

**MEMORANDUM OF AGREEMENT**

Between the Chair of the Facility Siting Board and the Hearing Officer Pursuant to 6 NYCRR 361.4(e)

in the Matter of the Applications of CWM Chemical Services, LLC (CWM), for the proposed Residual Management Unit Two (RMU-2) in Niagara County

---

**INTRODUCTION**

Pursuant to 6 NYCRR 361.4(e), the Chair of the Facility Siting Board and the Hearing Officer that is assigned to this proceeding are to enter into an agreement regarding their obligations and responsibilities with respect to the conduct of the hearing on the Certificate of Environmental Safety and Public Necessity (siting certificate) for which CWM is applying.

The intent of this Memorandum of Agreement (MOA) is to establish a relationship between the Facility Siting Board (Siting Board) and the Hearing Officer that is comparable to the relationship between the New York State Department of Environmental Conservation (DEC) Commissioner and an administrative law judge (ALJ) in a DEC permit hearing proceeding conducted pursuant to 6 NYCRR Part 624.

CWM has submitted applications for a siting certificate as well as various permits under the jurisdiction of DEC. Pursuant to Environmental Conservation Law § 27-1105(3)(e) the appointed Hearing Officer shall conduct the hearing which, under 6 NYCRR 361.4(b), is to be a joint hearing for the application for a siting certificate and applications for DEC permits for construction and operation of the proposed facility.

**GENERAL RULE**

The provisions of 6 NYCRR Part 624 are applicable to the joint proceeding to the extent those provisions are not inconsistent with ECL Article 27, Title 11, and 6 NYCRR Part 361 (see 6 NYCRR 361.1[h]). Except as otherwise noted, the relationship between the Hearing Officer and the Siting Board (through its Chair) shall be the same as that between the ALJ and DEC Commissioner under Part 624.

Pursuant to ECL 27-1105(3)(e), members of the Siting Board may participate in the hearing at their option. The participation of members of the Siting Board members shall be coordinated by the Chair (or designee) of the Siting Board in concert with the Hearing Officer.

As a joint hearing, this proceeding may involve matters that are exclusively permit-related, matters that are exclusively certificate-related, and matters relevant to both the permit and certificate applications.

The Hearing Officer shall exercise his judgment to refer certificate-related matters to the Siting Board, permit-related matters to the DEC Commissioner, and matters that are relevant to both the certificate and permit applications to both the DEC Commissioner and the Siting Board. In the latter category, it shall be left to the Siting Board and the DEC Commissioner to resolve any differences.

Communications with the Hearing Officer on behalf of the Siting Board shall be conducted through its Chair (or designee).

#### **CONDUCT OF THE PUBLIC STATEMENT HEARING AND ISSUES CONFERENCE**

The Hearing Officer shall conduct the public statement hearing (also known as a public comment hearing or legislative hearing) and the issues conference, in accordance with 6 NYCRR Part 624, to the extent those provisions are not inconsistent with Title 11 of Article 27 of the ECL and 6 NYCRR Part 361.

Persons may appeal from any ruling of the Hearing Officer on party status and issues, within 5 days of the ruling, or within such other time period as the Hearing Officer may establish. All such appeals shall be filed with the DEC Commissioner, the Siting Board Chair, or both, at the direction of the Hearing Officer.

#### **CONDUCT OF HEARING ON ISSUES IDENTIFIED FOR ADJUDICATION**

In the event that issues are identified for adjudication, the Hearing Officer shall conduct the joint hearing consistent with 6 NYCRR 624.8. Appeals of any ruling of the Hearing Officer during any adjudication shall be filed with the DEC Commissioner, the Siting Board Chair, or both, at the direction of the Hearing Officer.

### **POST-HEARING PROCEDURE**

Pursuant to ECL 27-1105(3)(g), the Siting Board's decision on the certificate application shall be:

upon the record made before the hearing officer, after receiving briefs from the parties to the hearing and exceptions to the recommended decision of such hearing officer and after hearing such oral argument as the board shall determine to be necessary.

For the purposes of this joint hearing, the Hearing Officer will prepare a recommended decision, which will be combined with a hearing report (Recommended Decision/Hearing Report) and will be circulated to the parties in accordance with 6 NYCRR 624.13(a)(2) and ECL 27-1105(3)(g). The document will include findings of fact and conclusions for the use of the Siting Board and the DEC Commissioner in reaching their final decisions, respectively, on the certificate and the DEC permit applications.

The Hearing Officer will distribute the Recommended Decision/Hearing Report to the parties to the proceeding for briefs or exceptions according to a schedule that the Hearing Officer establishes at that time.

In the event that the Siting Board determines that oral argument by the parties is necessary after the receipt of the Hearing Officer's Recommended Decision/Hearing Report and any briefs and exceptions, the Siting Board may ask the Hearing Officer to conduct a supplemental hearing at which to receive those arguments.

The Chair of the Siting Board will advise the Hearing Officer when the post-hearing process is concluded with respect to the Siting Board. The Hearing Officer shall thereafter declare when the record is closed, consistent with 6 NYCRR Part 624, and shall mail notice of record closure to all parties and the Siting Board.

**AMENDMENT OF THE MOA**

In the event that the Chair of the Siting Board and the Hearing Officer determine that this MOA requires amendment or revision, the Chair and the Hearing Officer shall incorporate such amendments or revisions, provided that the members of the Siting Board are given advance notice of such amendments or revisions.

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION  
OFFICE OF HEARINGS AND MEDIATION  
SERVICES

FACILITY SITING BOARD

  
\_\_\_\_\_  
DANIEL P. O'CONNELL  
HEARING OFFICER

Dated: July 8, 2014

  
\_\_\_\_\_  
JOSEPH MARTENS  
CHAIR

Dated: July 9, 2014

  
\_\_\_\_\_  
PAUL D'AMATO  
CHAIR-DESIGNEE

Dated: July 3, 2014