

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN THE MATTER OF THE APPLICATION OF CWM	X
CHEMICAL SERVICES, LLC Pursuant to Titles 7 and	X
11 of Article 27 of the Environmental Conservation Law,	X
for required permits and approvals for the RMU-2	X
Hazardous Waste Landfill to be located in the Towns of	X
Lewiston and Porter, New York	X
	X
Project Application Nos. 9-2934-00022/0025, 9-2934-	X
00022/00231, 9-2934-00022/00232, 9-23934-00022/00049,	X
and a Hazardous Waste Facility Siting Application.	X
	X
	X

**REPLY SUBMITTED ON BEHALF OF THE RESIDENTS FOR RESPONSIBLE
GOVERNMENT, INC., THE LEWISTON-PORTER CENTRAL SCHOOL DISTRICT,
AND THE NIAGARA COUNTY FARM BUREAU.**

The University at Buffalo Law School
The State University of New York
Clinical Education Program
507 John Lord O'Brien Hall
North Campus
Buffalo, New York 14260
R. Nils Olsen, Jr. counsel
716-645-2167
716-745-7381
E-mail: nolsen@buffalo.edu

Residents For Responsible Government, Inc. (“RRG”), the Lewiston-Porter Central School District (“Lew-Port”), and the Niagara County Farm Bureau (“Farm Bureau”) (collectively “the Parties”) file the following Reply to the Appeal presented previously by Amy Witryol. While in substantial agreement with Ms. Witryol’s petition and appeal, the Parties provide this brief Reply to clarify the submissions and to identify areas of agreement and to state, as necessary, their interpretation of the Appeal.

COMPLIANCE

Scope of Review:

In their Appeal, the Parties called for the broadest interpretation, as opposed to the narrow interpretation identified by the Administrative Law Judge (ALJ), for review of environmental violations by Chemical Waste Management (CWM) and affiliates. The Parties note that Ms. Witryol’s examples of Waste Management involvement in CWM operations provided in her Compliance submission of May 22, 2015 to the ALJ, as well as in her recent Appeal, are fully compatible with the position of the Parties.

DEC Monitors:

The Parties concur with the Witryol petition (at p. 17) and also with her Compliance Appeal (at p. 6), regarding the inability of the Town of Lewiston and Niagara County Community Advisory Committee for RMU-1 (CAC) members to determine from the monthly reports of the DEC setting forth violations, whether DEC or a member of the public, or a CWM self-report, the identifying party, as this information was not disclosed in the monthly DEC reports to the Towns and County

pursuant to ECL section 27-0920. As a result, the Parties' appeal, at p. 36, which stated that "leaking trucks were identified by DEC on-site monitors" should be amended to more accurately read "leaking trucks were noted in monthly reports sent to the Towns and County."

TRAFFIC/CLAY/SOURCES OF WASTE/NOISE.

The Parties' petition made comments on CWM traffic problems in front of the school campus (at pp. 9, 29, 31, 32, 35-36, 43), while Ms. Witryol's petition additionally addressed truck traffic problems on Creek Road Extension and missing traffic and accident data for the segment of the Designated Route closest to Interstate 90. The Parties agree with Ms. Witryol that the last CAC agreement, which was the process of negotiation among the parties, failed to sufficiently mitigate adverse effects of traffic proceeding past the schools, and was not intended to mitigate all of the concerns of residents living along the Designated Route. Given the obvious concerns presented by heavy hazardous waste traffic in front of the school, and the compelling comments in surveys set forth in Appendix K in Ms. Witryol's petition, the Parties agree further inquiry as the possible mitigation of truck traffic volume and hours is necessary.

We further note Ms. Witryol's comment in her petition (at p. 32) that, beginning in 2005, CWM restrained its waste volume to extend the useful life of RMU-1 because of problems encountered with the RMU-2 applications (the New York State Department of Health Orders). Ms. Witryol reiterated this in statements made at the Issues Conference (at p. 500). We concur with Ms. Witryol's appeal that actual CWM traffic volumes over the life of RM-1 reflect a wide variation in volume

that would necessarily understate projected RMU-2 traffic impacts, if averaged or based upon a CAC Agreement, which exempted clay and other construction trucks. The Parties agree CWM should release the actual truck volumes and times of day it has on record from RMU-1 to support a reasonable revised Traffic Study.

The serious accident and volume data gaps identified in Ms. Witryol's petition were reiterated in her Appeal, in the form of questions that the Parties found helpful and significant. They agree, for example, that a reasonable person would wish to inquire why accident rates for just the five largest CWM transporters during an unknown period of time should be relied upon as representative of RMU-1 operations.

Clay:

The Parties' petition (at p. 51) also echoed Ms. Witryol's concerns that clay truck traffic. The Parties proffered a witness, Thomas Freck, concerning impacts of clay truck traffic, while Ms. Witryol proffered another witness, Drahms, who would testify about the negative effect of clay mining and cumulative impacts noted in her petition (at pp. 101-102). The Parties do not object to Ms. Witryol's appeal concerning clay mining and truck routes.

Noise:

The Parties concur with Ms. Witryol's concern that the 1993 CWM Noise Study and update were deficient for much more than STAMINA vs. TNM corrections. Ms. Witryol's petition states that noise receptors were placed at more distant locations, one of which was not even on the designated truck route. At p. 26 of her petition, Ms. Witryol noted that "**Receptor #2** was reportedly placed 457 feet (465

feet including the shoulder) from Creek Rd. However, the nearest entrance to the elementary school is roughly 250 feet from Creek Road and the nearest entrance to the middle school is roughly 170 feet from Creek Road...Pre-K drop-off and pick-up times that now exist were also excluded from the Normandeau study.”

REVENUE/EXPENSE TRADEOFFS.

The Parties concur with Ms. Witryol’s Appeal (at pp. 17-18) to expand the scope of adjudication for Tourism testimony beyond the market for second homes. One of the reasons that agreement to consolidate this issue with the Property Value diminution claims of the Parties was the compatibility of Mr. Acks’ submission referencing RMU-2 adverse impacts on tourism (at p. 3) with the experience and expertise that Mr. Rosenwasser would bring to comments on tourism in areas impacted by CWM.

RESIDENTIAL AREAS AND CONTIGUOUS POPULATION – HEALTH.

The Parties did not appeal the exclusion of Health from consideration under SEQR because the Ruling permitted Health to be discussed in connection with Environmental Justice, Equitable Geographic Distribution, and Public Interest. However, they note that the Ruling excluded all witnesses, which would unfairly disadvantage stakeholders in the process.

The Parties therefore concur with Ms. Witryol’s appeal (at pp. 10-11) to include all three of our witnesses, Drs. Hughes, Carpenter and Moysich. Considering Dr. Carpenter’s substantial background in research of environmental causes of illness combined with his experience at the New York State Department of Health, his expert testimony is significant and substantive in limiting the extent of

uncertainty of causal effect from CWM contamination based upon data from the 2008 Department of Health Cancer Study. The Parties also confirm their willingness to join testimony by Dr. Carpenter and Ms. Moysich with Ms. Witryol's issue of the significance of the 2008 Study data. Finally, the Parties do not object to Ms. Witryol's Appeal seeking expansion of the scope of the Ruling to evaluate Health in connection with SEQR and the Siting Certificate.

Respectfully Submitted

The University at Buffalo Law School
The State University of New York
Clinical Education Program
507 John Lord O'Brian Hall
North Campus
Buffalo, NY 14260
R. Nils Olsen, Jr. counsel
716-645-2167
716-745-7381
E-mail: nolsen@buffalo.edu

By R. Nils Olsen, Jr.

