



## I. Written Responses

During the telephone conference call, all issues conference participants expressed an interest in filing written responses to the following documents. With a cover letter dated November 19, 2014 from Jill A. Banaszak, Technical Manager, Applicant commented about the draft permit. This document has been posted on the Department's web site at <http://www.dec.ny.gov/chemical/97783.html>, and is identified as OHMS Doc No. 2014691232-00108. In a letter dated November 19, 2014, Mr. Darragh outlined Applicant's position about the demand and capacity information in the 2010 Siting Plan. This document has been posted on the Department's web site at <http://www.dec.ny.gov/chemical/97783.html>, and is identified as OHMS Doc No. 2014691232-00109. The other documents are the petitions for party status filed by Hon. Rick Dykstra and Amy Witryol, and by Gary Abraham and R. Nils Olsen, on behalf of their clients.

With respect to when responses should be filed, the participants recommended the end of February 2015. Ms. Witryol recommended that the deadline for responding to the November 19, 2014 comments concerning the draft permit should be the end of March 2015.

Based on the discussion, responses are due as follows. By **February 27, 2015**, the participants may respond to: (1) Applicant's comments about the demand and capacity information in the 2010 Siting Plan (OHMS Doc No. 2014691232-00109); and (2) the petitions for party status filed by Hon. Rick Dykstra, Amy Witryol, Gary Abraham, and R. Nils Olsen.

By **March 20, 2015**, the participants may respond to Applicant's comments about the draft permit (OHMS Doc No. 2014691232-00108).

During the telephone conference call, I said that I would accept responses by email. Large email submissions should be divided into files 25 MB or less and sent in separate emails. I stated further that the participants must send a hard copy of their respective submissions, by first class mail and postmarked by the deadline date, to the other participants listed on the December 1, 2014 issues conference service list. Finally, the participants must send me the hard copy original and two copies of the response, by first class mail and postmarked by the deadline date. My office will then distribute hard copies of the responses to the Commissioner and the Siting Board members.

## II. Issues Conference

The participants and I discussed the schedule for the upcoming issues conference. I asked the participants about their availability from the week of March 16, 2015 through April 2015. I understand that the participants are available during the week of March 23, 2015. During the latter part of the week of March 30, 2015, Jewish and Christian religious holidays begin. Mr. Olsen stated that he would be presenting a paper at a conference during the week of April 13, 2015.

Given the availability of the Siting Board members, I request that the issues conference participants reserve the weeks of April 27, 2015, and May 4, 2015 for the issues conference.

We discussed the possibility of having the participants' consultants and potential witnesses available by telephone during the issues conference. I am open to this recommendation. As I mentioned during the telephone conference call, the issues conference is not an evidentiary hearing. To the extent that consultants and potential witnesses participate, they will not be allowed to testify, nor will they be cross-examined.

If, during the issues conference, consultants and witnesses wish to participate by telephone conference, OHMS will not be able to provide any equipment for this purpose, such as telephones, and speakers. If some of the participants' consultants and potential witnesses participate via telephone conference, then all those attending the issues conference must be able to hear the telephone participants. Most importantly, the stenographer must be able to take the minutes for a complete transcript.

We also discussed grouping the proposed issues on particular days after the conference has been scheduled to minimize the amount of time that the participants' consultants and potential witnesses have to be present at the issues conference or available by telephone. I encourage the participants to confer about this process. After the participants have reviewed the forthcoming responses, it may be easier to group proposed issues for this purpose.

The issues conference participants may provide recommendations for venues for the issues conference. These recommendations are due by **January 12, 2015**. Any recommendations about the venue for the issues conference must be sent to all the issues conference participants. The following criteria should be considered in identifying potential locations. The location should be in the town where the project is located or as reasonably near the project site as possible (*see* 6 NYCRR 624.3[b][2]). The location will need to accommodate from 50 to 75 people. I anticipate that those attending will include a representative for each issues conference participant as well as consultants, and potential witnesses. The Siting Board members will be attending. The location for the issues conference should be reasonably accessible to the mobility impaired.

### III. Transcripts

With respect to Ms. Witryol's concern about the accuracy of the transcript outlined in her email of November 26, 2014, I said that the issues conference participants would have the opportunity to review the transcript from the issues conference and the adjudicatory hearing sessions, and to propose errata. As appropriate, and subject to the approval of the administrative law judge, the transcript would be corrected. Ms. Witryol explained, however, that she would like to have an audio recording of the proceedings when reviewing the transcript for errors. I will take this request under advisement.

IV. Modifications to Petitions for Party Status

Subsequent to November 25, 2014, Ms. Witryol submitted updates of the original document identified as “1-SiteCert-AHW.pdf” with emails dated November 26, 2014 and December 2, 2014. During the telephone conference call, Ms. Witryol requested leave to file a further update of this document, which she identified as 1d-SiteCert-AHW.pdf. The latest version would delete the terms “draft” and “confidential” from the original document.

The other issues conference participants did not object to Ms. Witryol substituting the version identified as 1d-SiteCert-AHW.pdf for the original. The participants requested hard copy of the relevant pages in red-line to facilitate a comparison of the revision with the original. With an email dated December 11, 2014, Ms. Witryol provided an electronic version of 1d-SiteCert-AHW.pdf.

V. Redacted Information

To date, OHMS has redacted the telephone numbers, email addresses, and street addresses of members of the public who filed public comments about the captioned matter from the electronic copies of these documents before posting them on the Department’s web site. By regulation (*see* 6 NYCRR 624.5[b][1][i]), the content of each petition for party status must fully identify the proposed party including the name of the person or persons who will represent the party. To address potential privacy concerns associated with posting personal information on the Department’s web site and balance this regulatory requirement, I offered the participants an opportunity to identify any information that should be redacted from the *electronic* form of the petitions for party status. Ms. Witryol provided me with information in an email dated November 11, 2014. At this time, I understand that no other issues conference participant wants any information redacted from their respective petitions for party status.

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Daniel P. O’Connell  
Administrative Law Judge

Date: Albany, New York  
December 15, 2014

To: December 1, 2014 Service List – Issues Conference