

**EXHIBIT 2**

Tuesday, July 9, 2002

Niagara Falls, New York

# CWM suit dismissed

## Residents' case against Porter rezoning nixed by judge

By Susan Mikula Campbell

Niagara Gazette

Chemical Waste Management in the Town of Porter will be able to go ahead with its plans for expanding its hazardous waste landfill.

State Supreme Court Justice Amy J. Fricano on Monday dismissed the case brought by Porter residents hoping to overturn the town's decision to rezone 75 acres of CWM-owned property so it

could be used for a new hazardous waste landfill.

Thomas and Judy Fleckenstein refused comment as they left the courtroom. They and their Balmer Road neighbor, Thomas Freck, brought the case against the town on behalf of Residents for Responsible Government, a Porter environmental group.

Fleckenstein said he would have to consult with the group's attorney on the

possibility of any further action.

"It just makes the struggle a little harder," said Porter Councilman William Choboy, referring to the group's goal of keeping hazardous waste out of Niagara County.

Choboy and Thomas Baia were elected to the Town Board last November after two of the three councilmen who voted for the rezoning retired. The residents group had hoped that by

forcing a new vote, the rezoning decision would fail.

Monday's court session focused on technicalities.

The rezoning allows CWM to apply for state and federal permits to piggyback a new hazardous waste landfill on a 75-acres of land adjacent to its current active landfill.

*Please see Residents, 5A*

# Residents say fight will go on

Continued from page 1A

Scott Matter, CWM spokesman, said planning continued while the rezoning matter was in court, so the case did not cause any delays.

Thomas J. Caserta Jr., attorney for the residents, had argued three main points in last month's court session. First, that a protest filed by Modern Disposal which owns property across Porter Center Road from the landfill meant at least a 4-1 vote was needed for rezoning approval instead of the 3-2 vote that actually occurred.

Second, that the county Planning Board's approval showed a 400 foot setback, not 300.

Third, there was not an appropriate review of affected wetlands.

CWM's attorney, Daniel M. Darragh of Buchanan Ingersoll in Pittsburgh, said for Modern's protest to be accepted, the landfill must come within 100 feet of Porter Center Road. He argued that the new landfill's 300-foot buffer zone between it and the road means that it will not come that close.

In order to protest, a property-owner must have at least 20 percent frontage on the CWM property. Darragh argued that if the court eliminated the buffer zone from consideration, the entire landfill of 350 acres, not just the 75 acres should be considered.

This would mean Modern's protest would not meet the requirement.

Darragh also said the county Planning Board had received the generic environmental impact statement which set the buffer zone at 300 feet in August 1999, well before its December 1999 approval of the project.

Despite Monday's setback, Choboy said Residents for Responsible Government will continue to work to protect the environment, including seeing that PCBs to be dredged from the Hudson River are not shipped

here.

"The fight to stop the PCBs will continue," he promised.

The group also will continue to encourage the federal government to investigate waste in the Lake

Ontario Ordnance Works site, he said.

Contact Susan Mikula Campbell at 282-2311, Ext. 2255, or [campbells@gmnewsaper.com](mailto:campbells@gmnewsaper.com).

C  
ple:  
the  
sub  
"J  
wir  
lion  
see.

# Porter environmental group gets back to work

Members of Residents for Responsible Government were extremely disappointed with state Supreme Court Justice Amy Fricano's dismissal Monday of their case against Town of Porter.

However, they were back meeting the next day to plan a new strategy to protect the environment.

The group was hoping to force another vote on Porter's decision last year to allow rezoning of 75 acres of land owned by Chemical Waste Management. The company is planning to apply for state and federal permits to piggyback a new hazardous waste landfill

against its existing one.

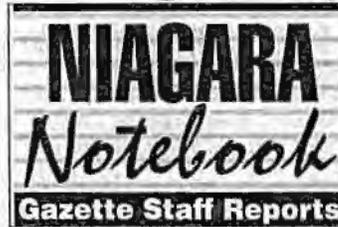
"We were looking for a little justice and had to settle for a little judge," said Tim Henderson, a member of the resident's group executive board and president of Residents Organized for Lewiston-Porter Environment.

— Susan Mikula Campbell

## What's up with what's up in the sky?

Look up in the sky. It's a bird, it's a plane, it's — what is that?

While fires raged near James Bay in Canada, several local residents were trying to figure



out why the blue Saturday sky had suddenly turned hazy.

Guesses ranged from residue left from the Thursday fireworks to nearby grass fires. One creative 6-year-old suggested it could be an alien invasion. He may have been influenced from seeing the sequel to the Men in Black

movie a day earlier.

"This would be the perfect place for aliens to take over," the youngster said. "They can be working along side of us right now and we would never know it. I think my teacher sort of looks like an alien."

— Rick Forgione

## Fund-raising through hopes of visitors

Chris Fortin doesn't live in Niagara Falls anymore, but he does have a suggestion for helping to fix one of the city's biggest problems.

When it came his turn to tell USA Niagara Development

Corp. officials what he would like to see inside a proposed Niagara Experience Center, Fortin said the proposed downtown cultural and visitor center should include plenty of fountains and other water-based amenities, so visitors will remember where they are and have a chance to make a wish or two.

He suggested one of the fountains be dedicated to the city itself, allowing it to collect change people toss in for road repairs.

"You could make it a fix-the-roads pond," he said.

— Mark Scheer

GAZETTE 7-13-02

# Fricano rules for CWM; RRG to continue fight

by Terry Duffy

vn  
n-  
ii-  
it  
y  
i-  
."  
a-  
er  
s-  
d  
in  
  
ie  
o  
n  
at  
ls  
e  
es  
is  
w  
ie  
on  
P

In a rather unexpected ruling, State Supreme Court Justice Amy Fricano abruptly dismissed a suit on Monday, brought by the citizens group Residents for Responsible Government (RRG), which had sought to block a rezoning decision approved last fall by the town of Porter Board to allow for the expansion of Chemical Waste Management's operations on Balmer Road.

The latest chapter of a legal battle pitting RRG against CWM and the town of Porter, Fricano's ruling in favor of CWM and Porter, while not totally closing the door on the RRG bid, was a significant setback to the citizens group who went into this hearing having already spent a significant amount of money on legal expenses and guarded optimism for a favorable ruling. That optimism was raised even more, following Fricano's displeasure at CWM and Porter attorneys over questions on buffer zones and the alleged misfilings of paperwork which occupied the previous hearing.

CWM attorney Daniel M. Darragh, a former second-string Buffalo Bills quarterback of the 1960s who now works for the Pittsburgh law firm of Buchanan Ingersoll, successfully argued—and apparently satisfied—Fricano on Monday over the questions regarding setbacks as they relate to neighbors' concerns, and the acceptance of environmental impact statements for rezoning. With her ruling, it throws the ball back to RRG on how they might want to continue their appeal, if they elect to do so.

### Frustrating

For Lewiston-Porter area residents, it's particularly frustrating as the CWM rezoning-expansion issue has been a major concern for some time now. First proposed by CWM over two years ago, the

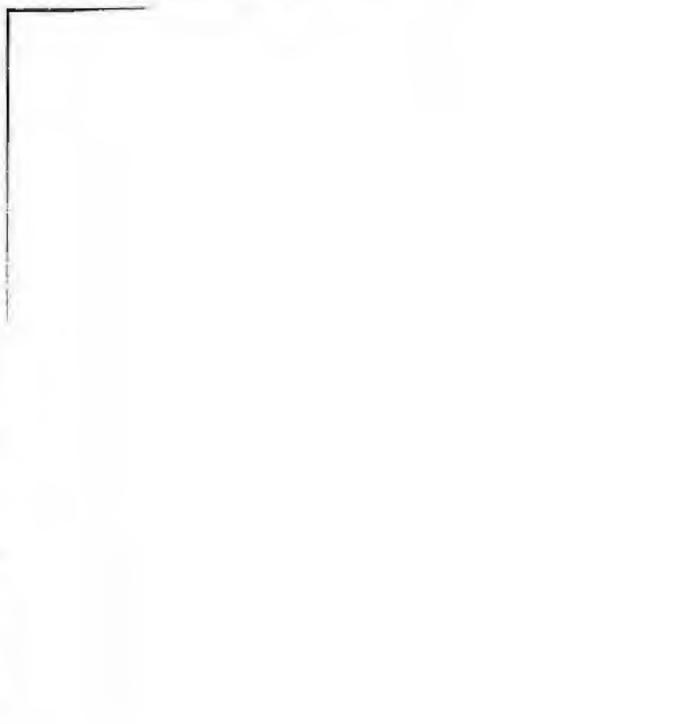
request calls for the rezoning of some 75 acres on the eastern half of the company's 710-acre site as well as a rerouting of 12-Mile Creek to allow for further site expansion and increased storage of various hazardous wastes, including the volatile PCBs.

The rezoning request was strongly opposed by literally hundreds of residents who made their feelings known at numerous public hearings held during the course of several months leading to last fall's Porter decision, on the merits of granting CWM's request.

In addition it was opposed by the town and village of Lewiston, village of Youngstown, the Lewiston-Porter School Board and numerous government officials, all having gone on official record as being against rezoning of the property, citing a number of health concerns.

Despite that, the Porter Board, with the strong backing of former councilmen Richard Phoenix and Harrison Harrington and current member Michael McCabe, voted in  
*continued on page 16*

SEM-TINEO 7-13-02



## RRG exploring options on appeal

SENTINEL 7-13-02

2  
3  
S  
I  
n  
t.  
d  
d  
or  
ie

*continued from cover*

favor of CWM for the rezoning of 75 acres to accommodate its operations. Included also were approvals on variations covering setbacks, allowable heights for landfills and numerous other provisions which will greatly enhance CWM's expansion objectives.

### Community Host Agreement

Soon after the Porter Board, with the concurrence of CWM officials but with little public debate, approved a very questionable community host agreement with CWM, which basically removes all town influence on CWM decisions over operating and expanding its Balmer Road facilities for the next 60 to 80 years. Such a move essentially gives the company carte blanche over what it can do on Balmer Road for the long-term future.

While the Fricano ruling was a blow to RRG, it should not be con-

sidered a death knell to their efforts as a 30-day window of opportunity still exists for the residents group to appeal the case. However their arguments would be limited to the Article 78 zoning related issues raised in the original suit.

Bill Choboy, a RRG member who also serves on the Porter Board but is not representing the town on this issue, termed Fricano's decision "Quite a surprise," adding "I'm not sure the judge understood the situation."

Those views were shared by Tim Henderson of Residents Organized for Lewiston-Porter's Environment Inc., who noted that Fricano went into the hearing having been interrupted from an earlier, rather contentious session, listened to arguments on both sides for close to two hours and issued an abrupt decision.

At this writing no written state-

ment had been provided by Fricano as to her ruling, and a follow-up call found that none would be forthcoming as the case was still not considered finalized.

Thomas Caserta, attorney for RRG, said that the citizens group is still exploring its options and was scheduled to meet late yesterday afternoon (Friday, July 12) to consider its next plan of attack.

"It's a setback, but it will not stop us," said Choboy, who added that the group will continue its efforts to safeguard Lewiston-Porter's environment, including working with Assemblywoman Francine DelMonte and state Sen. George Maziarz and other parties statewide to prevent the transport of Hudson River PCBs to Porter, and keeping pressure on the federal government to investigate and address the numerous health concerns at the Lake Ontario Ordnance Works site.

# Eco group meeting about sites

By Susan Mikula Campbell

Niagara Gazette

YOUNGSTOWN — Environmental justice will be the focus of an environmental conference at 7:30 p.m. today at the Youngstown Red Brick School, 240 Lockport St.

The conference, which is open to the public, is sponsored by Porter's Residents for Responsible Government.

Environmental groups from around the area, including groups from Fort Erie and Niagara Falls, Ontario, have been invited to attend, according to William Choboy, Porter councilman and member of the group.

"It will be an open discussion on how to get more accountability in Western New York with the various sites that are contaminated or alleged to be contaminated," Choboy said. "We've got to get the environmental groups of Western New York and possibly the state together so we can get some environmental justice for this area."

In 1994, the state Supreme Court ruled that there should be fair and equitable siting of toxic dumps in the state, but the Department of Environmental Conservation has never acted on it, Choboy said. Chemical Waste Management in Porter remains the only toxic waste site in the northeast. The residents group is concerned that toxic sludge containing PCBs from the dredging of the Hudson River will be sent here.

State Supreme Court Justice Amy Fricano recently ruled against the group's attempt to overturn Porter's decision to allow rezoning of 75 acres at CWM that will allow the Balmer Road facility to apply for state and federal permits to piggyback a new landfill against its current landfill. Choboy said the group is exploring options on whether to continue the case.

Rev. Charles Lamb, secretary of the Lewiston-Youngstown Clergy Association, has urged fellow clergymen and residents to attend the meeting. Lamb, a retired clergyman who serves as assistant to the minister at Youngstown Presbyterian Church, is a member of the executive committee of the Niagara Group of the Sierra Club.

"I think it's a very important meeting," he said. "It's to plan the next steps."

# Choboy touts power of citizens

Continued from page 1A

"It's people power," Choboy said, urging residents to put pressure on town, county, state and federal representatives to stop contaminating the area. "You have to put the pressure on these people and work together."

James Hufnagel of Wilson, a Sierra Club member, suggested the group might look at organizing some demonstrations, such as taking busloads of sign-waving residents to Albany or even laying down in the streets to stop toxic waste trucks.

"A lot of the stuff you talked about tonight has gone over my head," said Youngstown resident Bernice Richardson. She suggested a survey of the health of everyone who lives and works in the area.

Ann and Geraint Roberts, members of the residents group's health committee, reported on their investigation into LOOW site contamination.

Geraint Roberts said there was at least reasonable doubt that there might be contamination in the LOOW buffer zone where the school campus is located.

Ann Roberts said she has been talking with CWM officials about possible contamination on their land, which also was part of the LOOW site. Areas of possible radioactive contamination have not all been investigated, she said.

The Army Corps of Engineers is very careful to not disturb the soil when checking the land, she said.

"Cross over the fence to CWM and it's a completely different story," she said. "It doesn't make sense."

GAZETTE 11/31/02 - 11:07 AM

GAZETTE 11/30/02

the  
ur  
e  
y  
1  
t  
s  
d

# Wilson resident to spotlight Porter's PCB fears

NYSDEC OHMS Document No. 201469232-00113

fact  
and  
Porter  
this

ack  
on  
ame  
had  
ate  
he  
der  
pi-  
sta-  
ted  
ton  
10-  
uss  
ia-  
ed  
SP



Wilson resident James Hufnagel (at left) is shown with the toxic barrel he intends to wear on his statewide walk to dramatize Niagara County's environmental plight and the potential for PCBs being trucked to Porter. Shown with him is the Rev. Charles Lamb of the First Presbyterian Church in Youngstown, Youngstown Village Mayor Neil C. Riordan and RRG member Janice Zimmerman.

### by Terry Duffy

With the prospect of Chemical Waste Management in Porter becoming future home to 2.65 million cubic yards of PCB-contaminated waste from the government-ordered cleanup of the upper Hudson River, local environmental interests, notably Residents for Responsible Government and its sister group, Residents Organized for Lewiston's Environment, have been very active in numerous areas over the past year to prevent this from happening.

From various RRG-ROLE sponsored community forums focusing on the extensive waste concerns of Lewiston-Porter, to RRG's continued legal efforts aimed at reversing last year's Porter Town Board's vote in favor of CWM, its building of political support throughout municipalities in Erie and Niagara counties and in Albany on this issue, plus countless other efforts, such as protests at CWM's gates, informational booths set up at local events, petition drives, toxic bus tours and the like, much indeed has been and continues to be done to expose Porter's environmental concerns.

Now one Wilson area activist is taking this battle one step further--quite literally--by aiming to shed light on the PCB threats to Porter

and communities across the state, and he's giving up his own vacation time to do it.

### Statewide Walk

James Hufnagel announced plans to embark on a statewide walk, starting today, to dramatize the PCB dangers and inform residents of communities from Albany to Buffalo on the possibility of 176,000 truckloads of Hudson  
*continued on page 5*

SENTINEL 10/19/02

## Week at a Glance

### Saturday

**Pekin Vol. Fire Co. Ladies Auxiliary Craft Show & Flea Market**

Times are 9 a.m. to 4 p.m. at the Fire Hall, 3024 Upper Mountain Road, Sanborn. Included are raffles, a baked sale and a chicken chowder sale starting at 11 a.m.

### Sunday

**Immaculate Conception Holy Name Society Chicken BBQ**  
The event begins at 11 a.m. at the church, 4671 Townline Road, Ransomville. Dinner includes a green salad, potato salad, roll and butter plus dessert and beverage

### Tuesday

**Free lecture featuring David Kaczynski, brother of the convicted "Unabomber."**  
Entitled "The Death Penalty: A Question of Justice," the lecture will be held at 2 p.m. in Room 407 of St. Vincent's Hall at Niagara University.

**Classified Ads Get Results**

**Our Classified Section  
5<sup>00</sup> & under ads FREE**

**Send  
Yours  
Today**

SENTINEL 10-19-02

## Hufnagel seeks to raise state awareness to PCB dangers

*continued from cover*

River PCB contaminants coming through their own neighborhoods en route to Porter for ultimate disposal.

"I'm very familiar with PCBs...it's not just three letters to me," said Hufnagel, a Sierra Club member.

Noting the numerous health concerns associated with this compound plus Western New York's undesired designation of already being home to numerous hazardous waste sites, Hufnagel felt it was time to act.

"When I heard of it (the prospect of PCBs coming to Porter), I realized it's going to permeate Western New York. We just don't need any more of this..."

And so came his decision to act. "I've been involved in local environmental issues for years now," Hufnagel continued. "It's something I wanted to do," he said of his statewide educational effort.

Likened to the response seen by West coast environmentalists to news of the Yucca Mountain in Nevada becoming home to the nation's nuclear wastes, Hufnagel, under the sponsorship of RRG, will spotlight the PCB issue in a unique way with his one-man walk.

### Raising Awareness

Dressed as a skeleton and wearing a symbolic barrel, Hufnagel plans to walk across the state on Routes 5 and 20, paralleling the probable route that the PCB truck caravans would take to Porter should CWM win the contract bid for their disposal. From his walk along the Hudson River in Albany, Hufnagel expects to arrive at the CWM entrance gates in Porter on Oct. 25 if all goes well.

Along the route, he will be visit such communities as Johnstown, Utica, Syracuse, Newark, LeRoy, the Buffalo-Amherst area, Niagara Falls and Lewiston, before the final leg of his trip to the CWM gates on Balmer Road.

"I'll be going from town to town," said Hufnagel, spreading the word. Throughout his journey, vol-

unteers from local churches, schools and environmental groups are expected to assist Hufnagel with food and lodging.

"I'll see how it goes," said Hufnagel. "I'm ready."

Bill Choboys, a Porter councilman who has been very involved in RRG's efforts over the past year, sees great value in Hufnagel's effort.

### 'Enough is Enough'

"The hope is that this walk will alert people to the danger posed to all communities between the Hudson and Niagara County," said Choboys as he announced Hufnagel's trek. "Enough is Enough. Let's not just transfer the problem from one area of the state to the another. Let's work together and promote the technology necessary to advance a safe solution, fair to all."

Again pointing to RRG's numerous pro-environmental efforts over the past year, Choboys said Hufnagel's walk will shed new light on a very problematic issue.

He also hopes this action will spur further state interest on the bipartisan legislation sponsored over the past year by State Sen. George Maziarz (R-61st District) and Assemblywoman Francine DelMonte (D-138th District) both of which had sought to block the feared transport of PCBs to Porter.

As of this writing, the DelMonte version of the bill had cleared the Assembly, but Maziarz's bill languished in the Senate. With the 2002 session over and both legislators up for reelection this fall, any future action on this bipartisan effort remains at a standstill, pending November's outcome.

### Forum Slated

Choboys added that following Hufnagel's return to Porter, RRG will be holding another in its series of community forums on the issues of PCBs and environmental justice. A meeting will be held Saturday, Oct. 26, at the Youngstown Red Brick Village Hall on Youngstown-Lockport Road, beginning at 11 a.m.

ca  
sc  
nc  
w.  
  
the  
wc  
de  
se  
Br  
En  
br  
to  
cen  
Ont  
The  
hear  
  
N  
Qua  
Port  
mer  
to be  
Be  
Olser  
cerns  
the hi  
on ins  
istry  
said a  
ance.  
dent c  
condi  
the b  
with  
and q  
pool.  
Qu  
work  
uted  
whic  
He ;  
shou  
and  
the  
A  
tion  
a pr  
ing  
diff  
terr  
rep  
stu  
wa  
Qu  
the

## Hufnagle journey brings home dangers of PCB transport

NYSDEC OHMCA Document No. 201469232-00108

I am writing in response to a recent news article about James Hufnagle.

Jim, at this very moment, is traveling across New York state. He left from the State Capital in Albany on Oct. 19, following a news conference there. He is en route to CWM's gates in Porter and plans to arrive at 5 p.m. Friday.

Jim has journeyed through Johnstown and Auburn. The rest of his "Stop the Transport of PCBs Journey" will take him on to Utica, Canandaigua, Batavia, Rochester, Buffalo, Niagara Falls, Lewiston and his final destination, CWM on Balmer Road in Porter.

Jim's shoulders are raw and sore from wearing a "No PCB Transport" barrel. His feet are loaded with blisters. He is persevering through the wet and cold to draw attention to the downstate politicians' simple solution to a complex problem.

The downstate politicians vow no PCBs will be stored in their back yard. How giving these politicians are. During GE's prosperous times, the politicians cared nothing about the dumping of GE's PCBs into the Hudson River.

Now, their supporters want them out of the river, and they are more than willing to share ill health by transporting them to an upstate landfill.

"Porter's Potty," CWM, is more than willing to accept these carcinogens.

Landfilling is not the answer.

We must convince these politicians that a totally safe solution, not landfilling, must be found.

All tomorrows will either benefit or be condemned by our actions and disposals from today and yesterday.

Our future generations' health depends on our solutions today.

Be at the gates of CWM at 5 p.m. Friday. Let the media and James Hufnagle see our support for his one-man crusade.

Enough is enough.

Environmental justice is part of the answer. Please join the Residents for Responsible Government in a news conference at 11 a.m. Saturday at the Youngstown Red Brick School. The news conference will be on environmental justice, CWM siting and James Hufnagle's journey.

Janice Venné Zimmerman  
Residents for Responsible Government

Porter

110-24-07

## 4th-graders' visit to newspaper was 'an awesome experience'

The minute we entered, we knew it would be an awesome experience. Our entrance into the Tonawanda News was greeted by friendly staff. Later, all the students commented on how happy everyone seemed with their jobs.

"They went out of their way to show us around," one child said. One staff member took our picture and let us help edit it at his desk before it was printed on the front page.

Our next stop was the pressroom. When the door opened, we heard the rumbling of the machines. "The machines were massive," one student noticed. We learned each primary color had its own machine to make the paper. One child said, "I was amazed to see how the paper went

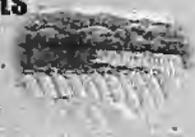
## Share your thoughts

■ The Niagara Gazette prints letters and "guest view" columns on issues of public concern. Letters should be typed and no longer than 400 words; guest views, 800. Include full name, address and daytime and evening telephone numbers for verification. For guest views, also include a photo of yourself and brief biographical information.

■ Send to: Niagara Gazette, 310 Niagara St., P.O. Box 549, Niagara Falls, N.Y., 14302-0549, Fax to 286-3895.

■ E-mail address: keefek@gnewsnewspaper.com

■ Niagara Gazette reserves the right to edit all submissions for length, content and clarity.



through each part of the process." The machines were a lot like the employees — both really depended on each other to get the job done.

The last room we entered had a table filled with newspaper hats. The special hats were made by Mr. Stone. He is the only employee who still works on the presses for Greater Niagara Newspapers who knows how to make the hats. Each hat took him 5 minutes to make. The story he told us about the history of the hat was very interesting.

"The hats were the coolest," one student said.

Thank you to everyone at the Tonawanda News and Greater Niagara Newspapers for providing such an enjoyable and positive learning experience. It was an exciting day. We learned a lot. We look forward to visiting again.

AmyLynn Benjamin's fourth-grade students  
Maple Avenue School  
Niagara Falls

## Paper hats made unique gift for Maple Avenue classes

As the fourth-grade classes from Maple Avenue School walked into the building at the Tonawanda News, they were greeted very politely. As we toured the facility, the employees were very generous with their time and knowledge.

The students got to see behind the scenes of what it takes to make a newspaper. The pupils observed a great deal of cooperation among the workers and the importance of being organized and responsible. One machine broke down, but the staff came together and used teamwork to solve the problem. A good solution for the problem.

The students were most impressed with all the incredible machines and materials. From the big rolls of paper, to the ink, the negatives and the computers used in making a newspaper; this is what really grabbed the students' attention. As Tim Krawczyk put it: "It felt like I was in a giant newspaper!"

Finally, we want to thank the Tonawanda News for being so kind while we were there. We really appreciated how all the employees shared their skills. Especially Mr. Stone, who spent hours of his time preparing unique hats made from newspapers as gifts for every student. The Maple Avenue students would like to say, "Keep up the fantastic work!"

Thomas Sauvageau's fourth-grade class  
Maple Avenue School  
Niagara Falls

Sentinel 11/2/02 FREE

## Hufnagel brings notice to PCB fears

by Terry Duffy and  
the Rev. Charles Lamb

On Friday, October 25, a local resident wearing a skeleton mask and barrel with a skull and crossbones finished a 300-plus mile walk at the gates of Chemical Waste Management in the town of Porter.

Jim Hufnagel of Wilson had spent his vacation walking the cross-state route that upwards of 175,000 truck loads of PCBs could be taking if CWM's bidding for their landfill storage proves successful. About 30 local residents and supporters were on hand to greet Hufnagel as he arrived, foot-sore and weary, at 4 p.m.

Since the Environmental Protection Agency ordered the dredging of PCBs from the Hudson River due to its toxic nature, the question remains of where these wastes will go for final disposal. Many feel that bringing them across the state through many communities for disposal in Porter will not solve a problem but will create a worse one.

These concerns were spotlighted earlier this year in legislation introduced in the State Assembly and Senate to block the transport of PCBs to Niagara County. Assemblywoman Francine DelMonte sponsored legislation which passed the Assembly, and State Sen. George Maziarz introduced a similar measure in the State Senate where it remains stalled. Hufnagel's walk was an attempt to alert communities along Routes 5 and 20 to the dangers and to enlist their help in supporting passage of this legislation when it is revisited.

### Current Status

Once the elections are over and a new Senate and Assembly are in session, the legislation must be passed again by the Assembly and also by the Senate, and then if the bills differ in any way a compro-

mise version must be hammered out by a joint committee and passed again. Then the governor must sign it for it to become law.

Hufnagel walked on his own and at his own expenses, but many people helped him on the journey. Bill Choboy of the citizens group Residents for Responsible Government and his wife drove Hufnagel to Albany to begin his walk on Oct. 19 from the steps of the State Capitol. Others helped with meals and lodging along the way.

In many locations along his route, interviews with the media had been arranged to spotlight the PCB issue. Quite a few churches were involved in providing this kind of help, while in other places members of the Sierra Club and the Green political party gave assistance.

Averaging some 40 miles a day, Hufnagel's shoes told the story as when he arrived at CWM on Oct. 25; they were in tatters.

He arrived to brief but welcoming speeches given Choboy, Rev. Lamb, assistant pastor at First Presbyterian Church of Youngstown, and by Tim Henderson, president of ROLE.

*continued on page 8*



## RRG slates public forum on Lew-Port health study

*Continued from cover*

### Continue Lobbying

Then it was Hufnagel's turn. He began by thanking everyone for their support and stating that he felt he had accomplished his goal of alerting many people to the dangers of thereatening Niagara County. He depended all on hand to lobby hard with their legislators and the governor to get the prohibiting legislation passed before the first truck makes the journey. For then it could be too late.

On Saturday, Oct. 26, RRG held a press conference at the Youngstown Village Hall. The event saw wide interest by residents as well as the local media. There was also good representation by local officials including Porter Town Supervisor Mert Wiepert and Youngstown Mayor Neil Riordan. A panel which

included Choboy, Maziarz and DelMonte spoke on the overall PCB concerns, along with Mikel Shakarjian, a scientist who is providing technical advice to RRG.

To the disappointment of many, Hufnagel was unable to attend, due to work commitments. However the barrel which he had worn on his long walk was there. This item has since been donated to the Porter Historical Society, where local residents may find it on display on the second floor of the Red Brick School in Youngstown.

### Maziarz Optimistic

Maziarz told the crowd that in his opinion the governor will sign the legislation blocking the importation of PCBs to this area once the Senate and Assembly pass it. He also felt that Majority Leader Bruno would be supportive.

Many in the group applauded

DelMonte and Maziarz for their efforts to protect this community. During a question and answer period that followed, Supervisor Wiepert was urged to work with the present Porter Town Board to assist in the efforts to limit CWM expansion.

Attendees were reminded of this by the large sign with RRG's familiar "Enough is Enough" message which formed the backdrop for the meeting. Literature was handed out by the RRG, and those in attendance were urged to become more involved now with phone calls, contacts, and donations. RRG can be contacted at Box 262, Youngstown, NY 14174, and donations for its various environmental efforts can be made to the Community Defense Fund.

One of these involves an earlier state Supreme Court ruling which

remains not acted upon by the state Department of Environmental Conservation.

In 1994, the New York State Supreme Court ruled that in the interest of environmental justice, more sites for toxic wastes should be located closer to waste sources "with all deliberate speed." That ruling has been ignored to date. In fact, RRG points out proposed state guidelines call for avoiding bringing a disproportionate share of toxic waste to communities that have high numbers of minority or low income populations.

RRG advises Niagara area residents that they contact DEC officials and urge that communities with an excessive amount of toxic wastes already present should be added to the list of disadvantaged communities. Comments can be addressed to DEC officials by

phoning 866-299-0497 and asking to talk about to them about environmental justice.

### Public Forum

In the meantime, RRG announces that a public forum to discuss further testing of the Lewiston-Porter campus will occur Saturday Nov. 2, from 2 to 4 p.m. at the Youngstown Village Hall. Dr. Joseph Gardella, associate dean and professor of Chemistry at the University of Buffalo, who gave a presentation last month to the Lew-Port School Board along with Ann and Geraint Roberts, industrial chemists, will speak and answer questions. All who are concerned about the health of students, teachers, and other workers at Lew-Port should gain a lot of important information by attending.

\$35 & Under Ads - FREE

1-03-03 NG

# Landfill foes to party

**FUND-RAISER:** *Group that opposes expansion at CWM is putting on a concert.*

**By Susan Mikula Campbell**  
*Niagara Gazette*

PORTER — Residents for Responsible Government, a non-profit environmental group, plans to use music to help pay for its lawsuit aimed at overturning the town's decision that allows Chemical Waste Management to expand its hazardous waste landfill.

The group is inviting everyone to Band Together for the Environment on Jan. 11 at Park West Lounge on Lewiston's Center Street. Donating their music to the cause will be Salt Peter, named 2002 Buffalo Best Original Band; the Jason Beaudreau Group; and the Al Marra Bax Band. Park West is donating the use of its premises.

Amy McCalister of Youngstown, an RRG member, is planning the event. Many residents have stepped forward to contribute for legal costs.

"This is one way that RRG can return that vote of confidence with a special value program and an unique chance to bring the community together," she said.

The environmental group's case against the rezoning decision was dismissed last year in state Supreme Court in Niagara Falls. An appeal is expected to be heard in Rochester this spring.

"I'm very optimistic," said RRG member Bill Rolland. "We think there were two to three items in there that were very clearly mishandled."

Rolland said RRG recently was granted non-profit status. The public also is invited to attend the group's organization meeting at 7:30 p.m. Jan 15 at the Youngstown Red Brick School, 240 Lockport St.

Tickets at the door will be \$10. Advance \$8 tickets are available by calling 745-3475 or 791-4562.

Contact Susan Mikula Campbell at 282-2311, Ext. 2255, or [campbells@gmnewspaper.com](mailto:campbells@gmnewspaper.com).

Gazette  
on

it  
n

bring  
the

clean  
ignorable  
to

it.  
our  
nk  
ng

h,  
's  
r-

casino cash

GAZETTE 1/21/03

# Study worth

# its cost

Lew-Port spent more, gave less to taxpayers

We think it would be money well-spent.

That's our take on a proposed \$51,000 study to test 30 soil samples from land behind the Creek Road campus in the Lewiston-Porter School District. The spot lies on the buffer zone of the former Lake Ontario Ordnance Works, which was acquired by the federal government in 1942.

The latest environmental concern about the school complex comes after recently declassified aerial photographs of the site, taken in 1944, show several areas of ground disturbance within the zone, including several on-campus spots.

Environmentalists fear the area could be a danger to Lew-Port students and employees.

We hope they're wrong, but nobody can know for sure unless the area is thoroughly tested. That's why we think \$51,000 is a small amount to pay for some peace of mind, especially when you consider the money the district has spent on other, more questionable items.

It wasn't long ago the district allowed Superintendent Walter Polka to sell back his unused sick days for a whopping \$58,000.

Then there are the legal bills.

In the past three years, the district's legal expenses nearly tripled, thanks to petty infighting by school board members. Lew-Port's legal bills totaled \$45,000 in 1999-2000, \$112,000 in 2001-02 and \$134,000 in 2001-02.

While we're in favor of fiscal conservatism when it comes to public funds, we also think the district has an obligation to ensure the safety of its facility. If part of that price tag is \$51,000 for more environmental studies, we think that's a small price to pay.

GAZETTE 2-1-03

# Advisory group reforming on ordnance site

By Susan Mikula Campbell  
*Niagara Gazette*

A new community-based group is being formed to replace the Army Corps of Engineers' advisory board on the former Lake Ontario Ordnance Works project in Lewiston and Porter.

Last June's meeting of the Restoration Advisory Board was cancelled and members received a letter indicating budget cuts were at fault.

However, the March meeting — filled with anger and frustration by community members attending — also pointed out the need for change.

The Army Corps eventually hired an independent researcher, Sue Senecah of Syracuse University, to interview community members, advisory board members and Army Corps participants to come up with a solution.

She met with study participants both Dec. 5 and Thursday to begin working out the structure of a new group.

Ann Roberts, vice chairman of Porter's Residents for Responsible Government, and a member of the group's temporary steering committee, said the structure should be ready by the beginning of March, she said.

"Shortly after that, we should be in a position to have a public meeting," she said.

Michele Hope, Buffalo District public affairs specialist, said the Advisory Board meetings were too formal.

"The public comment period was just a small part of the agenda and it never was enough," she said.

Meetings, which required experts, video equipment and a court reporter, also were costing about \$1,000, she said.

Tim Henderson, president of Lewiston's Residents Organized for Lewiston Porter Environment, was a member of

the Restoration Advisory Board. Serious questions were raised at meetings, but most of the time answers took at least three months, since the meetings were only held quarterly, he said.

"You could feel the frustration at the last meeting," he said.

LOOW was the site of Department of Defense activities during World War II and a storage site for radioactive waste from the Manhattan Project. Environmental concerns have arisen not only about the 2,500 acres actively used by the government, but about possible contamination in a 5,000-acre buffer zone.

Diggs is



Dan Cappellazzo/Niagara Gazette

**INFORMATION, PLEASE:** Matt Mortefolio, left, of the state Department of Environmental Conservation's Albany office, answers residents' questions Tuesday in the Porter Town Hall about the permit renewal process for Chemical Waste Management. The public hearing also was to take comments about CWM's expansion plans.

GAZETTE 2/5/03

# Residents voice concerns over CWM permit process

By Susan Mikula Campbell  
Niagara Gazette

PORTER — An extension of the public comment period, as well as a public hearing, are expected on Chemical Waste Management's permit renewal request.

State Department of Environmental Conservation officials said Tuesday at an information session in Town Hall that formal requests had been received for both items, however it is yet to be determined how long the public comment period will be extended or the date of the hearing.

Tuesday's information session was supposed to run from 3 until 5 p.m. and from 7 until 9 p.m. and be a vehicle for residents to ask questions about the permit and CWM operations. More than 70 people came to both sessions. The afternoon session continued until 6:30 p.m. and the evening session lasted until 10:30 p.m.

Matt Mortefolio, environmental engineer from the DEC's Albany office, fielded most of the questions about the permit process and CWM's

operation. He emphasized that the permit renewal is only for continuing operation of the existing landfill and does not include any of CWM's plans for expansion.

Residents fired questions about burial of decontaminated anthrax items, the possibility of PCBs dredged from the Hudson River being sent here, air and water monitoring and truck traffic.

"I'm just here as an arm-chair environmentalist," said Peggy Nash of Lewiston as she left the session. "I tend to think the fox is guarding the henhouse here, like CWM is monitoring their own facility and telling DEC what a good job they're doing."

Bill Rolland of Residents for Responsible Government, said CWM has paid \$2.9 million in various fines and penalties since 1985, indicating that rules aren't always followed. If he had children who were constantly getting arrested for driving while intoxicated and other infractions, they wouldn't be allowed to have the car, he said.

"There is something wrong with the system," he said. "Nobody seems to listen, care or do any kind of follow-up."

Residents' requests for more written comment time and a chance to express their views in public gained support from Assemblywoman Francine DelMonte and state Sen. George Maziarz who sent a letter to DEC Commissioner Erin Crotty on Jan. 29 requesting the public comment period be extended from 45 to 90 days. They went on to ask that instead of a permit renewal application, CWM be required to file a complete application along with a full environmental impact statement.

Mortefolio said anyone interested in learning more about hazardous waste landfill regulations can check the DEC Web site: [www.dec.state.ny.us/website/regs/index.htm/](http://www.dec.state.ny.us/website/regs/index.htm/) and click on 370 to 374 and 376.

Contact Susan Mikula Campbell at 282-2311, Ext. 2255, or [campbells@gnewspring.com](mailto:campbells@gnewspring.com).

## Residents band together to support RRG

by Terry Duffy

Last weekend saw a strong showing of support by area residents as a crowd of over 200 gathered at Park West in Lewiston for a concert/fund-raiser to benefit the citizens group Residents for Responsible Government.

Presented by Love Canal Entertainment, the event featured four bands and raised in excess of \$1,600 to aid RRG as that group continues its legal battles in the Article 78 lawsuit against Chemical Waste Management and the town of Porter over rezoning of CWM's property and its threatened expansion, which carries with it the potential for Hudson River PCBs coming to Porter.

"I was impressed by the diversity of the people who turned out on one of the coldest nights to support our efforts," remarked RRG member Tom Fleckenstein. "Several people expressed dismay to RRG...about the apparent disregard of public sentiment and safety issues..." exhibited by CWM. "These people came from all walks of life, young and old, different political affiliations, living nearby or near the lake where all these creeks (from CWM property) bring their ground water.

"The one message (conveyed that night) was that the public trust was violated and citizens want to respond to correct that injustice," Fleckenstein added.

### Fight Continues

Such support comes as encouraging news to RRG as the group continues its efforts in the Article 78 suit, with appellate hearings by a five-judge panel scheduled to begin this spring in Rochester. While the Jan. 11 concert greatly assisted RRG with its ongoing legal expenses, the citizens group now finds itself critically short of money as it prepares the required court documents as the Rochester hearings approach.

So much so in fact that RRG is now launching an urgent appeal to the community in an effort to raise much-needed funds to allow it to proceed. As indicated in a prominent ad found in today's *Sentinel*, residents are being asked to help out RRG with tax-deductible financial contributions so that the group can complete its printing and filing of the court documents to the appellate judge panel. Those interested in assisting RRG in its appeal can forward their tax-deductible contributions to RRG, PO Box 262, Youngstown, NY 14174.

### DEC Announcement

Meanwhile RRG continues its efforts to protect the Lewiston-Porter environment. On a related matter, the state Department of Environmental Conservation announced this past week it is now moving ahead on the process of renewing CWM's existing 6NYCRR Part 3 Hazardous Waste Permits, through issuance of a new single draft permit. According to DEC legal documents, "This new draft permit will not authorize an expansion in size or capacity of CWM's RMU-1 landfill (which is

*continued on page 3*

## Week at a Glance

### Saturday

2003 Bond Lake Winterfest  
Lower Mountain Rd., Lewiston  
10 a.m. to 3 p.m.

This event also includes a Chowder Sale (ready at 11 a.m.), Chinese Auction and Slapshot Hockey Tournament

### Monday

#### Panel Discussion

"The Youngstown Cold Storage: Past, Present and Future"  
Presented by the Town of Porter Historical Society at 8 p.m.  
Red Brick School, Youngstown  
The public is invited to attend

### Thursday

Town of Lewiston Haz-Mat Control Commission Meeting  
Town Hall, 7 p.m.  
Conference Room No. 1

**ified Ads Get Results**  
**r Classified Section**  
**& under ads FREE**

**Send  
Yours  
Today**

## Public commentary sessions on DEC's draft permit for CWM set for Feb. 4

*continued from cover*

the focus of the continuing RRG Article 78 suit), nor will it result in any significant increase in the storage and treatment of wastes" at CWM.

Essentially DEC's issuance of the new permit will allow for CWM to maintain its current management and treatment of hazardous and industrial non hazardous wastes at the Balmer Road facility. All current permits governing CWM's ongoing corrective measures "to remedy/control on-site soil and ground water contamination would be maintained," as would the requirement of CWM-funded DEC monitoring of the operations, and the company's financial responsibilities regarding closure, corrective measures and post-closure care of the facility, according to the DEC announcement.

### Public Input

This permit process also involves public input. As part of its announcement DEC informed that "Public Availability" sessions, allowing for DEC officials to respond to questions raised by local residents regarding the "technical, environmental and procedural

aspects" of the new draft permit will be presented. These sessions, which are open to the public, will be held Tuesday, Feb. 4, from 3 to 5 p.m., and from 7 to 9 p.m. at Porter Town Hall, 3265 Creek Road in Youngstown. Area residents are strongly encouraged to attend these sessions.

In preparation for this, RRG announced it will be holding an open community meeting Saturday, Feb. 1 at the Red Brick Village Hall in Youngstown beginning at 10 a.m. The purpose of this session will be to further inform and educate the community on the specifics of the proposed DEC consolidated permit for CWM, allowing for residents to be better prepared for the Feb. 4 sessions with the DEC officials. For further information on these meetings, contact RRG at 791-4562, or on-line at [www.rrg-wny.org](http://www.rrg-wny.org).

### Did you know...

In 1927, The Old Fort Niagara Association was formed by local citizens to preserve the historic structures at Fort Niagara and opened them to the public?

PORTER

# Residents prepare to fight landfill

By DIANE E. HUGHES

News Niagara Bureau

BFO NEWS 2/2/03

**YOUNGSTOWN** — More than 50 Niagara County residents fighting renewal of a state permit for operation of a hazardous-waste landfill in the Town of Porter marshaled their forces Saturday morning in Village Hall.

The citizens group, Residents for Responsible Government, organized more than a year ago to try to prevent an expansion of Chemical Waste Management's hazardous-waste landfill on property off Balmer Road in Porter.

But Saturday, the group was hoping in part to prepare for the state Department of Environmental Conservation's public availability sessions Tuesday in Porter Town Hall, 3265 Creek Road. The sessions are scheduled for 3 to 5 p.m. and 7 to 9 p.m. The DEC says staffers will be available to provide information and answer questions.

"All landfills will eventually leak," said Ann Roberts of Youngstown, a chemist who has been working with Residents for Responsible Government.

Dr. David Cooper, an environmentalist and retired chief of neurosurgery at Mount St. Mary's Hospital in Lewiston, said ground water contamination can be delayed by many years.

"These are called secure landfills, and they're only as good as the technology of the day," Cooper said.

He echoed audience concerns that the landfill is near several schools.

"We live in a community already overburdened with waste," Cooper said. "We want no more."

Several speakers called for an extension of the DEC's public comment period on the permit renewal application and a public hearing.

"This is the only shot you have," Mikel Shakarjian, who grew up in the Lewiston-Porter area and now works for Tompkins County, said in urging people to turn out on Tuesday.

The DEC has made a tentative decision to renew CWM's permit for its existing operations on 710 acres in the Town of Porter.

The DEC's 45-day comment period on the permit renewal ends March 3. Comments or requests for a public hearing must be submitted in writing by that date. They can be sent to Steven J. Doleski, Regional Permit Administrator, NYSDEC Region 9, 270 Michigan Ave., Buffalo, NY 14203.

"Get your comments in," said Shakarjian. "It really does make a difference."

"It's up to people power," said Bill Choboy, chairman of the residents' group.

e-mail: [dhughes@buffnews.com](mailto:dhughes@buffnews.com)

# CWM works through delay

GAZETTE 2/14/03

By Susan Mikula Campbell  
*Niagara Gazette*

PORTER — The state Department of Environmental Conservation has yet to take formal action to establish a public hearing on Chemical Waste Management's permit renewal request.

At a public information session Feb. 4, which lasted from mid-afternoon to late evening, DEC officials said an extension of the March 3 deadline for the public comment period and the scheduling of a public hearing was likely.

Dick Sturges, CWM district manager, said Thursday he has not yet been contacted by the DEC on setting a date, time and place for a hearing.

He encourages people to participate.

"The more information the community receives through these sessions, I think is only going to be beneficial in the long run," he said.

Until the matter is resolved, CWM continues to operate under its current permit. Extending the public comment period and delaying to hold a public hearing will not affect business at this point. However, public comment could mean changes in the current draft permit, Sturges said.

Bill Choboy, chairman of Residents for Responsible Government, said he and other members of his organization already have sent in formal requests for extension of the comment period and a public hearing. He and other RRG members are willing to help residents compose their letters. He can be reached at 745-7790.

Letters requesting an extension of the March 3 deadline for comments and the establishment of a public hearing should be sent to: Steve J. Doleski, regional permit administrator, NYS DEC Region 9, 270 Michigan Ave., Buffalo, NY 14203-2999.

Contact Susan Mikula Campbell at 282-2311, Ext. 2255, or [campbells@gnnewsaper.com](mailto:campbells@gnnewsaper.com).

# Spitzer sues for clean air

By H. Josef Hebert  
*The Associated Press*

WASHINGTON — The Bush administration issued rules to make it easier for industrial plants and refineries to modernize without having to buy expensive pollution controls — and immediately was sued by nine states charging that the changes undermine their efforts to protect public health.

The Environmental Protection Agency regulations, which go into effect in March, amount to a major change in the way older industrial plants will have to deal with air pollution when they expand, make major repairs or modify operations to increase efficiency.

While the administration called the new approach badly needed to remove barriers to innovation and increased productivity, the lawsuit — filed only hours after the changes became final — argues that new breaks given industry amount to a "gutting" of the 1970 law that has been responsible for substantial air quality improvements over the past three decades.

The more relaxed requirements "will bring more acid rain, more smog, more asthma, and more respiratory diseases to millions of Americans," said New York Attorney General Eliot Spitzer, calling them "a betrayal of the right of Americans to breathe clean healthy air."

Along with New York, eight other Northeastern states — Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island and Vermont — joined in the lawsuit filed in the U.S. Court of Appeals in Washington.

Among the changes to become effective in March:

■ Companies will be given greater flexibility to modernize or expand without having to install new pollution controls, although the changes may lead to greater air emissions.

■ Plants that have installed state-of-the-art pollution controls will be assured they will not be required for 10 years to install more effective equipment even if they expand or change operations in a way that results in greater pollution.

■ Plants with numerous pollution sources may increase pollution from some sources as long as overall, plant-wide air emissions are not increased.

■ Companies are given greater leeway in calculating pollution to reduce the likelihood that new pollution controls will be required.

The states' lawsuit argues that all of these measures violate the 1970 Clean Air Act, which exempted older plants from having the kind of emission controls newer facilities had to have — but only under the condition that they not expand or make changes that significantly increase smog-related emissions.

Gazette 1/2/03

al  
a  
g  
a  
ie  
n  
ed  
a-  
to  
re  
n.  
o-  
an  
is  
as  
ed  
n  
n  
s  
t

February 8, 2003

# Tempers heat up at DEC's CWM 'Public Availability' sessions

by Terry Duffy

As part of its process towards issuing a new hazardous waste single draft permit for Chemical Waste Management's operations on Balmer Road in the town of Porter, the New York state Department of Environmental Conservation conducted two "Public Availability" sessions Tuesday at Porter Town Hall.

Those sessions, offered by DEC as part of its pre-announced 45-day public commentary period, saw 13 DEC reps in attendance for purposes of answering questions on the technical, environmental and procedural aspects of the permit. It opened in a purely educational/informational atmosphere, with DEC offering pertinent material on the draft hazardous waste permit to the 25-30 residents who attended.

But as the pre-announced two-hour afternoon/evening sessions turned into one meeting lasting several hours in length, the tempers of the attending residents began to flare. As the session wrapped up around 11 p.m., many residents came away frustrated, with some commenting that issues ranging from CWM's operations and its impact on the neighboring area, to the numerous problems associated with the adjoining Lake Ontario Ordnance Works and Niagara Falls Storage Site, the prospect of Hudson River PCBs coming to Porter, and continuing gripes on a whole host of related health and environmental concerns were not being sufficiently addressed by DEC.

### CWM Fines

Bill Rolland of Residents for Responsible Government, whose group is currently engaged in a suit with CWM and the town of Porter over the board's October 2001

*continued on page 8*

## DEC expected to announce extension for public commentary

*continued from cover*

rezoning/expansion vote in favor of CWM, raised issue more than once to the DEC reps on the CWM fines exceeding \$2 million that the company had paid over the years on its various technical and environmental violations.

Drawing a comparison between CWM's repeated offenses to that of a repeat drunken driver, Rolland commented, "...There's something wrong with a system that would allow us to even think about having a permit for an operating system of this type at this point in time."

Porter Supervisor Mert Wiepert was also critical of DEC when a later discussion over their monitoring of CWM's operations came up. Raising issue with the lack of DEC monitors on site at CWM during an earlier fire incident on the property, Wiepert repeatedly asked the DEC members how this was allowed to happen.

"They won't give me an answer," Wiepert echoed as he left the room.

So what did local residents actually gain from attending these sessions? Good question.

As noted, DEC opened by discussing various elements of the hazardous waste permit renewal and draft permit process to residents, including what actually is a

Public Availability Session. Simply put, it's meant to offer the public an opportunity to ask DEC questions on the draft hazardous waste permit, the permit renewal process and the hazardous waste facility (CWM).

### Comments Not Recorded

The Tuesday session, however, was not regarded by DEC as a formal public hearing where all statements and concerns of residents are recorded. That particular issue caught the attention of state Assemblywoman Francine DelMonte and Sen. George Maziarz, who in a joint Jan. 29 letter to state DEC Commissioner Erin M. Crotty, specifically asked that DEC use its Feb. 4 Public Availability Session "as an opportunity for a broader discussion of all future operations at the facility rather than a discussion of the permit renewal. This meeting should be conducted in a group setting and be recorded," they wrote.

While DEC reps indicated that such a public meeting was indeed possible, no actual decision was made. Follow-up calls to the DEC regional office in Buffalo seeking further clarification revealed that DEC has in fact committed to an extended comment period, but DEC attorney Abby Snyder was

unable to report when any of the public commentary sessions, which will allow for residents' commentaries to be entered into the official record, would be held.

Subsequent conversations with Maziarz and DelMonte found that both are awaiting an official response from Crotty on the full-fledged public commentary meeting as well as final word on the extension to 90 days for additional comments on the permit.

Continuing with the DEC presentation, residents were told the permit renewal being considered provided for a continuation of CWM's current hazardous waste operations in Porter, "with some stricter conditions."

**Required Information**

Matt Mortefolio, a DEC environmental engineer from Albany, informed that CWM's operating permits expired in 1994, but the company continues operate under amendments approved yearly by DEC. These allow for the company to operate indefinitely until a final decision is made on the permit renewal.

Calling CWM's current Porter operations, "state of the art", he then expanded in detail on the specifics of the CWM information that's required by DEC as part of the draft hazardous waste application permit. This consists of:

- Module I, general provisions, which includes a listing of the permits, various permit attachments, and numerous requirements covering waste transport, monitoring, funding, closure and perpetual post closure care of the Porter dumpsite.

- Module II, corrective action requirements which include site-wide final measures covering ground water extraction and treatment, lagoon salts remediation, financial assurances covering corrective actions, and various deed restrictions.

- Module III, which seeks a list of all container storage areas (ranging from 55 gallon drums to 5,000 gallon containers); requirements covering containment for liquids, the segregation of incompatible wastes, plus various inspection and area-specific requirements.

- Module IV, covering a listing of CWM's tank systems, repair and placement requirements, secondary containment and leak detection requirements, inspection requirements, and adhering to air emission standards.

**Waste Discharges**

- Module V, waste storage/treatment in surface impoundments, including a list of Faculative Ponds, and the requirements covering operations, inspections, repairs and the special treatment of the FAC Pond 3.

DEC noted that this clause addresses the requirements concerning CWM's annual release of treated waste water into the lower Niagara River. The company recently concluded a release of 23 million gallons of treated waste water into the Niagara and Lake Ontario un-

- Module VI, the RMU-1 providing disposal in a landfill. This includes landfill liner and leachate collection, disposal and operating requirements, plus the final closure and perpetual post closure requirements of CWM.

- Module VII, waste blending and laboratory wastes and the various requirements thereof. DEC noted this is a new requirement in the waste remediation/treatment process.

- Module VIII, ground water monitoring programs, which includes points of compliance, frequency of monitoring samples, statistical analysis, reporting requirements, additional sampling, analysis, and state DEC sample collection.

As they continue to review the various aforementioned elements of the permit, DEC reps were emphatic in their remarks on Tuesday that its issuance of any new draft permit for CWM "will not authorize an expansion in size or capacity of CWM's RMU-1 landfill, nor will it result in any significant increase in the storage and treatment of wastes at this facility."

As readers know all too well, CWM's operations have been a concern of the Lewiston-Porter area for years now. This controversy was intensified by the Porter Town Board's October 2001 approval of a rezoning/expansion plan for CWM's eastern property along with a questionable community host agreement in favor of the waste company. As a result, a lawsuit introduced earlier last year by RRG remains in the courts, with a five-judge state appellate court panel scheduled to further review the case this spring. The outcome of this case has no bearing, however, on the current DEC permit renewal process.

DEC continues to take public commentary on the CWM draft permit renewal. While nothing has been officially announced by DEC concerning extending the public commentary period to 90 days or the holding of public meetings where comments will go into the record, such news is expected on both fronts. In the meantime, the pre-announced 45-day public commentary period stands. DEC will accept written statements by the public on CWM's draft permit renewal until March 3. Comments should be directed to Steven J. Doleski, regional permit administrator, NYSDEC Region 9, 270 Michigan Ave., Buffalo, NY

ash

g to  
of a

net.

# CWM to expand within property

Company will apply for new landfill on land zoned for such projects

By Susan Mikula Campbell  
*Niagara Gazette*

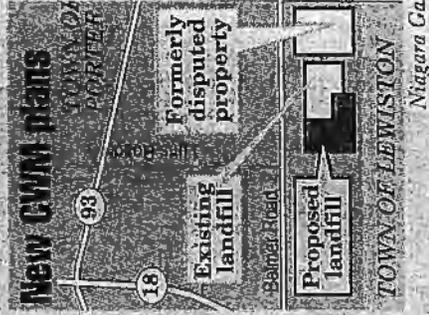
PORTER — Chemical Waste Management has decided not to seek a permit to build a hazardous waste landfill on 75 acres next to Porter Center Road.

Instead, CWM District Manager Richard Sturges announced Thursday the company will submit permit applications this spring for a new landfill to be placed west of its currently operating RMU-1 landfill on land already zoned to receive hazardous waste.

A pre-application information meeting for the public has been scheduled for 7 to 9 p.m. April 3 at the Lewiston-Porter Primary Building. Detailed maps will be available and stations will be set up so individuals can talk to company officials and engineering experts on various aspects of the expansion and permit process.

"We want to encourage public involvement," Sturges said. "That's going to make the project better at the end of the day."

A Porter citizens group, Residents for Responsible Government, has been fighting for more than a year to overturn the Town of Porter's decision to allow rezoning for the property next to Porter Center Road for a new landfill. After being dismissed in state Supreme Court, the case currently is being



# CWM no longer seeking rezoning

Continued from page 1A

appealed.

Balmer Road resident Tom Fleckenstein, one of the people who started the case on behalf of the group, said, "I think the move by CWM is a move we've said all along should be done. That is clean up areas inside the already zoned M-3 areas and not expand."

Although the eastern site no longer takes precedence in CWM's long range plans, Sturges said the landfill would "vigorously defend" its rights to rezone the eastern area.

The amount of waste brought to the site and truck traffic regulations remain the same, said Scott Matter, spokesman for CWM's parent company, Waste Management. "All previous agreements remain in effect."

That includes the Community Host Agreement negotiated with the Town of Porter for the

eastern site. Its requirements will be transferred to the new site. That agreement provided for approximately \$3 million to be paid to the Town of Porter by May 2007. The payments can begin once the court case is settled, Sturges said.

The permit process for the new site will take about two years, followed by another two years to build the needed infrastructure and lining for the new landfill. The current landfill has about four to five years of life left.

By using the western site, CWM will have about six to eight years before it needs to look at where it will expand next, Sturges said.

The shift to the new location will mean some existing CWM buildings will have to be moved, including the drum handling building where incoming drums of waste are inspected, the maintenance shop and the scale house and

scales.

"This gives us a great opportunity to upgrade those facilities," Sturges said.

Since the scale house is not attached to the permit, work on a new one, located closer to the main gate, should begin this year. Upgrading existing facilities and constructing the landfill liner system will be a \$50 million investment for CWM, Sturges said.

The new site also means the company will not have to deal with wetlands or 12-Mile Creek as they would have in the eastern or Porter Center Road site. If the company should look at the eastern site in the future, another application and draft environmental impact study would be needed.

John Hino, CWM permitting manager, said the company's engineering consultant sees little problem with the new western site since it already has been cleared and developed.

The only thing that could be called wetlands are man-made ditches running along the side of the roads.

The new western site will hold roughly 4 million cubic yards of waste. The eastern site would have held about seven million cubic yards, he said.

Hino said the new western site is not the property west of the water holding ponds which CWM originally asked to have rezoned along with the eastern site. This property already has the proper zoning.

Matter said newsletters including information on CWM's new long range plans will be sent to more than 4,000 households in Lewiston and Porter.

Contact Susan Mikula Campbell, at 282-2311, Ext. 2255, or [campbells@gmnewspaper.com](mailto:campbells@gmnewspaper.com).

Please see CWM, 6A

# workers happy to have jobs

Continued from page 1A

Richard Sturges, CWM district manager, said he has been calling and meeting with various community leaders and residents to explain the company's new plan to seek permits for the new landfill that will be located on the western side of its current landfill.

"I think it was a business decision by CWM and in the best interest of CWM and the Town of Porter," said Councilman Michael McCabe.

McCabe was the town's representative in negotiating a Community Host Agreement for the rezoned site. Even though CWM has decided to plan for the new site, it has agreed to continue the restrictions included in the agreement, such as no incineration of waste on the site.

"I feel CWM is a very responsible business entity in the Town of Porter," McCabe said.

CWM also has agreed, if the rezoning on the former site is not overturned in court, to go ahead with the negotiated payment of \$3 million to the town by 2007. However, unless CWM builds on the disputed site in the future, the town will not receive the negotiated \$3 per ton of waste brought to the site — an estimated \$1.1 million per year.

CWM employs about 90 people. Michelle Fleck, CWM operations coordinator, works with the company's health and safety program.

She is moving from the village of Youngstown to a new home on Cain Road, where she will be able to walk to work if she wants. Especially with the current economy, she was concerned about the continuing delay in CWM plans because of the lawsuit.

"I'm very happy about the fact I don't have to worry about my job anytime soon," she said.

Contact Susan Mikula Campbell at 282-2311, Ext. 2255, or

2-22-03 cont

will 755

enz

Saturday, February 22, 2003

Niagara Falls, New York

# CWM plan eases concerns

## Group, however, says the company is 'saving' expansion for later date

By Susan Mikula Campbell

Niagara Gazette

PORTER — The news that Chemical Waste Management no longer is seeking a permit to build a new landfill near Porter Center Road didn't exactly bring jubilation among those opposed to the project.

Porter's Residents for Responsible Government still are supporting a lawsuit seeking to overturn the town's 2001 decision to allow rezoning of the 75 acres adjacent to Porter Center Road.

"This doesn't change anything as far as (the lawsuit) goes, because they are not withdrawing. They're kind of sav-

The lawsuit was dismissed in state Supreme Court last year, but the appeal to the Appellate Court in Rochester is due to be heard in September, according to Merton Wiepert, Porter supervisor.

Wiepert, who voted against the rezoning, said he was pleased with

Tim Henderson, president of Lewis-ton's Residents Organized for Lewiston Porter's Environment, said he expects the fight to keep CWM from expanding onto the 75 acre site will continue.

"Just because they're not going to build a landfill there now, I don't want



**Nancy Price Run**  
**Next Week**  
 Page 9

Phone: (716) 773-7676 • Fax: (716) 773-7

Lewiston-Porter

# SENTINEL

Vol. 17 • No. 4

March 29, 2003

## RRG says nothing has changed with CWM

by Terry Duffy

Responding to the recent news by Chemical Waste Management concerning its plans to table a 75-acre expansion pursued earlier on the eastern end of its 710-acre Balmer Road property and instead concentrate on a 50-acre tract to accommodate future growth, the Porter citizens group Residents for Responsible Government has come out on the attack.

Bill Rolland, RRG executive committee member, in a statement issued this past week said nothing has changed with CWM.

"It is a ploy on Chemical Waste Management's part to disrupt public sentiment and understanding of the importance to the community of limiting CWM growth," said Rolland.

Specifically, Rolland was referring to the March 1 *Sentinel* story regarding CWM's change in plans out on Balmer Road, where it has filed an application with the state Department of Environmental

Conservation to pursue a 50-acre expansion in its central-western portion and table the aforementioned 75 acre expansion bordering Porter-Center Road. That parcel, approved for rezoning by the Porter Town Board in October 2001 along with a new Community Host Agreement with the company, has been the focus of an Article 78 lawsuit between RRG, the town of Porter and CWM.

### Now in Appeal

Currently that suit, which was filed by RRG in early 2002 and ruled in favor of Porter and CWM by state Supreme Court Judge Amy Fricano last June, has entered the New York Supreme Court appeals process and is awaiting to be heard by a five-judge panel in Rochester, with a September court date set.

"Nothing has changed," Rolland pointed out. "...RRG still believes that the town council's actions were not in the best interests of the community and did not follow proper procedure..."

RRG's Tom Freck agreed, pointing out that, "CWM can legally apply for a permit for the 75-acre expansion next year, next month or next week. If CWM is sincere, let them come before the Porter Town Board, withdraw their expansion request and allow for the board's decisions granting the expansion to be rescinded."

RRG then turned its focus to two upcoming meetings, one centering on CWM's 50-acre expansion proposal, and the other focusing company's continuing process with DEC towards securing a new site-wide permit for its Porter operations.

CWM announced earlier that the company-sponsored community meeting, to be held Thursday April 3, from 7 to 9 p.m. at the Community Resource Center (Primary Building) on the Lew-Port campus, will provide local residents a wide range of information on both the permit process and the

*continued on page 6*

## RRG urges continued public input to DEC

*continued from cover*  
 technical design aspects of the new proposed landfill. The company is expected to have several employees on hand that evening along with representatives from its engineering firms who will detail to local residents, the many aspects of CWM's future plans in Porter. CWM invites and encourages attendance by the community at this event.

### 'Distractive Move'

RRG however views this effort with suspicion.

Calling the April 3 session "a distractive move by CWM," Rolland pointed out that while the company will avail small, private discussions between its representatives and residents, allowing for better information as to CWM's future in Porter,

there would be no opportunity for recorded feedback to the state. This despite the fact the event is being billed as a required public meeting under state law to access public sentiment on the 50 acre project.

"This one-on-one process may be a good way for CWM to determine what citizens really know without allowing anyone else in the public to know about it," said Rolland. "But everything is subject to CWM interpretation and there are no reports back to the public from such a meeting."

Rolland then turned his attention to the recent DEC news concerning the extension of the public commentary process relating to the aforementioned site-wide permit renewal the company is pursuing (Draft Part 373 Hazardous Waste

permit renewal--copies of which are available at the Youngstown Free Library and at Porter Town Hall).

### Public Commentary

DEC recently announced it had extended from 45 to 90 days, the public commentary period for the CWM site-wide permit application. This followed a rather boisterous Feb. 4 DEC "Public Availability" session at Porter Town Hall where residents vented their frustrations to DEC over CWM's Porter operations and the area's many environmental concerns on the former Lake Ontario Ordnance Works site that adjoins CWM.

From now through April 17, residents may submit written comments on the draft permit to Steven J. Dolcski, Regional Permit Administrator, DEC Region 9, 270 Michigan Ave., Buffalo, NY 14203-2999. DEC will also be holding a Legislative Public Hearing, Tuesday, April 8 at the Youngstown Fire Hall, with sessions scheduled for 2 and 7 p.m..

Calling this session "extremely important to local citizens," Rolland said this session "will allow the public to hear all of the concerns, pro and con, and will require an open public record and responses to questions."

He closed by strongly urging local residents to continue providing their input to DEC as well as attend the April 8 sessions.

For more information on RRG's activities, visit its web site at [rrg-wny.org](http://rrg-wny.org).

**Testimony of R. Nils Olsen, Jr.**

**650 Main Street**

**Youngstown, NY 14174**

**November 2008**

**Comments Concerning the DEC Draft Hazardous Waste Facility Siting Plan**  
**July 2008**

**Good evening. My name is Nils Olsen, and I reside at 650 Main Street, Youngstown, New York. I appear on my own behalf and on behalf of my client, Residents Organized for Lewiston-Porter's Environment.**

**I have lived in Youngstown for 25 years, during which there have been three constants in my life: the love and support of my wife and three children; my employment as a Professor at the University at Buffalo Law School; and the culpable failure of the New York State Department of Environmental Conservation, our hosts tonight, to issue a Final Hazardous Waste Facility Siting Plan that honestly and fairly addresses the question of the equitable geographic siting throughout the State of hazardous waste treatment, storage and disposal sites [TSD].**

**Tonight's hearing should demonstrate that the environmentally-aware citizens of the towns of Lewiston and Porter, other than those who either work for Chemical Waste Management or who do business with it, have little respect for or confidence in the New York State Department of Environmental Conservation. A very brief history of its extraordinary failure to promulgate a timely and responsive Hazardous Waste Facility Siting Plan will illustrate the reasons that underlie this attitude.**

**In 1987, the late Senator John Daley and Assemblyman Joe Pillitere co-sponsored a bill which sought to establish a shift from *ad hoc* siting of hazardous waste facilities to a statewide comprehensive plan. The bill was signed into law more than 21 years ago. The most significant feature of the law, from the perspective of Lewiston-Porter, was the requirement that, in preparing its plan, DEC make a determination of new or expanded treatment, storage, and disposal facilities which will be needed for the proper long-term management of New York State's hazardous waste consistent with an equitable distribution of facilities. A final Plan was required from the Agency within fifteen months of the passage of the legislation in 1987.**

**The actions of the DEC in producing the required facility siting plan have been repeatedly untimely, in contravention of the legislative timetable as well as an order of the New York State Supreme Court. In fact, tonight's hearing is convened to consider the DEC's latest Draft Plan that is being proffered nearly twenty years after the statutory deadline for completion of a final Plan and a staggering thirteen years after Justice Mintz of the New York State Supreme Court entered an order which resulted in the withdrawal of an earlier, illegal effort and directed the agency to prepare and file a new, responsive plan "with all deliberate speed." This dereliction of legal obligation represents, to my mind, a contemptuous attitude, not only to controlling New York State Law and a State Supreme Court judgment, but as importantly to the citizens of the towns of Lewiston and Porter, who have been compelled against the public's will to host the massive CWM hazardous waste landfill, the only such facility in the northeast United States.**

**The Agency offers no apology for its violations of New York State law. Its only explanation is that the legal and factual framework that existed in 1988, when its final plan was due, has changed significantly during the past two decades, rendering the many of the statutory requirements irrelevant and that other states have failed altogether to draft a plan<sup>1</sup>. Page Intro-I. Thus, relying upon a delay that is founded solely upon its own lawless malfeasance, the agency seems to consider that it is doing this community a favor by preparing and offering its latest Draft Plan, even though to their mind, it is no longer relevant. In our community, whose legislators authored the Siting Plan requirement; which successfully challenged the legality of previous DEC drafts; and whose hosting of the State's only commercial hazardous waste landfill clearly inspired the requirement to consider an equitable geographic siting of facilities, this Draft Plan is no favor. Indeed, it comes too late to slow the tragic violation of Environmental Justice that the DEC has imposed upon the rural townships of Lewiston and Porter during the past twenty years.**

**In all, this draft plan is the fifth version that I have commented upon throughout the years. For all the time that has passed, this effort by today's DEC, ultimately, contains many of the shortcomings of its predecessors. It is a deeply flawed, disappointing, and internally contradictory document that fails, once again, to comply with the statutory and judicial mandates imposed on the agency.**

**In the interests of time, and because other issues are well discussed by others in their comments tonight, I will focus my remarks on two fatal shortcomings of the Draft Plan: it's unsupported and unsupportable conclusion that the market in New**

---

<sup>1</sup> Reliance on the failures of other states to complete Plans is wholly irrelevant since the DEC does not indicate that any were under state law mandates to prepare such documents

York has resulted in an equitable geographic distribution of hazardous waste TSD facilities; and its failure to include an appropriate discussion of Environmental Justice and public health as material aspects of the Draft Plan.

**EQUITABLE GEOGRAPHIC DISTRIBUTION OF FACILITIES**

Incredibly, this Draft continues the DEC's insistence, asserted in each of its prior efforts at Hazardous Waste Facility Siting planning, that "the evolution of the hazardous waste management industry within the State has resulted in an equitable geographic distribution of facilities." Draft, Page 6-13. In considering the best way to fairly characterize the Department's conclusion, I am drawn to Lewis Carroll's novel, *Alice in Wonderland*. Specifically, the DEC has consistently asserted that the burying of millions of tons of hazardous waste *only* in the town of Porter and nowhere else throughout the State represents "an equitable geographic distribution of facilities." This assertion illustrates the approach to interpretation of language first espoused by Humpty Dumpty in the novel and leaves the rest of us as confused as Alice:

"When *I* use a word, it means just what I choose it to mean – neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master – that's all." Alice was much too puzzled to say anything; so after a minute Humpty Dumpty began again. "They've a temper, some of them – particularly the verbs: they're the proudest – adjectives [such as 'equitable'] you can do anything with, but not verbs – however, *I* can manage the whole lot of them! Impenetrability! That's what *I* say."

Thus, we have once again been left in the DEC's version of Humpty Dumpty's Wonderland, where black means white and in which hazardous waste landfilling that only occurs in one location throughout the State, is an "equitable geographic distribution."

**In seeking to justify this assertion, the DEC has compared seven different types of state-wide statistics that include: (1) the distribution of all facilities that receive hazardous waste for management from off-site sources (commercial and captive) or that treat regulated waste at the site of origin; (2) all of such facilities excluding those only treating wastewater on-site; (3) only those facilities that receive waste from off-site management (commercial and captive); (4) all of such facilities excluding non-commercial entities; (5) “end treaters” of hazardous waste including combustion units and landfills at facilities; (6) only commercial “end treaters” of hazardous waste; and (7) the distribution of hazardous waste received by facilities in each region of the state. None of these comparisons fairly address the issue of equitable geographic distribution. In fact, the Draft works hard to obfuscate and avoid any meaningful discussion of the issue.**

**The Draft Plan acknowledges as it must that “the Department continues to consider land disposal as the least desirable management method...” Landfilling, even of treated residuals, is the only management practice that keeps all of the waste that is received buried on-site in a facility forever, resulting in a permanent repository of hazardous waste that will leak at some time in the future and that requires perpetual environmental care and remediation. The extensive property utilized for a hazardous waste landfill is a permanent sacrifice zone that will never be appropriate or available for any future residential or other productive use, especially one such as CWM that was active long before the federal government limited, in the name of environmental and public health, the types of waste that**

could be legally landfilled. It simply cannot be fairly compared to storage or reuse/recycling management facilities across the state.

Having recognized the unique and unacceptable management method that landfilling represents, the DEC's reliance on the location of all TSD facilities (including or excluding wastewater treatment) is wholly inappropriate. The vast majority of these facilities are storage or recycling/reclamation facilities that ultimately ship any on-site hazardous waste to a landfill or incinerator. Similar problems result in comparing the siting of the CWM landfill with all commercial and captive facilities that receive waste from off-site management (still predominantly storage and recycling) and with limiting the comparison cohort to commercial TSD facilities. While the progression of analysis employed reduces the number of facilities compared, it still matches a large commercial hazardous waste landfill with storage and recycling facilities that do not maintain permanent possession of hazardous waste on site – a comparison of apples and onions if ever there was one.

In an apparent backhanded effort to address the failure of its analysis and to provide some support for its otherwise naked assertion of “equitable geographic distribution,” the DEC considers the locations of so-called “end treaters” – cement aggregate kilns and landfills – to determine equitable distribution. One is located near Albany, the other in Lewiston-Porter. It also compares the distribution of hazardous waste *received* by facilities in each DEC region of the state. Different problems result from these considerations and render them useless to establish the equitable geographic siting that the DEC apparently seeks.

In its consideration of “end treaters,” the DEC’s comparison does not consider the amount of waste that is disposed of by commercial combustion facilities as opposed to the amounts annually and permanently buried at the Model City facility. Thus, Norlite Corporation, the only commercial “incinerator” in New York State, operates two permitted aggregate hazardous waste kilns in Cahoes, NY. Norlite burns hazardous waste liquid low-grade fuel and used oil to produce lightweight aggregate. As disclosed at Page ES-5 of the Draft Plan, Norlite received a total of 24,287 tons of hazardous waste in 2005, which was burned and destroyed in their kilns. CWM landfilled and permanently buried on-site 145,761 tons of hazardous waste during the same time period, more than six times the amount of waste burned in Cahoes.

Even more clearly, by limiting its focus to hazardous waste *received* by region, rather than on hazardous waste permanently *kept* after management, the Agency is once again refusing to accept the necessary consequence of landfilling as the least desirable hazardous waste treatment, storage, and disposal management method. CWM is the only landfill in New York. By contrast, the only other commercial facility to take delivery of even 25,000 tons of waste was Revere Smelting and Refining of Middletown, NY, which in 2005, received 158,520 tons of lead-based batteries. Revere is a recycling facility for these batteries. Any hazardous waste remaining after the recycling process is stored and then shipped off-site to Chemical Waste Management or out-of-state facilities. No hazardous waste is permanently managed or disposed of at the facility. A recycling facility, which is the most highly preferred management practice after reduction or

elimination under controlling New York environmental law, can hardly be compared to a commercial hazard waste landfill such as CWM when assessing equitable geographic distribution in New York State.

It is clear that, in examining its data concerning equitable geographic distribution of treatment, storage and disposal facilities, the DEC must evaluate by comparing like facilities, considering management method, inventory and volume, referenced to the Hierarchy established by the Environmental Conservation Law Section 27-0105. To date, as a direct result of DEC permitting, Chemical Waste Management has buried in excess of 8,000,000 tons of hazardous waste in its thirteen permitted landfills, much of it organic, liquid, volatile and other untreated waste, now banned from landfilling because of its unacceptable danger to the environment and public health. No other region or location in New York State has any comparable facility or inventory. The existence of Reclamation/Recovery, Storage, Fuel Blending, Bulking, aggregate kiln, and/or Transfer facilities across the state, handling a comparatively miniscule amount of hazardous waste and retaining none, does not create “an equitable distribution of TSD facilities” anywhere but in the DEC’s Humpty Dumpty Wonderland.

**THE PLAN’S FAILURE TO ADDRESS APPROPRIATE ENVIRONMENTAL JUSTICE AND ASSOCIATED PUBLIC HEALTH RISKS**

As stated in the Draft Plan, Environmental Justice policies in New York State “are a response to the recognition that some communities, including minority and low-income communities in particular, have historically been overburdened by a high density of known contaminated sites and air, water, and noise pollution, lack of green open space, have not received a fair share of environmental programs and

related benefits, with a resultant reduced quality of life as compared to other communities, with the accompanying potential for increased environmental and related public health impacts.” On March 19, 2003, the DEC issued Commissioner Policy [CP] 29, Environmental Justice and Permitting. The policy is quite narrow in scope and effectively is limited to environmental justice areas comprised of minority group or predominantly low-income communities.

This narrow limit to Environmental Justice is the result of the origin of the concept in the Kettleman City, California area, a low-income Mexican-American community that is burdened by a number of significant environmental disposal facilities, much like the Lewiston-Porter area. The focus of the Commissioner’s Policy is too narrow for meaningful application of Environmental Justice principles to the siting of hazardous waste TSD facilities within the State.

In New York State, 100% of the hazardous waste landfilling is situated the rural township of Porter. In addition to the 8,000,000 tons of hazardous waste that has been transported into the area and permanently buried here, the Lewiston-Porter community is further burdened by the presence of a plethora of seriously compromised environmental sites. These include the Niagara Falls Storage Site [NFSS], comprised of 191 acres in the Town of Lewiston which is used to store residual radioactive materials associated with the Manhattan Project including uranium and radium residues derived from highly radioactive African pitchblende ores, and waste containing plutonium, fission products, and other radioactive material; the Lake Ontario Ordinance Site, a 7,500 acre site where activity included TNT manufacturing, the Northeast Chemical Warfare Depot (storage and

transshipment of chemical weapons materials), rocket engine testing, high energy fuels storage, a horon-10 production plant, and a NIKE missile base; the Modern Landfill, an active solid waste landfill; and the presence of persistent organic contaminants in the Niagara River and its tributaries– an astonishing burden for a single area to carry.

The Draft Report asserts that hazardous waste TSD facilities and generators are found across the State, “with concentrations near the greater industrialized area. Fewer facilities are found in more rural or wilderness areas.” Page 6-13. CWM’s vast hazardous waste landfill is situated in the Town of Porter. Even a moment’s presence in the town confirms that it is a rural, rather than industrialized area. Porter has a population density of 208 individuals per square mile and more than 50% of its land is agricultural. *A Comprehensive Plan for the Town of Porter: Connecting Our Past With the Future*. In order to ensure that New York State’s strong commitment to Environmental Justice is applicable in future TSD siting decisions, the Draft Plan must recognize the concentration of landfilling in rural areas and significantly enhance the definition to include rural communities to the current limit of minority or low-income populations.

The Report correctly asserts that federal law restricts state regulation of hazardous waste TSD facilities to provisions protective of human health and environmental protection. 40 CFR 271.4(b); Page ES-2. It is, however, silent as to the role that demonstrated, statistically significant health issues in Environmental Justice areas, that could result from a concentration and loading of environmental facilities and hazardous sites, should play in future permitting of new or expanded

hazardous waste TSD facilities. This omission is particularly critical to the Towns of Lewiston and Porter. As discussed above, these rural townships currently carry an extraordinary environmental burden comprised of permitted landfills and hazardous sites. Over the past ten years, the existence of this loading has prompted the undertaking of a number of health studies to understand potential health consequences of this situation.

Because of the excessive concentration of hazardous, radioactive, and solid waste sites and disposal facilities situated in the Towns of Lewiston and Porter, three health studies have been undertaken by the Center for Community Health, the New York Cancer Registry, the Center for Environmental Health, the New York State Department of Health, and the Departments of Environmental Health and Toxicology and of Biometry and Statistics of the University at Albany. Each of these reports disclosed statistically significant elevation of cancers and of thyroid disease that are consistent with exposure to environmental contaminants for all relevant areas and demographics.

Specifically, in a public health study that included the Lewiston-Porter area, published in December 2001 in *Environmental Health Perspectives Supplements*, Volume 109, Number S6, public health researchers reported “a significant elevation of disorders of the thyroid gland in women ... of all ages greater than 25 to greater than 75 years for all comparison groups. There was also a significant elevation in incidence of endometriosis in women 25 – 44 years of age. All these elevations were significant at the 99% confidence level...Although many factors influence incidence of thyroid and genital diseases, our results are consistent with the hypothesis that

**exposure to environmental contaminants through residence near polluted sites may be a factor.”**

**Similarly, a health study conducted in the Ransomville from 1995 – 1999 by the New York State Department of Health found that, when all types of cancer were aggregated, the number of cancers diagnosed in males was significantly greater than the number expected. Several types of cancer in males, including bladder cancer, had higher than expected numbers.**

**Finally, a recently released cancer study of the Lewiston-Porter area found statistically significant incidence of all cancers in men including prostate and testicular cancer and of breast and bladder cancer among women. Among children, a statistically significant incidence in all cancers was found among children including a higher incidence of cancers of the testes and ovaries. This study also found a statistically significant incidence in prostate cancer in men in the Village of Youngstown area.**

**Protection of the public’s health must be of paramount concern to the DEC in planning for future siting of bazardous waste TSD facilities, especially in highly impacted Environmental Justice areas such as the Towns of Lewiston and Porter. The failure of the Plan to address this concern directly is a serious omission. When public health studies consistently demonstrate statistically significant incidence of cancers and other diseases in an environmentally burdened community, for which environmental and toxic exposure may be factor, the Siting Plan must mandate that no further permitting, especially of hazardous waste landfilling, is appropriate. Further, communities such as Lewiston and Porter must not be held to the nearly**

**insurmountable burden of demonstrating direct causation of the disease through exposure to environmental toxins and contaminants. With few notable exceptions, such as asbestos, causation can never be conclusively established. Any condition precedent for such proof before a permit application is affected would represent a betrayal of the public's trust in the Department's commitment to ensure that no adverse health consequences will result from its permitting process.**

**The Draft Plan seems to indicate that it is not necessary for these serious Environmental Justice issues to be mandated as an element informing the siting process because DEC Policy “provides guidance for incorporating environmental justice concerns into the Department’s environmental review process...” It goes on, however, to admit that CP – 29 “does not specifically address the siting of hazardous waste facilities ...” The Plan then states that:**

**“the Department *supports efforts* to ensure environmental justice, including efforts to: address disproportionate exposures to multiple environmental harms and risks on minority and low-income populations and other affected communities...Additionally, and consistent with regulation governing the siting of industrial hazardous waste facilities, the Department *recommends* that the Siting Board consider issues of environmental justice whenever making its determination to grant, conditionally or otherwise, or to deny a certificate for construction or operation of a new or expanded industrial hazardous waste facility.” Page 6-9. [emphasis added].**

**However, CP-29 unequivocally provides that “[t] his policy will not be construed to create any right or benefit, substantive or procedural, enforceable by law or by equity by a party against the DEC or any right to judicial review.” [CP29 III] As a result, this asserted support for the inclusion of Environmental Justice policy in hazardous waste TSD siting is misleading and leaves the communities of Lewiston**

and Porter without meaningful protection from violations of Environmental Justice policies.

Environmental Conservation Law Section 27-1105(f) sets the general terms under which an application to permit the siting of an industrial hazardous waste facility can be denied, and the associated New York State regulation, 6 NYCRR 361.7, establishes an elaborate numerical scoring system to determine whether a permit should be granted or denied. Neither provision expressly requires consideration of factors relating to Environmental Justice discussed above. If these critical issues are to play an appropriate role in the siting of hazardous waste TSD facilities, they must be expressly included in the Hazardous Waste Facility Siting Plan's findings. ECL Section 27-1105(f) requires that a permit will be denied if the proposed site is not consistent with the statewide Hazardous Waste Facility Siting Plan. By failing to include a detailed discussion of Environmental Justice, as it applies to the siting of TSD facilities, the plan effectively renders this consideration and action of environmental justice policy inoperative and leaves the Lewiston-Porter community at risk.

### **CONCLUSION**

It is apparent that, like its many predecessors, the current Draft Hazardous Waste Facility Siting Plan is fatally flawed and inadequate to the task mandated by the legislation. The DEC must withdraw its draft and complete a new Plan that corrects the following errors:

- First, address the need for additional hazardous waste landfilling accurately. The Plan's estimates of national capacity are significantly understated because of its failure to consider the existing capacity of six of the operational

facilities throughout the US. There is, quite simply, no need for additional excess capacity in New York State.

- **Second, discuss the effects that current landfill overcapacity has on the DEC's commitment to the development and utilization of alternative technologies and treatment processes that are mandated by the Hazardous Waste Hierarchy, and without Environmental Justice violation, can reduce or eliminate hazardous waste on the site of generation and dramatically reduce still further the landfilling of hazardous waste.**
- **Third, break away from its continued insistence that the market has resulted in an equitable distribution of facilities. This insistence fatally compromises the credibility of both the Draft Plan and the Department. Use common sense and follow your mandate to consider this issue by management method, inventory, and volume and consider the effects of excess landfilling capacity on the Hierarchy of treatment methodologies mandated by controlling legislation.**
- **Fourth, make a serious effort to discuss the State's commitment to the policy of Environmental Justice as it applies to the siting of TSD facilities and expand its coverage, at least to rural communities that host 100% of the State's inventory of landfilled hazardous waste – an Environmental Justice issue by any rational definition.**
- **Fifth, expressly consider and acknowledge that the environmental burden borne by this community is extraordinary and unacceptable that should have a preclusive effect on landfill expansion, especially in a market in which there are literally decades of excess of capacity nationally even if the State phases out additional landfilling.**
- **Sixth, address the relevance to future siting of public health studies that confirm statistically significant excesses of cancers and other illnesses that could be caused by exposure to excessive environmental contaminants and consider embargoing these areas from additional siting of TSD facilities.**
- **Seventh, take transportation issues seriously enough to at least present some congruity between your assertions and the record of leaking trucks and other transportation violations recorded at facility gates and by your own decisions to levy fines for breaches of transportation rules and regulations.**
- **Eighth, expunge from your recommendations any link between hazardous waste and solid waste policy in future siting decisions. Such a link sends a clear message that the DEC is seeking to address concerns in neighboring states about accepting solid waste exports from the State and especially New York City by maintaining excess landfilling capacity for disposal of out-of-state hazardous waste. Such a purpose is not permitted by the Siting Plan legislation and violates the law.**
- **Ninth, stop referring to Supreme Court decisions which have banned State efforts to discriminate against the interstate importation of solid and hazardous waste. The statutory mandate to prepare this plan does not envision such discriminatory planning. If the Agency concludes that additional landfilling capacity is unnecessary and that further activity in the Lewiston-Porter area is inappropriate, the State's action will limit landfilling**

**of hazardous waste in a wholly equitable manner without reference to its state of origin. Let's try to keep our eye on the ball and not create straw men arguments to confuse the process.**

- **And tenth, provide meaningful and accurate data to support the Draft Plan's assertions that additional New York State hazardous waste landfill capacity is necessary to promote brownfields reclamation, focusing on hazardous waste disposal from such projects.**

**While this community has the means and expertise to once again litigate the adequacy of your Draft Plan and will not hesitate to do so, do not force us to return to court. Treat the citizens of Western New York, Niagara County, and especially Lewiston and Porter with the respect and seriousness of purpose that they deserve. Working together we can find far better ways to ensure that hazardous disposal capacity and policy in New York State is equitable, lawful, and reflective of the profound values represented by Environmental Justice and public health concerns.**



**Testimony of R. Nils Olsen, Jr.  
650 Main Street  
Youngstown, NY 14174  
November 19, 2009**

**Comments Concerning the DEC Re-Draft Hazardous Waste Facility Siting Plan**

**September 2009**

**Good evening. My name is Nils Olsen, and I reside at 650 Main Street, Youngstown, New York. I am a member of the faculty of the University at Buffalo Law School where I teach the Environmental Law and Policy Clinic. I appear on behalf of our client, Residents for Responsible Government.**

**The efforts of the New York State Department of Environmental Conservation to adopt a Hazardous Waste Facility Siting Plan can only be described as a long and torturous process, both for the Department and certainly for the citizens of the Towns of Lewiston and Porter who share an abiding and strong interest in the subject.**

**The legislation requiring the Department to adopt a Hazardous Waste Facility Siting Plan was authored twenty-two years ago by Niagara County's own Assemblyman Joseph Pillitere and the late Senator John Daley, both from Lewiston. It required the DEC to adopt a final plan by no later than March 1, 1989. Here we are, on November 19, 2009, and that mandate has yet to be complied with. This is, I believe, the fourth occasion over the years that I have appeared at and issued comments about a draft plan. While many have lost faith in the Agency and view these hearings as meaningless bread and circuses, I still wait hopefully for a final plan that will respond to our legitimate comments and fully comply with the statutory mandate.**

**Our twenty-one year wait has not been wholly without result. During the passage of two decades, the issue of commercial hazardous waste landfilling has made a 180 degree shift, from a situation in which there was a net shortage of capacity that led the United States Environmental Protection Agency to condition federal Superfund financial assistance upon each state demonstrating adequate disposal capacity for the next twenty years' projected hazardous waste generation to a situation in which there exists a significant over-capacity of commercial hazardous waste landfill capacity, with the DEC projecting sufficient national capacity in the northeast quarter of the country to accommodate New York generated waste until at least 2028. [Page 6-8] As a result, the EPA no longer requires states to demonstrate disposal capacity and the DEC has quite appropriately concluded that "based on present national capacity, there is no need for additional hazardous waste management facilities in New York." [Page 9-3]**

**When one considers the plan's discussion of need, it is clear that the nineteen-year estimate of excess national capacity of commercial hazardous waste landfills represents a seriously understated estimate. First, the draft plan does not even consider three-quarters of the country – focusing solely on the northeast. [Page 6-8] Inclusion of the remainder of the national inventory of such landfills would have more than doubled the number of facilities [Page 6-5]. Second, the draft plan does not consider expansion at the existing landfills – certainly based on the experience at CWM, significant expansion efforts can be reasonably anticipated. Third, despite dramatic reduction in the amount of process hazardous waste produced by New York industry over the years [Page 3-28], the draft plan concludes "the generation rate of primary hazardous waste in the State over the next 20**

years is expected to remain at current levels or to decline slowly.” [Page 3-29]

Considerations of cost and liability will continue, in conjunction with technological innovation, to drive further significant reductions. When the true picture is drawn, it seems self-evident that the current excess capacity acknowledged by the draft is seriously understated. In fact, it is highly unlikely that New York State will require any commercial hazardous waste landfill capacity to dispose of its generated waste for at least the next fifty years.

I will next turn my discussion to a continuing sore point for this community. The statutory command to the DEC instructs it to undertake the following task: “the plan shall include...a determination of the number, size, type and location by area of the state of new or expanded industrial hazardous waste treatment, storage, and disposal facilities which will be needed for the proper long-term management of hazardous waste consistent with...an equitable geographic distribution of facilities.” This so called equitable distribution analysis was crafted by Senator Daley and Assemblyman Pillitere, and was intended to ensure that the plan, which was to address *future* disposal requirements also looked to the past to determine if treatment, storage, and disposal facilities, considering number, size, and type of facility, had been distributed equitably across the state. Indeed, the Memorandum of the Assembly Rules Committee noted specifically that the bill was intended to remedy the fact that “New York has continued to rely on two land burial facilities located in the western part of the state,”

Over the past twenty-two years, DEC has continually, against all common sense and in the face of the facts, found that there is equitable distribution of facilities. The current draft plan continues this practice, concluding “the distribution of all industrial hazardous

waste treatment, storage and disposal facilities...is relatively geographically equitable across the state.” [Page 6-16]

In reaching this remarkable conclusion, the DEC seeks to present a comprehensive approach to statutory construction, asserting, “[i]n evaluating questions of equitable geographic distribution of facilities, a number of approaches can be taken.” [Page 6-11] It then proceeds to examine the question from six different perspectives; ultimately concluding that equitable geographic distribution exists “considering all of these ways to define facilities...” [id] Even bolstering its analysis by considering six different definitions, the DEC’s conclusion does not pass the laugh test.

Without burdening you with a detailed summary of each of its six approaches, the continued failure of the DEC to honestly confront reality can be summarized as follows. Of the six approaches, the first four [represented by Figures 6-3, 6-4, 6-5, and 6-6] essentially establish equity by no more than counting treatment, storage, and disposal facilities in each of the 9 DEC regions, without reference to size or type. This process leads to absurd results. Thus, excluding wastewater treatment facilities (which clearly are not in any fashion relevant to the plan mandated by the legislature), Region 1 (which encompasses Long Island) is host to 25 TSD facilities, while Region 9 (which encompasses Niagara, Erie, and the Southern Tier counties) hosts 23. Ergo, there must be geographic equity.

Problems arise, however, when you penetrate the purple haze of the DEC analysis and look more closely at exactly how much hazardous waste we are talking about. According to Figure 6-8 of the Plan, the 25 TSD facilities on Long Island received a whopping 2,129 tons of hazardous waste in 2007 [Page 6-16]. By contrast, in this version of the DEC’s multi-faceted view of equity, the 23 TSD facilities in Region 9, received 166,862

tons of hazardous waste [id], Number of facilities without reference to size, is clearly a misleading and inappropriate way to determine whether there has been equitable siting of hazardous waste TSD facilities, whether focusing on: the total number, including wastewater treatment facilities; the total excluding wastewater treatment facilities; the total of captive and commercial facilities; or even the total number of commercial facilities. As all residents of the Towns of Lewiston and Porter know, in hazardous waste disposal, size matters. I'd bet the farm that anyone in the audience who does not work for CWM would gladly trade one of our facilities, the CWM landfill, for one located in Region 1, the Long Island Jewish Medical Center's annual .2-ton recycling operation.

Similar issues are apparent when the types of facilities being counted are considered. The Revere Smelting and Refining facility in Orange County is not the same as the CWM landfill. Lead is reclaimed from waste for subsequent sale, with any hazardous remainder being shipped off site. Similarly, Norlite Corporation near Albany, despite being classified as an incinerator in the draft plan, is in fact an aggregate cement kiln that burns no more than one-tenth of the hazardous waste received at CWM to produce lightweight aggregate. No hazardous waste remains permanently at the facility and local concerns focuses primarily on attendant dust and noise. Again, type of facility matters. Even the draft plan acknowledges, as it must, that "[t]he Department continues to consider land disposal as the least desirable management method, even when LDR has been achieved."

[Page 4-6]

Finally, in Figure 6-8, the DEC sets forth hazardous waste generated and received by facilities within each region. Certainly, amount of hazardous waste received is clearly relevant to a determination of geographical equity. Despite the fact that the plan purports

to find support for its conclusion of equitable siting from this information, it actually does quite the opposite.

This is because the DEC has profoundly understated the amount of hazardous waste being treated in Region 9 generally and Niagara County in particular. In making its argument, the agency reports only the annual gate receipts. With respect to the Chemical Waste Management facility, which accounts for nearly all of the Region 9 receipts, this results in considering only the amount of hazardous waste landfilled in RMU-1, the one active landfill. While it should be noted that this figure exceeds the total amount of waste received by all of the other facilities located in the other regions of the State combined, and thus hardly supports a conclusion of equitable distribution of facilities, it is a woefully understated figure.

The DEC is not addressing the amount of hazardous waste permanently stored and being treated in commercial hazardous waste landfills in Niagara County and, as a result, also undercounts the number of such landfills. The closed landfills at CWM, and just a couple miles down I-190 at the CECOS facility, are permanent storage facilities, subject to perpetual care, monitoring and treatment under the supervision and oversight of the DEC. When these closed landfills are considered, the amount of waste subject to long-term management in Niagara County reaches an extraordinary 10 million tons, far more than that being treated in any other region, and the number of commercial hazardous waste landfills numbers from 10 to 14 depending on who is counting and how consolidated landfills are counted. From this perspective, it is clear that there is no equitable distribution of facilities in New York State and the plan must be modified to reflect this fact.

The draft also fails to meaningfully consider the controlling matter of the hazardous waste hierarchy, set forth in section 27-0105 of the Environmental Conservation Law. Under this provision, which “is to be used to guide all hazardous waste policies and decisions,” elimination and reduction are the most favored management practices, followed by recovery, reuse, and recycling, which are in turn followed by treatment, detoxification, and destruction technologies. Land disposal of hazardous wastes is the least preferable management practice and may only be used for treated residuals posing no significant threat to the public health or to the environment.

It is clear that New York State has not phased out hazardous waste landfilling as required by the hierarchy, and that the draft in no way alters that fact. The legislative history of the provision is clear. Thus, the Memorandum of the Assembly Rules Committee stated unequivocally: “For the first time, New York State, acting through the Department of Environmental Conservation will have dedicated itself to a policy of reducing its generation of hazardous wastes, of assuring that those wastes that continue to be generated are treated or destroyed using state-of-the-art technologies, *and of phasing out the use of land disposal as a hazardous waste management process.*” New York State Legislative Annual, 1987 at p. 226. [Emphasis supplied] Similarly, the Governor’s Approved Memorandum states: “The hierarch properly characterizes land disposal as the least desirable disposal methodology...” *Id.* While repeating the terms of the hierarchy, the draft plan does actual disservice to it by providing a means to permit the expansion of unnecessary, wholly redundant hazardous waste landfill capacity that is “otherwise necessary or in the public interest.”

Moreover, the Plan's effort to establish consistency with the hierarchy by devoting a chapter to Land Disposal Restrictions is inadequate. (Chapter 4). The draft justifies its continued efforts to maintain landfill capacity at CWM by emphasizing the State Land Disposal Regulations (6 NYCRR Part 376), and the associated land ban. While it is clear that bazardous waste landfilled at CWM comply with these provisions, it is equally clear that it fails to comply with the statutory requirements that "[l]and disposal of industrial hazardous wastes, except treated residuals posing no significant threat to public health or to the environment should be phased out." While it may be true that "as a result of implementation of the LDR's, the toxicity and mobility of the treated residuals that are now allowed to be disposed in a hazardous waste land disposal facility are dramatically reduced," (Page 4-1), it is equally true that much of the waste disposed of at CWM continue to pose a not insignificant treat to public health or to the environment. The draft plan must be significantly revised to address this anomaly.

I will address one last aspect of the draft plan. To its credit, the DEC has finally, after all of these years, undertaken an extremely important requirement of its Siting Plan responsibility – providing specific, binding guidance to Facility Siting Boards that will consider granting Certificates of Environmental Safety and Public Necessity after adoption of a final plan. This guidance is set forth in a new Chapter 9. I will address only two of several serious concerns with this guidance as it stands tonight.

The first concern raised by the chapter is the prescribed process for granting a certificate to proposals for new or expanded facilities because they are "otherwise necessary or in the public interest." [Pages 9-5 – 9-6] Specifically, the guidance provides

**that Siting Boards must “among other things...evaluate ... environmental justice considerations.”**

**As interpreted by the DEC, environmental justice reflects the principle that no community should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operation, or the execution of federal, state, or local programs and policies. However, as implemented in Commissioner Policy 29, the principle only applies in permitting and certificate decisions to minority and low-income communities.**

**The doctrine, as interpreted by the DEC is far too narrow and rigid to be the focus in the plan’s guidance since, as demonstrated clearly by the Lewiston-Porter community, low-income and minority citizens are not the only New York State communities that may be exposed to a disproportionate share of environmental burdens resulting from federal, state, or local policies. Thus, this community is currently home to 8 million tons of hazardous waste permanently buried in CWM’s Model City facility; the Niagara Falls Storage Site, a federally created and supervised facility storing highly radioactive African pitchblende ores and waste containing plutonium, fission products and other radioactive material; the Lake Ontario Ordinance Site, a 7,500 acre site where activity included TNT manufacturing and the Northeast Chemical Warfare Depot; and Modern Landfill, one of the State’s largest solid waste dump; not to mention the presence of persistent organic contaminants in the Niagara River and its tributaries – an astonishing burden for a single area to carry.**

**Fundamental fairness requires that, before determining whether to issue a Certificate of Environmental Safety and Public Necessity, a Facility Siting Board must**

carefully consider the cumulative effects of all such operations in the targeted community. Thus, to consider a local example, the guidance should provide that, before granting such a certificate for a new landfill at CWM, a facility siting board would have to consider the cumulative negative effects, including on public health, property values, and quality of life of all of these facilities. These considerations must weight heavily in granting yet another Certificate of Environmental Safety and Public Necessity, especially when such an expanded facility is completely unnecessary to adequately dispose of New York State's hazardous waste generation for the next fifty years.

Finally, the guidance also provides that an unneeded hazardous waste facility, may be considered in the public interest if "approving the facility will result in significant economic benefit to New York State, New York industry, or the community where the proposed facility will be located or, alternatively, whether the denial of an application will cause significant economic harm." [Page 9-6] As phrased in the draft, this factor is simply not appropriate as guidance to a facility siting board when there is no demonstrated need for the facility.

Moreover, it completely fails to require consideration of the true cost of such facilities, including stagnant or declining property values; the heavy costs of agency regulation that are not paid by the applicant; the loss of revenue resulting from failure to construct new residential housing for those potential residents who would favorably consider the community were it not for the presence of the facility; lost opportunity to attract clean and sustainable businesses including those related to tourism; and the associated lost of property tax revenue resulting from the presence of the facility. I have attached a resolution, approved unanimously by the Niagara County Legislature, which

**makes many of these same points. Moreover, it goes without saying that no amount of income will compensate for these losses, not to mention deep concern over negative impacts on the public health, and the Plan should certainly not suggest that it would.**

**Nor are the draft plan's intimations that New York business will benefit economically from the presence of excess commercial hazardous waste landfill capacity because of the minimization of transportation costs borne out by the record. [Page 7-3] As stated unequivocally in the draft: " New York generators do not and need not consider State borders when determining how to meet their hazardous waste management needs. Due to the nature of a specific waste stream, a nearby facility may not be capable of meeting a generator's specific waste management requirements. Certain components of a generator's waste stream may allow the waste to be handled more effectively or at a lower cost at a facility located further away." [Page 5-10] Indeed, in 2005, 73% of the hazardous waste generated in New York State was shipped out of state; and in 2007, the number reached 70%. The marketplace in hazardous waste disposal and treatment is not intrastate in its scope, and the price of transportation is not dispositive on the ultimate destination of the waste for treatment or disposal. Projected savings in transportation costs should therefore not be used to justify the creation of more unnecessary and unwanted commercial hazardous waste landfill capacity in a community already burdened by the burial of 8 million tons of hazardous waste.**

## **CONCLUSION**

**It is apparent that, like its predecessors, the current Draft Hazardous Waste Facility Siting Plan is fatally flawed and inadequate to the task mandated by controlling State legislation. The DEC must withdraw its draft and complete a new plan that corrects the errors I have discussed. Thank you for your consideration.**

*Comments*  
*DEC hearing, January 14, 2013*  
*Lewiston-Porter High School*  
*R. Nils Olsen, Jr.*

**Good evening. My name is Nils Olsen. I reside at 650 Main Street in the village of Youngstown. I am a member of the faculty of the University at Buffalo Law School, where I teach the Environmental Law and Policy Clinic. I appear tonight on behalf of our client, Residents for Responsible Government and my comments are offered on their behalf.**

**My family and I have lived in Youngstown for more than 25 years. During that extended period, I have worked to prevent the expansion of commercial hazardous waste landfilling by Chemical Waste Management (CWM). I am familiar both with the history of the symbiotic relationship between the DEC and CWM, as well as the negative effects on our community that has resulted from this relationship.**

**Tonight's hearing focuses upon the Site-wide permit renewal required by 6 NYCRR Part 373. While RRG opposes the renewal of the permit, it will be filing written comments in the future within the time provided. Tonight, I will very briefly address the history of environmental regulation of the site, the serious problems that have resulted for the Lewiston-Porter communities, and the impatience and skepticism that many in the community harbor towards this seemingly never ending process.**

**My good friend Tim Henderson has long described the actual function of the DEC as a Department of Environmental Conversation, in which little more**

than a seemingly endless stream of conversation about CWM occurs rather than meaningful regulation of the operation. The cumulative effect of this extended conversation has resulted in the following: The Lewiston-Porter community is presently the home to more than *eight million tons* of hazardous waste that has been trucked into our community, driven through its residential neighborhoods and in front of this consolidated school district, and which has been permanently buried in a series of landfills located just a stone's throw from this very auditorium.

Our Lewiston-Porter community, comprised of historic homes, extensive fruit orchards and other agricultural activities, and river and lakefront proximity to the Niagara River and Lake Ontario, has been negatively effected by this collaboration between CWM and the DEC. Thus, serious questions persist as to the effects of this massive amount of hazardous waste on our community's public health. Studies undertaken by the NYS Department of Health have consistently found instances of cancer beyond that reasonably expected in our community. Property values in the towns of Lewiston and Porter are considerably lower than those in similar communities that are not burdened by hazardous waste landfilling. Significant revenue loss results from the failure to construct new residential housing for those potential residents who would favorably consider relocated to our community were it not for the presence of the CWM facility. There has been a real lost opportunity to attract clean and sustainable businesses, including

**those related to tourism. As a result, there has been an associated loss of property tax revenue resulting from the presence of the facility.**

**In the Hazardous Waste Facility Siting Plan adopted by the DEC decades after the legislatively imposed deadline, the agency quite correctly concluded that there was no need for addition hazardous waste landfilling in New York State. When the cumulative damage that has resulted in this community through the operation of this immense hazardous waste landfill, it seems clear that the agency should not renew CWM's hazardous waste management permit. All commercial activities at the site, including treatment, storage, and landfilling of hazardous waste should be discontinued, and future activity should be limited to providing the perpetual care that this landfill requires. Enough is enough - indeed eight plus million tons of waste in our community is far more than any area should be forced to endure.**