carriers purchased the facility it had been cited for multiple violations of DEC and other rules/regulations, and the Carriers worked closely with the DEC to bring the facility into compliance. On prior occasions, the Carriers have worked with the DEC to clean up other junkyards/scrap processing facilities. While the Carriers may have been cited or advised by the DEC of problems that continued after

they purchased the facility, they did not create those problems and, in reality, the DEC was probably happy to have been able to work with the Carriers.

The Carriers are committed to running the cleanest and safest facility they possibly can. For example, many scrap metal processors will require their customers to drain all fluids from any items they intend to sell for recycling. The Carriers, however, have noticed that customers who drain fluids from scrap don't do a very good job, and they often saw drip trails of oil from cars that were brought in or other items covered in oil and other hazardous fluids after careless or inexperienced customers had "drained" them. In order to ensure that fluids are leaked or spilled in appropriately, the Carriers allow their customers to bring items that have not been drained so the Carriers can properly and safely drain these items themselves.

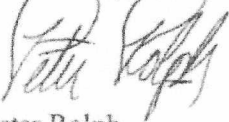
The Carriers also have regular interactions with law enforcement officials. State Police and local Sheriff's departments depend on the Carriers to help them reduce the amount of theft of valuable scrap metal and catch those responsible for theft of scrap metal items (batteries, copper, etc.). While every scrap processor, as noted previously, is required to document all purchases/sales, the Carriers are extra vigilant and will call law enforcement if they have any concerns or doubts about items that come into their facility.

While the Carrier's good working relationship with law enforcement and the DEC is not directly relevant to any discussion of noise generated at CNY on Saturdays (or any other day), they do want to stress the simple fact that they are committed to being good neighbors who can and do play an important role in the region.

Please share this information with your clients and let me know if there is anything else we can provide.

Sincerely,

HALL AND KARZ



Peter Rolph

pc: Shelley and Kevin Carrier