

FACILITY SITING BOARD

In the Matter of the Application of
CWM Chemical Services, L.L.C. For a Certificate of
Environmental Safety and Public Necessity,
Residuals Management Unit-Two

NYS Department of Environmental Conservation
Commissioner Joseph J. Martens, Chair

NYS Department of Economic Development
Commissioner Kenneth Adams

NYS Department of Health
Acting Commissioner Howard A. Zucker, M.D.

NYS Department of State
Secretary of State Cesar A. Perales

NYS Department of Transportation
Commissioner Joan McDonald

PRESENT:

Paul D'Amato, Chair-Designee

Lynn Marinelli, Designee

Matthew Forcucci, Designee

Dierdre K. Scozzafava, Designee

Darrell Kaminski, P.E., Designee

John F. Benoit, Ad hoc Member

Lee Simonson, Ad hoc Member

A. Scott Weber, Ph.D., Ad hoc Member

Hearing Officer/Administrative Law Judge
Daniel P. O'Connell
Support Staff

Louis A. Alexander, Assistant Commissioner
for Hearings and Mediation Services

Michael Caruso
Facility Siting Board Counsel

13:29:46 1 **MR. D'AMATO:** Okay. I have 1:30. Let's go
13:29:49 2 on the record, please. Good afternoon everyone.
13:29:51 3 Thank you for being here. Please let me apologize
13:29:55 4 up front for my voice. I've been fighting off a
13:29:59 5 little something for a couple of weeks and we'll
13:30:01 6 see how well it cooperates this afternoon.

13:30:03 7 The meeting of the facility Siting Board is
13:30:06 8 now in session. This is Wednesday, July 2nd, 2014.
13:30:09 9 The time is 1:30. This meeting will be recorded by
13:30:12 10 a stenographer, so board members please make sure
13:30:16 11 you speak loudly enough. She's asked us to use the
13:30:20 12 microphones as well to assist.

13:30:22 13 And I'll ask the stenographer, if you miss
13:30:25 14 anything and need it to be repeated, don't be shy,
13:30:29 15 feel free to interrupt us and have us repeat
13:30:29 16 ourselves.

13:30:32 17 My name is Paul D'Amato. It's my privilege
13:30:36 18 to be the director of the Region 8 office of the
13:30:38 19 DEC. For those of you who may not know this, the
13:30:43 20 Region 8 is your immediate neighbor to the east.
13:30:45 21 We cover 11 counties in the Greater Rochester
13:30:48 22 region and Finger Lakes from Lake Ontario all the
13:30:53 23 way to the Pennsylvania border.

13:30:56 1 Commissioner Joe Martens, as DEC
13:30:56 2 commissioner, was named the chair of the facility
13:30:58 3 Siting Board. He's asked me to serve in that
13:31:01 4 capacity as his designee. In that role I will be
13:31:05 5 chairing this organizational meeting as well as
13:31:08 6 future meetings of this board.

13:31:10 7 I'd first like to welcome and thank my
13:31:13 8 fellow members of the board for your willingness to
13:31:16 9 serve in this capacity. I'd also like to thank our
13:31:19 10 hosts here in the Village for allowing us use of
13:31:23 11 their facility today.

13:31:24 12 The purpose of today's meeting is
13:31:27 13 organizational and procedural. It was scheduled as
13:31:30 14 required by the regulations, specifically 6 NYCRR
13:31:34 15 Part 361.

13:31:35 16 Board members have been provided a copy of
13:31:38 17 the agenda for today's meeting, and for those
13:31:41 18 members of the public who have joined us today a
13:31:43 19 copy is available at the sign-in table.

13:31:47 20 We'll be accomplishing what really is fairly
13:31:52 21 routine business today related to SEQRA and some
13:31:54 22 other matters which will allow us to move forward
13:31:58 23 in this process as a constituted board.

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13:32:02 1 The responsibility of the facility Siting
13:32:05 2 Board is to review the application by CWM Chemical
13:32:10 3 Services LLC for a certificate of environmental
13:32:12 4 safety and public necessity, commonly referred to
13:32:16 5 as a siting certificate.

13:32:17 6 It's the responsibility of the DEC
13:32:21 7 commissioner to consider CWM's SEQRA application
13:32:24 8 for DEC permits, and those were described in the
13:32:28 9 public notice published on June 11, 2014 in the
13:32:31 10 State's Environmental Notice Bulletin.

13:32:33 11 In a few minutes I will introduce counsel to
13:32:36 12 the Siting Board who will give a brief overview of
13:32:40 13 the application review process, the board's
13:32:42 14 responsibility in that process and how the two sets
13:32:44 15 of application materials are reviewed in one
13:32:47 16 administrative proceeding.

13:32:48 17 Today's meeting is not a public statement
13:32:51 18 hearing. That is the function and the purpose of
13:32:54 19 the July 16th hearing which will be held at the
13:32:57 20 Lewiston-Porter High School. There will be both
13:33:00 21 afternoon and evening sessions at that hearing.

13:33:03 22 At today's meeting, there will be no
13:33:06 23 discussion of the specifics of the pending

13:33:08 1 application or any concerns or issues that anyone
13:33:11 2 might have with them. As counsel will explain,
13:33:14 3 that will occur later in the process. Likewise,
13:33:16 4 today there will be no presentations or statements
13:33:19 5 by DEC staff, the applicant or members of the
13:33:23 6 public.

13:33:24 7 The members of the board will note that
13:33:26 8 their meeting packets contain both the public
13:33:28 9 notice and media advisory which were issued for
13:33:31 10 this meeting.

13:33:32 11 I would now like to ask each board member to
13:33:36 12 introduce him or herself for the record. If a
13:33:39 13 board member is a designee of an agency, please
13:33:42 14 identify your agency and the agency's commissioner
13:33:44 15 or agency head.

13:33:45 16 Why don't we start at this end of the table.
13:33:48 17 John.

13:33:50 18 **MR. BENOIT:** I am John Benoit. I am here as
13:33:55 19 an individual ad hoc member. I represent no
13:33:59 20 organization or any other individual except myself,
13:34:05 21 and I bring, presumably, background and experience
13:34:12 22 sufficient for me to contribute to these
13:34:16 23 proceedings.

13:34:17 1 **MR. D'AMATO:** Thank you, John.

13:34:19 2 **MR. FORCUCCI:** I'm Matt Forcucci. I'm the
13:34:21 3 designee representative for the State Health
13:34:24 4 Department in the Buffalo office and I'm here to
13:34:29 5 represent the interest of the State.

13:34:34 6 **MR. D'AMATO:** And your commissioner?

13:34:37 7 **MR. FORCUCCI:** Our commissioner is
13:34:42 8 Dr. Howard Zucker.

13:34:42 9 **MR. D'AMATO:** Thank you.

13:34:50 10 **MR. KAMINSKI:** I'm Darrell Kaminski. I'm
13:34:52 11 the regional director for the New York State
13:34:52 12 Department of Transportation Region 5. I'm here as
13:34:55 13 a designee for the Commissioner Joan McDonald.

13:35:01 14 **MR. D'AMATO:** I already introduced myself,
13:35:04 15 Paul D'Amato.

13:35:05 16 **MS. MARINELLI:** I'm Lynn Marinelli. I'm the
13:35:07 17 designee of the State Empire Development
13:35:11 18 Corporation. Kenneth Adams is the head of that,
13:35:13 19 and under the law is cited as commerce, so this is
13:35:17 20 the commerce part.

13:35:20 21 **MS. SCOZZAFAVA:** Hi. My name is Dierdre
13:35:21 22 Scozzafava. I'm the Deputy Secretary of State and
13:35:24 23 I'm the designee for Secretary of State Cesar

13:35:28 1 Perales.

13:35:30 2 **MR. SIMONSON:** My name is Lee Simonson and,
13:35:32 3 like John and Scott, I'm an ad hoc member
13:35:35 4 representing the community and I'm a local small
13:35:38 5 business owner, community volunteer and former
13:35:41 6 elected official. Thank you.

13:35:45 7 **DR. WEBER:** Good afternoon. I am Scott
13:35:46 8 Weber, ad hoc member as well. I've been on the UB
13:35:50 9 faculty at the University of Buffalo for 31 years.
13:35:54 10 Thank you.

13:35:55 11 **MR. D'AMATO:** Thank you, board members.

13:35:58 12 Pursuant to the Environmental Conservation
13:36:01 13 Law Section 27-1105, Administrative Law Judge,
13:36:05 14 Daniel P. O'Connell has been appointed to serve as
13:36:09 15 the hearing officer for purposes of this
13:36:11 16 administrative proceeding. Judge O'Connell is here
13:36:14 17 with us today and he's sitting to my immediate
13:36:16 18 right.

13:36:17 19 **JUDGE O'CONNELL:** Good afternoon.

13:36:18 20 **MR. D'AMATO:** Thank you for being here,
13:36:18 21 Judge.

13:36:21 22 Pursuant to 6 NYCRR Part 361, the chairman
13:36:23 23 of the Siting Board and the hearing officer shall

13:36:28 1 enter into a memorandum of agreement, or MOA,
13:36:30 2 regarding their obligations and responsibilities
13:36:32 3 with respect to conduct of this hearing. The
13:36:34 4 memorandum of agreement is in the board members
13:36:37 5 meeting packet and is to be executed by the hearing
13:36:40 6 officer and the chair of the facility Siting Board
13:36:43 7 or its designee.

13:36:45 8 The MOA references the requirements and
13:36:48 9 regulations by which the proceeding will be
13:36:50 10 governed. It addresses the conduct of the public
13:36:52 11 statement hearing and issues conference, conduct of
13:36:55 12 the hearing on any issues identified for
13:36:59 13 adjudication and posthearing procedures.

13:37:00 14 At this time, I would ask the board members
13:37:02 15 if they have any questions regarding the MOA today
13:37:06 16 that was in their packet and that they've had a
13:37:08 17 chance to review?

13:37:14 18 Hearing none, I will proceed to the final
13:37:17 19 execution of the MOA. Copies of the fully executed
13:37:21 20 memorandum of agreement shall be made available to
13:37:24 21 the parties in this proceeding and they also may be
13:37:27 22 requested from Assistant Commissioner Louis
13:37:31 23 Alexander from our central office in Albany.

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13:37:35 1 I would like next to introduce two members
13:37:40 2 of the staff assigned to support the board as this
13:37:42 3 process moves forward. First, as I just mentioned,
13:37:46 4 is Assistant Commissioner Louis A. Alexander. He
13:37:50 5 is our assistant commissioner for hearings and
13:37:53 6 mediation services. As the board members have come
13:37:56 7 to realize, Assistant Commissioner Alexander has
13:38:00 8 facilitated the organization of this board and the
13:38:02 9 scheduling of this meeting. He has and will
13:38:05 10 continue to provide assistance in all the
13:38:09 11 logistical aspects of the board and I want to thank
13:38:12 12 him for his work for us. He will be commenting on
13:38:16 13 a couple of the agenda items as this meeting moves
13:38:19 14 forward.

13:38:19 15 I also want to take this opportunity to
13:38:22 16 introduce Michael Caruso. Michael is a DEC
13:38:24 17 Administrative Law Judge, but for purposes of this
13:38:27 18 hearing and proceeding he has been assigned as
13:38:30 19 counsel to the Siting Board. I've asked Michael to
13:38:33 20 give a brief presentation on this process which he
13:38:36 21 will do in a few minutes.

13:38:37 22 Board members, as well as members of the
13:38:40 23 public who have joined us today, should all be

13:38:43 1 aware that all of the CWM application materials are
13:38:47 2 available in electronic format as well as an entire
13:38:50 3 hard copy being placed at the document repository.
13:38:53 4 The repositories for a hard copy are at the
13:38:56 5 Youngstown Free Library, the Porter Town Hall, the
13:38:59 6 DEC Region 9 office and the DEC central office in
13:39:03 7 Albany.

13:39:04 8 The DEC has also developed a -- excuse me --
13:39:07 9 a new CWM application gateway page and which can be
13:39:13 10 found on our Web site at dec.ny.gov. The full
13:39:20 11 address is /chemical/8766.html. Board members have
13:39:28 12 been provided a copy of that gateway page in their
13:39:32 13 packets as well.

13:39:34 14 Board members also previously received hard
13:39:37 15 copies of CWM's Part 361 application for the siting
13:39:41 16 certificate and a copy of the draft environmental
13:39:46 17 impact statement for the project which includes
13:39:47 18 appendices that are on a disk.

13:39:50 19 As I've indicated earlier, I've asked
13:39:55 20 counsel to the board to provide an overview of the
13:39:58 21 process that we're in. I would just remind
13:40:00 22 everyone that this is an overview of the procedure
13:40:03 23 and not a discussion of any concerns or issues

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13:40:06 1 related to the application.

13:40:07 2 Mr. Caruso, would you please go ahead with
13:40:10 3 the presentation.

13:40:14 4 **MR. CARUSO:** Thank you, Paul.

13:40:18 5 Welcome again everybody, and I echo Paul's
13:40:22 6 thanks for serving as a facility board member.

13:40:24 7 As you know, the board was formed for
13:40:26 8 service by the Environmental Conservation Law
13:40:33 9 Article 27 Title 11. And the Siting Board is
13:40:41 10 constituted to review CWM's application for a Part
13:40:45 11 361 certificate.

13:40:46 12 The siting board's review is going to be
13:40:50 13 conducted jointly with the DEC's review of CWM's
13:41:06 14 application -- the Siting Board review is conducted
13:41:08 15 jointly with CWM's application for DEC permit.

13:41:13 16 The DEC permit applications include the
13:41:16 17 hazardous waste facility permit modification
13:41:20 18 application; a state freshwater wetlands permit
13:41:24 19 application; a water quality certification
13:41:26 20 application; and a state pollution discharge
13:41:31 21 elimination system permit modification application.

13:41:33 22 The Office of Hearings and Mediation
13:41:41 23 Services assigned Judge O'Connell to conduct the

13:41:43 1 hearings on the DEC permit application. DEC
13:41:44 2 Commissioner Martens appointed Judge O'Connell
13:41:45 3 jointly to conduct the hearings related to the
13:41:48 4 siting certificate. As a result, Judge O'Connell
13:41:52 5 will be establishing an administrative record that
13:41:55 6 will be the basis for both the Siting Board
13:41:58 7 certificate and again the DEC commissioner's
13:42:00 8 decision on the permit applications.

13:42:01 9 As counsel to the Siting Board, I will be
13:42:05 10 providing the board with legal advice on the
13:42:09 11 applicable statutory and regulatory requirements.

13:42:12 12 In this proceeding, the Siting Board will be
13:42:14 13 reviewing such things as the siting certificate
13:42:16 14 application, which you already have; the draft
13:42:19 15 environmental impact statement; the hazardous waste
13:42:22 16 facility siting plan; the regulatory siting
13:42:25 17 criteria found in Part 361; written and oral public
13:42:33 18 comments; testimony of witnesses; legal arguments;
13:42:38 19 the ALJ hearing report; and other record documents;
13:42:45 20 to determine whether or not to grant the Siting
13:42:47 21 certificate to CWM.

13:42:54 22 In reaching your decision, the board will
13:42:56 23 need to determine the siting of the proposed

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13:42:57 1 facility with respect to things such as residential
13:43:00 2 areas, contiguous populations; the siting criteria
13:43:05 3 score, which will be explained to you much later;
13:43:09 4 and the state hazardous waste facility siting plan.
13:43:14 5 And the board, as an involved agency under SEQRA,
13:43:20 6 will also be required to issue a SEQRA findings
13:43:21 7 statement as part of its review, but that comes
13:43:24 8 much later in the process.

13:43:25 9 The siting criteria in Part 361 with all the
13:43:29 10 other applicable statutory or regulatory provisions
13:43:33 11 will be reviewed with the Siting Board during the
13:43:35 12 course of the proceedings, and later times.
13:43:39 13 Briefly, however, Part 361.7 contains 14 general
13:43:44 14 categories that are reviewed by application and
13:43:48 15 scoring of 32 specific criteria, so these are
13:43:51 16 things that I will help the board familiarize
13:43:54 17 themselves with as time goes on.

13:43:56 18 The Siting Board members may attend and
13:44:01 19 participate in all the hearings, and Judge
13:44:04 20 O'Connell will guide the course and conduct of the
13:44:05 21 public comment hearing, issues conference, and any
13:44:07 22 adjudicatory hearing.

13:44:10 23 Now the procedure is largely based on the

13:44:14 1 procedure that's in place according to the DEC
13:44:18 2 regulations that apply to permit hearings which is
13:44:21 3 Part 624.

13:44:23 4 As you know, and Paul mentioned, there's a
13:44:26 5 legislative hearing coming up on July 16th. That's
13:44:29 6 also known as a public statement hearing and a
13:44:32 7 public comment hearing. This is an opportunity for
13:44:35 8 the public to express their views on the project
13:44:38 9 and applications and they may do so orally, in
13:44:41 10 writing or both.

13:44:43 11 And secondly, as the two letters of public
13:44:49 12 notice indicated, the public comment period
13:44:52 13 concludes on September 5th, 2014, and the public
13:44:56 14 can continue to provide written comments by letter
13:44:58 15 and e-mail to the Office of Hearings and Mediation
13:45:02 16 Services.

13:45:04 17 The parties to the proceeding are DEC staff,
13:45:06 18 and the applicant and anybody that's been granted
13:45:09 19 party status by Judge O'Connell. Persons seeking
13:45:14 20 to participate in the issues conference and any
13:45:17 21 subsequent public hearing, if they are necessary,
13:45:19 22 must file a petition containing the information
13:45:23 23 required by the regulations. The June 11th notice

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13:45:28 1 indicated petitions for party status must be
13:45:31 2 received in the Office of Hearings and Mediation
13:45:33 3 Services by September 30th, 2014.

13:45:36 4 An issues conference will be scheduled by
13:45:41 5 Judge O'Connell after the petitions for party
13:45:43 6 status have been received, and participation at the
13:45:46 7 issues conference is limited to the Department
13:45:49 8 staff, the applicant, and those persons requesting
13:45:53 9 party status.

13:45:57 10 And just to give you an idea of what the
13:46:00 11 whole purpose of the issues conference is, it's
13:46:03 12 fivefold, and I'll read it. This is right out of
13:46:06 13 the regulations. It's to hear argument on whether
13:46:08 14 party status should be granted to any petitioner,
13:46:11 15 and to narrow or resolve any disputed issues of
13:46:16 16 fact. Third, to hear argument on whether disputed
13:46:20 17 issues of fact that are not resolved meet the
13:46:20 18 standards for adjudicable issues. Fifth -- or
13:46:24 19 fourth, to determine whether legal issues exist
13:46:27 20 whose resolution is not dependent on facts that are
13:46:31 21 in substantial dispute; and, if so, to hear
13:46:34 22 argument on the merits of those issues; and fifth
13:46:36 23 to decide any pending motions.

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13:46:38 1 Now, after the issues conference, Judge
13:46:41 2 O'Connell will subsequently issue a ruling and that
13:46:44 3 will determine persons -- what persons are being
13:46:47 4 granted party status; which issues satisfy the
13:46:49 5 requirements for adjudicable issues; and he'll also
13:46:52 6 rule on the merits of any legal issues, if
13:46:55 7 practicable; and decide any pending motions.

13:46:59 8 Now this will be another little background
13:47:02 9 here. Some of these rulings are appealable and so
13:47:07 10 during the course of the proceedings the rulings
13:47:09 11 that are appealable would include, rulings to
13:47:13 12 include or exclude any issue for adjudication, a
13:47:17 13 ruling on the merits of any legal issues made as
13:47:17 14 part of that issues ruling; and/or rulings
13:47:20 15 affecting party status.

13:47:22 16 So if the board and the judge receive
13:47:27 17 appeals of decisions of his rulings, they're going
13:47:31 18 to be -- they could be decided by -- through an
13:47:33 19 interim decision to be decided by the DEC
13:47:37 20 commissioner, the Siting Board or both, depending
13:47:40 21 on what the issue was that was raised. And we will
13:47:43 22 guide you through all that, when these things come
13:47:45 23 in. We will walk you through this process.

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13:47:48 1 Now, the last of the hearings will be an
13:47:53 2 adjudicatory hearing, if it's necessary. And these
13:47:57 3 are held to -- so the parties can litigate any
13:48:01 4 issues that are determined to warrant adjudication.
13:48:04 5 And that's probably the hearing that you're most
13:48:06 6 familiar with because it's like any courtroom drama
13:48:09 7 that you've seen on TV. You know, there's going to
13:48:12 8 be testimony of witness, evidence, experts,
13:48:14 9 cross-examination of witnesses, et cetera, so
13:48:16 10 that's -- that would be about the last step in the
13:48:21 11 process.

13:48:25 12 And then after conclusion of all the
13:48:28 13 hearings, the Siting Board will receive a complete
13:48:32 14 record of the hearings from the Office of Hearings
13:48:37 15 and Mediation Services that have been created by
13:48:40 16 and conducted by Judge O'Connell.

13:48:42 17 The board will review the record and decide
13:48:45 18 whether to grant the application, deny it, or grant
13:48:48 19 it upon terms, conditions, limitations or
13:48:50 20 modifications that the board deems appropriate.
13:48:54 21 The chair of the Siting Board will then mail a
13:48:57 22 final decision to the applicant, the DEC, and all
13:48:59 23 the parties to the proceedings.

13:49:01 1 So in a nutshell, right now we're going
13:49:04 2 forward. We've got a legislative hearing, followed
13:49:07 3 by an issues conference, and then potentially an
13:49:11 4 adjudicatory hearing down the line. And as I said,
13:49:15 5 we'll be available. I will be available throughout
13:49:17 6 the process and throughout the proceedings to
13:49:19 7 answer your legal questions, provide you with legal
13:49:22 8 advice on any given issue. Okay. Thank you.

13:49:25 9 **MR. D'AMATO:** Thank you very much, Mike.

13:49:29 10 Next on the agenda of the board business is
13:49:33 11 the adoption of SEQRA resolution. The proposal by
13:49:37 12 CWM is subject to State Environmental Quality Review.
13:49:38 13 Act or SEQRA, as we typically refer to it shorthand.

13:49:44 14 The Department of Environmental Conservation
13:49:46 15 declared themselves to be a lead agency and in that
13:49:49 16 capacity determined that the proposed landfill
13:49:52 17 project to be a Type I action. The DEC issued a
13:49:55 18 positive declaration on October 12th, 2005
13:49:59 19 requiring the preparation of a draft environmental
13:50:02 20 impact statement to evaluate the potential impacts
13:50:05 21 associated with the proposed landfill project.

13:50:08 22 The resolution that the facility Siting
13:50:11 23 Board is considering today would concur with DEC's

13:50:15 1 determination that the proposed landfill project is
13:50:17 2 a Type I action and it also acquiesces to the DEC
13:50:22 3 serving and continuing to serve as lead agency for
13:50:25 4 this project. And the draft resolution was
13:50:28 5 provided to the board members prior to this
13:50:32 6 meeting.

13:50:33 7 The resolution will confirm the role of the
13:50:36 8 facility Siting Board as an involved agency
13:50:39 9 pursuant to SEQRA.

13:50:41 10 As you're probably aware, an involved agency
13:50:44 11 is any agency that has a discretionary approval
13:50:47 12 over a project subject to SEQRA. Since this board
13:50:51 13 will decide whether or not to issue the siting
13:50:53 14 certificate, the board is an involved agency under
13:50:57 15 SEQRA.

13:50:58 16 I think it's important to realize that
13:51:00 17 agreeing to DEC remaining as lead agency under
13:51:04 18 SEQRA does not usurp or diminish this board's
13:51:09 19 authority or responsibility to review the
13:51:12 20 application for the siting certificate and to make
13:51:15 21 its decision relative to that application.

13:51:18 22 Now it is considered appropriate to read the
13:51:24 23 content of the resolution into the record so that

13:51:28 1 it's in the transcript.

13:51:35 2 This is a resolution related to an
13:51:38 3 application for a certificate of environmental
13:51:40 4 safety and public necessity and the State
13:51:44 5 Environmental Quality Review Act.

13:51:46 6 At a meeting of the facility Siting Board
13:51:50 7 relating to the application of CWM Chemical
13:51:53 8 Services LLC for a certificate of environmental
13:51:57 9 safety and public necessity pursuant to Title 11 of
13:52:02 10 Article 27 of the New York State Environmental
13:52:05 11 Conservation Law and 6 NYCRR Part 361, to a site --
13:52:12 12 to site a proposed residuals management unit two,
13:52:17 13 landfill project at 1550 Balmer Road, Model City
13:52:22 14 New York, convened in public session on the 2nd day
13:52:25 15 of July 2014 at 1:30 p.m. There were present all
13:52:32 16 members of the board. No one is absent.

13:52:36 17 And we have offered the following resolution
13:52:39 18 and move for its adoption:

13:52:41 19 Whereas, the board is authorized and
13:52:45 20 empowered by Title 11 of Article 27 of the ECL to
13:52:50 21 review an application for a certificate of
13:52:53 22 environmental safety and public necessity or siting
13:52:58 23 certificate, participate in hearings, review the

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13:53:03 1 established record and issue a decision either
13:53:05 2 granting the application, denying it, or granting
13:53:08 3 it upon such terms, conditions, limitations or
13:53:12 4 modifications thereof as the board may deem
13:53:17 5 appropriate.

13:53:17 6 And whereas, the board will evaluate CWM's
13:53:22 7 application for a siting certificate while various
13:53:26 8 permit applications are also being considered by
13:53:28 9 the New York State Department of Environmental
13:53:31 10 Conservation.

13:53:32 11 Whereas, the matters will be considered in
13:53:35 12 joint hearings administered by the board and the
13:53:38 13 DEC's Office of Hearings and Mediation Services.

13:53:42 14 Whereas, Article 8 of the ECL and 6 NYCRR
13:53:49 15 Part 617 require the proposed RMU-2 landfill
13:53:56 16 project to undergo a State Environmental Quality
13:53:59 17 Review process in conjunction with the submission
13:54:03 18 of the siting certificate and permit applications.

13:54:06 19 Whereas, DEC declared itself lead agency
13:54:10 20 pursuant to SEQRA and determined the proposed RMU-2
13:54:16 21 landfill project to be a Type I action as described
13:54:20 22 under 6 NYCRR 617.4, and issued a positive
13:54:27 23 declaration in accordance with 6 NYCRR 617.7 on

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13:54:34 1 October 12th, 2005. Accordingly, CWM submitted a
13:54:39 2 draft environmental impact statement which
13:54:42 3 evaluates potential environmental impacts
13:54:45 4 associated with the proposed RMU-2 landfill
13:54:48 5 project. By notice dated May 7th, 2014, DEC staff
13:54:54 6 determined the applications for a siting
13:54:57 7 certificate, the various DEC permits and the DEIS
13:55:02 8 to be complete and ready for public review.

13:55:05 9 Whereas, the board review of and decision on
13:55:09 10 CWM's application for a siting certificate for the
13:55:11 11 proposed RMU-2 landfill project is an action as
13:55:17 12 defined in SEQRA.

13:55:19 13 Whereas, pursuant to ECL Article 8 and 6
13:55:26 14 NYCRR Part 617, the board is an involved agency for
13:55:30 15 this project.

13:55:32 16 Whereas, pursuant to 6 NYCRR 361.3(d)(2),
13:55:41 17 the DEC shall be designated lead agency for
13:55:45 18 purposes of SEQRA, unless the DEC and the board
13:55:48 19 acting through majority vote, mutually agree
13:55:52 20 otherwise.

13:55:52 21 Whereas, the board agrees that the DEC
13:55:55 22 should serve as lead agency, due in part to the
13:55:58 23 various applications for DEC permits that the DEC

13:56:02 1 is considering.

13:56:04 2 And now, therefore, be it resolved by the
13:56:08 3 members of the facility Siting Board as follows:

13:56:11 4 The facility Siting Board concurs with the
13:56:15 5 determination of the New York State Department of
13:56:17 6 Environmental Conservation that the proposed RMU-2
13:56:24 7 landfill project is a Type I action, concurs with
13:56:26 8 the DEC serving as lead agency for this project,
13:56:31 9 and shall serve as an involved agency for purposes
13:56:33 10 of compliance with the requirements of the State
13:56:37 11 Environmental Quality Review Act in this
13:56:43 12 proceeding.

13:56:43 13 I would now move for adoption of the
13:56:43 14 resolution and ask if there's a second.

13:56:43 15 **MR. BENOIT:** Seconded.

13:56:43 16 **MR. D'AMATO:** John Benoit has seconded.

13:56:55 17 Is there any discussion board members need
13:56:57 18 to have prior to a vote on resolution?

13:57:02 19 Hearing none, let's call for a vote. All in
13:57:04 20 support of adopting the resolution by this board
13:57:08 21 please raise your hand.

13:57:08 22 (Board members raised hands.)

13:57:16 23 **MR. D'AMATO:** I'll note for the record the

13:57:19 1 vote is unanimous and there were -- because it was
13:57:19 2 unanimous, there obviously was no opposition or
13:57:29 3 abstention so the record can reflect that. Thank
13:57:29 4 you.

13:57:31 5 I will formally execute the resolution after
13:57:35 6 Assistant Commissioner Alexander fills in some of
13:57:39 7 the information that could not be filled in until
13:57:43 8 the vote.

13:57:46 9 The next item on today's agenda is a
13:57:50 10 discussion of the community advisory committee.
13:57:54 11 I've asked Assistant Commissioner Alexander to go
13:57:57 12 ahead and take that part of the discussion and tell
13:58:00 13 us about the community advisory committee process.

13:58:09 14 **MR. ALEXANDER:** Thank you.

13:58:10 15 I'd like to speak just briefly regarding the
13:58:12 16 community advisory committee or the CAC which is
13:58:16 17 referenced in the Environmental Conservation Law.

13:58:19 18 In your packet is a copy of the provision of
13:58:24 19 the Environmental Conservation Law Section 27-1113
13:58:31 20 which sets forth the framework for the CAC.

13:58:36 21 The statute provides that a county in which
13:58:39 22 an industrial hazardous waste disposal facility is
13:58:44 23 to be located is to constitute a committee for the

13:58:49 1 purpose of entering into a dialogue with the
13:58:51 2 applicant to develop mutually acceptable solutions
13:58:55 3 to the problems which may be created by the siting
13:59:00 4 of the facility.

13:59:01 5 The statute provides that the CAC is to have
13:59:04 6 between nine and 15 members, and is it also
13:59:06 7 establishes a geographical composition for that
13:59:10 8 committee.

13:59:12 9 Specific to this board, after the board
13:59:15 10 receives notification of the constitution of the
13:59:19 11 CAC, the chair of the facility Siting Board is to
13:59:23 12 convene and preside over a conference between the
13:59:27 13 CAC and the applicant.

13:59:30 14 The chair's role is to endeavor to foster a
13:59:35 15 dialogue between the applicant and the CAC. To
13:59:38 16 that end, the chair may convene and preside over
13:59:43 17 additional conferences as may be necessary. So
13:59:47 18 basically the chair serves in a facilitative role
13:59:52 19 with respect to the CAC and the applicant.

13:59:56 20 I would also like to note that in your
13:59:59 21 packet there is a letter dated June 9th, 2014, from
14:00:03 22 the supervisor of Lewiston in which he wrote to
14:00:11 23 department staff with respect to the delegates of

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14:00:13 1 the Town of Lewiston to the CAC.

14:00:18 2 Any further communications that are received
14:00:21 3 regarding the CAC will also be distributed to
14:00:25 4 members of the board as this process continues.

14:00:29 5 Thank you.

14:00:35 6 **MR. D'AMATO:** Thank you, Mr. Alexander.

14:00:38 7 The next item on the agenda is a -- is the
14:00:42 8 upcoming public statement hearing on July 16th. It
14:00:46 9 actually has already been mentioned twice during
14:00:48 10 today's board meeting. Mr. Caruso mentioned it and
14:00:51 11 I mentioned it earlier. We just wanted to make
14:00:54 12 sure there was no miscommunication about this
14:00:58 13 meeting somehow substituting for that one.

14:01:01 14 So as you all know now, that meeting will be
14:01:04 15 on July 16th. There will be an afternoon session
14:01:09 16 beginning at 1 p.m. and an evening session
14:01:13 17 beginning at 6:30 p.m.

14:01:16 18 And that is the proceeding in which the
14:01:18 19 public will be given the opportunity to make
14:01:20 20 statements on the record regarding the application
14:01:24 21 to the Siting Board as well as the applications
14:01:27 22 pending before DEC.

14:01:31 23 For those members of the public that are

14:01:34 1 here, you should also be aware, if you're not, that
14:01:37 2 that is not your only opportunity to comment upon
14:01:40 3 these applications. As Mr. Caruso indicated
14:01:43 4 earlier, the public comment period runs through
14:01:48 5 September 5th and comments could be submitted to
14:01:52 6 the DEC in writing regardless of whether you get
14:01:58 7 the opportunity on July 16th or not.

14:02:02 8 The Administrative Law Judge will be
14:02:06 9 responsible for running that hearing and all of the
14:02:12 10 logistics associated with that. The members of the
14:02:18 11 Siting Board have indicated that they will be
14:02:21 12 present at that meeting to hear firsthand the
14:02:26 13 comments that are made that afternoon and evening.

14:02:30 14 However, there will be a stenographic record
14:02:33 15 to that proceeding as well, so in the event that
14:02:37 16 some unavoidable conflict were to come up for --
14:02:41 17 one or more of the board members, you will not miss
14:02:44 18 any part of the record. We will have that
14:02:45 19 transcript available to us subsequently.

14:02:48 20 The next item on the agenda is a brief
14:02:52 21 discussion of the ex parte rules that apply to us
14:02:55 22 as Siting Board members. And again I will turn the
14:03:00 23 discussion of some of the details of that over to

14:03:03 1 Assistant Commissioner Alexander.

14:03:11 2 **MR. ALEXANDER:** Now, as has been discussed,
14:03:13 3 the facility Siting Board serves as a decision
14:03:17 4 maker in determining whether to grant or deny a
14:03:21 5 siting certificate for this project.

14:03:23 6 So in light of the board's role as decision
14:03:26 7 maker, the board and its members are subject to
14:03:29 8 strict limitations as to their communications with
14:03:33 9 individuals who are not members of the Siting Board
14:03:36 10 or who are not staff assigned to the Siting Board.

14:03:40 11 This limitation, which is more formally
14:03:44 12 known as the ex parte rule, is established by the
14:03:48 13 New York State Administrative Procedure Act and is
14:03:51 14 also incorporated into the regulations of the
14:03:54 15 Department of Environmental Conservation. So, at
14:03:58 16 this time, I'd like to make just a few general
14:04:01 17 comments regarding this rule and its implication.

14:04:05 18 The ex parte rule establishes that, on
14:04:09 19 issues of fact relating to a proceeding, the
14:04:12 20 board's members -- the board's members may not
14:04:16 21 communicate directly or indirectly with any person
14:04:20 22 or party.

14:04:22 23 So, for example, if a member of the public

14:04:26 1 wanted to discuss a factual issue relating to this
14:04:30 2 proceeding with a board member, that discussion
14:04:34 3 would not be permissible under the ex parte rule.
14:04:40 4 If an individual came and wanted to give some
14:04:43 5 materials to one of the board members regarding
14:04:46 6 factual issues in this proceeding, that also would
14:04:49 7 not be permissible under the ex parte rule.

14:04:53 8 Now all sorts of all communications are
14:04:56 9 subject to this rule, face-to-face conversations,
14:04:59 10 phone calls, written correspondence, e-mails,
14:05:03 11 instant messaging. Simply put, board members by
14:05:06 12 this rule are not allowed to engage in
14:05:10 13 off-the-record communications on factual issues
14:05:13 14 relating to this proceeding.

14:05:14 15 So if someone should approach you, say a
14:05:18 16 neighbor, say a colleague at work or a local
14:05:21 17 official, a representative of, you know, an
14:05:24 18 environmental group or a citizens group that seeks
14:05:28 19 to discuss the factual issues relating to this
14:05:31 20 proceeding, those would not be permissible under
14:05:34 21 the ex parte rule.

14:05:35 22 Basically the intent is for factual issues
14:05:40 23 to be developed through the formal hearing process,

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14:05:43 1 that formal hearing process that was explained by
14:05:47 2 Mr. Caruso earlier on in this session. It is meant
14:05:53 3 for the board's decision to be based solely on that
14:05:56 4 formally developed record, and this development of
14:05:59 5 the record will be through the written comment
14:06:02 6 period, the issues conference, the petitions for
14:06:06 7 party status, submissions that are authorized to be
14:06:09 8 presented during this proceeding and any
14:06:13 9 adjudicatory hearing that may be held.

14:06:18 10 Of course nothing restricts a board member
14:06:20 11 from discussing the proceeding with other board
14:06:24 12 members or staff assigned to the board to assist.

14:06:30 13 For members of the board who are state
14:06:34 14 agency representatives, this rule applies both to
14:06:37 15 them and their commissioners.

14:06:41 16 Now in the event that an ex parte
14:06:45 17 communication does happen, then the chair of the
14:06:50 18 board should be immediately notified who will then
14:06:53 19 take the necessary steps to address that
14:06:56 20 communication.

14:06:59 21 Although certain what you would call,
14:07:01 22 ministerial inquiries, such as inquiries about
14:07:05 23 dates, hearing schedules and the like, do not fall

14:07:08 1 within the prohibitions of the ex parte rule, it
14:07:11 2 would be recommended that any such inquiries should
14:07:14 3 be directed to the chair who can handle them
14:07:18 4 accordingly.

14:07:20 5 I should indicate on a related note, press
14:07:25 6 inquiries for this proceeding are primarily being
14:07:28 7 handled through the DEC's press office. Peter
14:07:32 8 Constantakes is the press or the public information
14:07:38 9 officer and his number is (518) 402-8000.

14:07:44 10 So, as we just go through this process and
14:07:47 11 we go through the various stages we'll be, you
14:07:51 12 know, explaining in more detail the various
14:07:53 13 applications of the ex parte rules to those
14:07:55 14 segments of the -- of the process.

14:07:58 15 The bottom line, the communications that the
14:08:00 16 board has relative to this matter are to be
14:08:06 17 addressed through the formal process and that, you
14:08:11 18 know, if you are approached by anyone who indicates
14:08:16 19 that they'd like to discuss the matter with you,
14:08:20 20 the fact is since you're serving as decision maker
14:08:24 21 basically in quasi judicial capacity, you would
14:08:28 22 need to decline to have those conversations.

14:08:32 23 So a nutshell, that is the scope of the ex

14:08:36 1 parte rule.

14:08:37 2 There are also restrictions in terms of
14:08:40 3 discussing law and policy. And in those
14:08:44 4 situations, if the law and policy issues are
14:08:48 5 raised, an opportunity must be given, noticed to
14:08:54 6 all the other parties in the proceeding and the
14:08:56 7 opportunity for those parties to participate in
14:08:59 8 that discussion and also be heard.

14:09:04 9 So that's a summary of, you know, the rule
14:09:07 10 that I wanted to impart today.

14:09:31 11 **MR. D'AMATO:** Thank you, Mr. Alexander. I
14:09:36 12 just had one note as, in case there's any confusion
14:09:41 13 on the part of the board or anyone that's with us
14:09:43 14 today, that rule also applies to communications to
14:09:47 15 the department staff that are reviewing the DEC
14:09:53 16 applications.

14:09:54 17 For example, myself as a DEC employee, we
14:09:56 18 also have very strict rules that I am not to
14:09:59 19 discuss this matter at all with those who are
14:10:02 20 responsible for reviewing the DEC applications, so
14:10:06 21 that applies within DEC as well as to individuals
14:10:12 22 outside the DEC.

14:10:17 23 The next item on the agenda is really just a

14:10:21 1 question as to whether the board members have
14:10:26 2 anything further they wish to discuss during this
14:10:29 3 organizational meeting today.

14:10:31 4 Before getting to that, I do want to
14:10:35 5 recognize that the board has received three pieces
14:10:39 6 of correspondence that are now in your meeting
14:10:45 7 packet. One is a letter that was addressed to both
14:10:50 8 Administrative Law Judge O'Connell and myself dated
14:10:53 9 June 30th, 2014. The second is the letter that
14:11:00 10 Assistant Commissioner Alexander referenced that
14:11:04 11 was received from the Town of Lewiston which was
14:11:08 12 dated I believe June 9th, 2014. And the third is a
14:11:13 13 letter dated June 24th, 2014, which included, as an
14:11:20 14 attachment, the resolution from the Niagara County
14:11:25 15 legislature. Those are now the property of and
14:11:30 16 included in the board's business.

14:11:36 17 Other than that, is there any business or
14:11:40 18 discussion that board members need to have?
14:11:44 19 Obviously we're at the beginning stages of this
14:11:47 20 review process and there's a lot more to come, but
14:11:51 21 if there's anything board members wish to raise at
14:11:56 22 this point, please do so.

14:12:01 23 **MR. KAMINSKI:** Paul, I have one. Is there

14:12:01 1 any requirement by the board to log our time in
14:12:04 2 this proceeding in any fashion?

14:12:08 3 **MR. D'AMATO:** Not that I'm aware of.

14:12:15 4 **MR. CARUSO:** I think the only thing would be
14:12:17 5 for the ad hocs who are entitled to be remunerated
14:12:21 6 for their out-of-pocket expenses, reasonable
14:12:24 7 expenses. That would be the only thing that I know
14:12:26 8 of off the top of my head that falls into that
14:12:30 9 category.

14:12:30 10 **MR. D'AMATO:** You would have to double check
14:12:32 11 that, but as far as I know there's no obligation.

14:12:38 12 **MR. BENOIT:** I'm sorry. I didn't hear that
14:12:40 13 comment and question.

14:12:41 14 **MR. CARUSO:** The law provides that the ad
14:12:44 15 hoc members can be reimbursed for their reasonable
14:12:48 16 expenses as well as it's \$200 a day that it's
14:12:52 17 spelled out in the law for your appearance at
14:12:55 18 meetings like this or the legislative hearing, et
14:12:58 19 cetera, so reasonable expenses might be mileage.
14:13:01 20 If you have -- obviously you're local so you're
14:13:04 21 probably not going to have hotel expenses, but
14:13:07 22 those types of expenses that you would expect, you
14:13:10 23 know, something that belongs to the board that you

14:13:12 1 may incur. It may be a copying cost because you
14:13:15 2 went out to copy something for the rest of the
14:13:17 3 board members and things like that.

14:13:20 4 **MR. BENOIT:** Is there a document that
14:13:22 5 describes the administrative procedure that we need
14:13:24 6 to follow?

14:13:26 7 **MR. CARUSO:** I'll give that to you later.

14:13:26 8 **MR. BENOIT:** Okay.

14:13:33 9 **MR. ALEXANDER:** Yes, there is. It would be
14:13:34 10 part of the appointment packet, but we will double
14:13:38 11 check to see if that was included in the
14:13:40 12 appointment packet that went out to the ad hocs.

14:13:45 13 **MR. BENOIT:** So I may have it is what you're
14:13:48 14 saying?

14:13:49 15 **MR. ALEXANDER:** We were told that it had
14:13:51 16 gone out with the appointment packet but I'll
14:13:51 17 double check on that.

14:13:54 18 **MR. BENOIT:** Oh, okay. I did have a couple
14:13:55 19 other questions, just administrative stuff. The
14:13:57 20 location of the July 16th hearing was originally
14:14:01 21 set to be at Lewiston-Porter school? Was that --
14:14:07 22 can anybody confirm that?

14:14:09 23 **MR. CARUSO:** Still is.

14:14:12 1 **MR. BENOIT:** Still is.

14:14:13 2 The references to the citizen advisory
14:14:17 3 committee, does that prove fully constituted.

14:14:21 4 **MR. ALEXANDER:** We have not received formal
14:14:24 5 notification from the County that it has been fully
14:14:29 6 constituted. We did receive the one letter from
14:14:32 7 the Town. I did not receive any further
14:14:35 8 correspondence since that time.

14:14:37 9 **MR. BENOIT:** Okay. So that would be pending
14:14:39 10 presumably and this board will be apprised of
14:14:45 11 meetings of that group? Is that a safe assumption?

14:14:50 12 **MR. ALEXANDER:** Yes.

14:14:55 13 **MR. BENOIT:** Clarification on the ex parte
14:14:57 14 rule. I see that one of these letters from the
14:15:03 15 legislature was copied to you. It goes to just a
14:15:12 16 little bit of advice on unilateral communications
14:15:17 17 related to this should be redirected to you,
14:15:22 18 Mr. D'Amato. Is there additional reporting
14:15:29 19 requirement or recommendation? Should unilateral
14:15:36 20 communications of this nature be reported to you
14:15:39 21 whether -- or simply redirected?

14:15:44 22 **MR. D'AMATO:** I would want to receive a copy
14:15:47 23 of whatever you receive as well as communication

14:15:50 1 from you about what you got and then we'll take it
14:15:54 2 from there.

14:15:57 3 **MR. BENOIT:** So you would recommend both? I
14:15:58 4 simply decline to accept it and ask that it be sent
14:16:03 5 to you. Additional reporting of that would be
14:16:08 6 advisable.

14:16:08 7 **MR. D'AMATO:** If it was a communication that
14:16:10 8 you had the opportunity to not receive that would
14:16:16 9 be fine, and with an instruction to redirect it to
14:16:19 10 me that would be absolutely fine. I was assuming
14:16:22 11 that it was something you didn't have the
14:16:24 12 opportunity to stop and you already had it. But,
14:16:28 13 no, if you can redirect it prior. If someone calls
14:16:31 14 and says, who do I send this to, anything like
14:16:35 15 that, you know, direct them to me. If you open
14:16:38 16 your mail and something's there, then we'll deal
14:16:41 17 with it.

14:16:44 18 **MR. BENOIT:** I can just forward it;
14:16:45 19 otherwise I would just advise through
14:16:48 20 Mr. Alexander, as an action to be taken, is
14:16:52 21 sufficient. I think that covers my questions.
14:16:58 22 Thank you.

14:16:58 23 **MR. D'AMATO:** Thank you.

14:16:59 1 Any other board members with any business to
14:17:06 2 discuss? No.

14:17:06 3 I would request a motion to adjourn the
14:17:10 4 meeting.

14:17:10 5 **MR. WEBER:** I so move.

14:17:16 6 **MS. SCOZZAFAVA:** Second.

14:17:17 7 **MR. D'AMATO:** All in favor?

14:17:19 8 (A chorus of ayes.)

14:17:22 9 **MR. D'AMATO:** All opposed?

14:17:22 10 (None.)

14:17:22 11 **MR. D'AMATO:** I do -- before we adjourn, I
14:17:24 12 do want to thank everyone for being here, everyone
14:17:29 13 at this table, certainly our support staff who
14:17:34 14 dealt with the logistics, all the members of the
14:17:36 15 public who took time out of their schedule to come
14:17:40 16 and see what this was all about today, and I want
14:17:43 17 to wish everybody a very happy holiday weekend.
14:17:46 18 Thank you for being here. The meeting is now
14:17:50 19 adjourned. It is 2:17 and I thank you for coming.

14:17:58 20 (Proceedings adjourned at 2:17 p.m.)

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4

5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing proceedings, which were taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the proceedings were then
10 reduced to writing in my presence and under my
11 direction. That the proceedings were taken to be
12 used in the foregoing entitled action.

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Mary E. Black

MARY E. BLACK,
Notary Public.

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