

**New York State Hazardous Waste Facility Siting Plan  
July 2008 Draft**

**Response to Public Comments**

<u>Comment Categories</u>	<u>Page</u>
Process/Plan Details (Comments 1 – 10).....	1
Use of Hierarchy/Reuse, Reduce, Recycle, Treatment and Incineration, Landfill (Comments 11 – 23).....	3
Siting Criteria/Determination of Need (Comments 24 – 39).....	6
Equitable Geographic Distribution (Comments 40 – 45).....	10
Capacity (Comments 46 – 53).....	12
Non-hazardous waste/Imports/Exports (Comments 54 – 58).....	13
Transportation (Comments 59 – 65).....	14
Public Health Risk/Environmental Justice (Comments 66 -73).....	16
Comments related to CWM (Comments 74 – 81).....	18
DGEIS (Comment 82).....	19

Process/ Plan Details

1. Comment: Public notice of hearings should be published in several local venues for each DEC region. The hearings should be noticed in local papers and re-held in the spring of 2009 for each region where notice was not in a local paper.

Response: The Department is required by law to publish notice in the Environmental Notice Bulletin and the State Register. In addition, notice is provided on the Department Web Site and notice has been published in a local newspaper in the area of the State which has expressed substantial public interest in this document.

2. Comment: The public comment period closes six days after the last scheduled hearing. This does not provide enough time to read the Plan, develop comments and submit them to DEC. The public comment period should be extended an additional 90 days.

Response: The hearings were to receive comment, not provide a venue to discuss Plan content. The public had nearly four months, from July 2008 to November 2008, to read and develop comments on the Plan.

3. Comment: DEC has not met the mandated timeline for finalizing a Siting Plan.

Response: This is correct, but does not negate the Department's obligation to produce a plan.

4. Comment: A number of copy edits were offered.

Response: Thank you.

5. Comment: Instead of looking at hazardous waste shipped off site, the analysis should include hazardous waste managed on-site. Looking at what is already being treated on-site seems a pre-requisite to understanding and encouraging more on-site solutions.

Response: The vast majority of hazardous waste generated in the state is managed on-site, and most of this is wastewater. The law requires a Plan to address the availability of commercial facilities which receive hazardous waste generated from off-site for management.

6. Comment: The Major Findings in the Executive Summary are incomplete or inaccurate.

Response: The Executive Summary was intended to highlight the major findings and recommendations provided in the Chapters of the Plan. However, many reviewers felt that various details found in the Chapters but not in the Executive Summary were being devalued. This was not the intent. The format of the Executive Summary has been changed to provide an introduction to the content of each chapter so that the reader will find their areas of interest and can then direct their reading of the document accordingly.

7. Comment: The Plan is inconsistent in its selections of when to trend one, five, ten or twenty years of data, both historically and prospectively.

Response: The Department has made the best use of all available data from multiple sources to complete the analyses in the Plan.

8. Comment: The Plan must substantiate anecdotal comments somehow. Such as survey methods.

Response: The Plan has been clarified to address this issue. The Plan has been clarified to state that this information is from informal communications and from comments received on the draft plan from interested parties.

9. Comment: There should be a chapter on each handling method.

Response: The Chapters reflect specific statutory mandates for Plan content.

10. Comment: The Waste Minimization discussion addresses only primary waste. Remedial waste needs to be discussed as well.

Response: The Plan has been revised to address this comment. Revised Chapter 3 has an extensive discussion on remedial hazardous waste including the impact of the hierarchy on remedial projects. The topic of remedial hazardous waste has also been added to Chapter 2.

#### Use of Hierarchy/Reuse, Reduce, Recycle, Treatment and Incineration, Landfill

11. Comment: Consideration needs to be given to alternatives to landfilling of hazardous waste. Landfilling or incineration of hazardous waste should not be an option in the 21<sup>st</sup> century. The Plan should include a description of how the state would pursue the hierarchy goals to substantially reduce the generation of hazardous waste. The Plan should discourage landfilling, consistent with current policy.

Response: Chapter 2 has been expanded to more thoroughly cover these issues. The hierarchy law presents preferences for hazardous waste management but does not preclude the use of any option.

12. Comment: The law mandated the phase out of landfilling of hazardous waste that has not been treated to a benign state. Burying untreated waste in drums does not count. State law defines “treatment” of hazardous waste as “any method, technique, or process including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.” The Joint Commission’s 1989 report defines treatment as “wastes that have been detoxified to the extent that they no longer pose a significant threat to public health or the environment” (p. 21). Putting untreated waste in today’s state-of-the-art containers does not satisfy the law or the legislative intent.

Response: As a result of implementation of the land disposal restrictions (LDRs), 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 compared to the toxicity

and mobility of wastes being land disposed in 1987, the year the law was enacted requiring the preparation of this Siting Plan. The State LDR program will be revised as these requirements are modified by USEPA in the future. Please see revised Chapter 4 for further discussion.

13. Comment: Commentors stated preference for reuse and recycling. Per the hierarchy, on-site treatment or recycling and development of technologies for all hazardous waste, including recycling, should be strongly recommended in the Plan and State funding should provide incentives. Land disposal for remedial as well as primary wastes should be discouraged. Evaluation is needed of whether existing State policies and programs provide incentives to improve availability of on-site remedial technologies and a discussion of on-site remedial technologies that are now in use and those under development.

Response: Revised Chapter 2 addresses the numerous components of New York State's pollution prevention and waste reduction programs. It includes discussion of potential legislation and additional funding to strengthen the program. Revised Chapter 3 discusses expanded use of on-site remedial technologies as a component of remedial site cleanups.

14. Comment: National overcapacity for hazardous waste landfilling has resulted in lower cost for hazardous waste landfilling, undermining the goals of the hierarchy.

Response: As stated by a commenter, "the hazardous waste management industry has evolved to the point that market forces and the private sector have served to provide adequate capacity for a diverse interstate interdependent market place." The country depends on the private sector to operate hazardous waste management facilities. Revised Chapter 2 discusses actions being undertaken by the State and others to encourage moving up the hierarchy. Revised Chapter 4 discusses the "land disposal restrictions" which mandate management methods other than land disposal for many types of hazardous wastes.

15. Comment: The plan should set goals and timeframes for a plan to require treatment of residuals to levels that are not hazardous for eventual elimination of landfilling of hazardous waste.

Response: The law does not require elimination of landfilling. It does state that landfilling is the least preferred management method for hazardous wastes other than treated residuals posing no significant threat to public health or the environment. Revised Chapter 4 addresses this issue.

16. Comment: Commentors do not concur that treated residuals that are still classified as hazardous pose no significant threat to public health or the environment.

Response: Comment noted. Revised Chapter 4 addresses this issue.

17. Comment: Hazardous waste disposal capacity, including landfill capacity, will continue to be necessary.

Response: Comment noted. The Plan text reflects this statement.

18. Comment: Emphasis should be on treatment of remedial waste, rather than landfilling. Having a chapter on landfilling creates the impression that this is the preferred alternative. Stating that landfill capacity is a diminishing resource encourages rather than discourages land disposal and does not comply with the Hierarchy. At one place the text says “almost all” landfilling of untreated hazardous waste has been phased out. Another statement says all has been phased out – this is in conflict.

Response: Revised Chapter 4 addresses a specific issue required to be addressed in the Plan by the Statute. Language has been clarified to remove conflicting language.

19. Comment: The Findings attempt to convey to the reader what [land disposal] capacity estimates are – that’s enough. Please remove the fourth bullet in Recommendations in its entirety. It would just frighten a board with the statement “landfills are a diminishing resource”.

Response: Findings and recommendations have been removed from the Executive Summary.

20. Comment: When addressing “compilation and analysis of existing inventories” it should include the inventory of waste permanently disposed of in hazardous waste landfills.

Response: The law does not require an inventory of waste permanently disposed of in hazardous waste landfills.

21. Comment: The DEC should develop an aggressive plan that prioritizes toxic use reduction with specific annual waste reduction goals for industry. Legislation should be proposed to provide the State with the legal framework to specifically require industry to take action to implement the hierarchy and comprehensively reduce its use of highly toxic substances and reduce its generation of hazardous waste. Modeled after the Massachusetts *Toxic Use Reduction Act*, the bill would require those who use toxic substances or produce hazardous waste to develop a plan to reduce toxic substance use and hazardous waste generation, and would be required to meet targets for reduction, or face penalties.

Response: This issue is addressed in revised Chapter 2.

22. Comment: The Plan should provide adequate, verifiable data and information that assesses facilities by rank in the Hierarchy.

Response: The description of commercial facilities in revised Chapter 1 provides information on what management methods occur at each location, thus providing information on their status within the hierarchy.

23. Comment: The Plan should discuss various legislation, either proposed or passed, regarding protection of the Great Lakes.

Response: The Siting Law does not require discussion of specific programs or legislation focusing on protection of the Great Lakes.

#### Siting Criteria/Determination of Need

24. Comment: The Plan should state that no landfill should be located in an area with known atomic waste already present.

Response: In new Chapter 9, for actions subject to facility Siting Board approval, the board is advised that other past and present activities at the property must be considered for their impact on the proposed action to evaluate the location in a public interest context.

25. Comment: A set of criteria for establishing whether a facility is needed should be provided to provide a framework for a siting board in determining facility need.

Response: Agreed. New Chapter 9 provides guidance in regard to, among other things, a finding of need.

26. Comment: DEC should be able to identify present needs for hazardous waste facilities. The Plan should include what factors would indicate, presently, that a hazardous waste facility was needed; do circumstances exist that necessitate the construction of expansion of hazardous waste facilities in the State; if no need for facilities is identified, whether any indication exists that such factors may materialize at some future time. Particular attention is needed for land disposal facilities.

Response: Revised Chapter 6 addresses these issues.

27. Comment: Siting criteria should include issues of environmental justice, community health and transportation, as well as the record of any proposed facility operator.

Response: The final decision of a Siting Board must be a formal reasoned judgment resulting from an evaluation of the entire record before it, of which the Plan is only one component, in its determination of whether a certificate of environmental safety and public necessity is granted, granted with conditions, or denied. Parts 361 and 621, as

well as new Chapter 9 of the Siting Plan, provide some of the guidance and criteria that must be considered by the Board.

28. Comment: Land disposal capacity available in the mid-west and the north-east was underestimated and needs to be reassessed.

Response: This analysis has been expanded to include additional information provided in comments received on the draft Plan.

29. Comment: The Plan does not address compliance with the 20-year disposal capacity requirement (27-1102).

Response: Revised Chapter 6 addresses this requirement.

30. Comment: In assessing need, TSCA waste should also be included. While there are 20 landfills permitted for disposal of RCRA hazardous wastes, there are only 11 that are authorized to manage TSCA waste.

Response: New York regulates PCB wastes as hazardous waste but not all RCRA C permitted hazardous waste management land disposal facilities in the country can accept PCB waste. The facilities in Michigan and Indiana, along with the New York facility, can accept PCB waste. PCB waste is also managed outside of the northeast quarter of the country, for example, PCB waste from the Hudson River dredging project is being sent to Texas. The Department's estimates of hazardous waste disposal capacity as of 2007 ranged from 18.3 to 28.7 million tons, depending on what factors were taken into consideration. The lowest number, 18.3 million tons, resulted from taking into consideration the use of capacity at some locations by non-RCRA C wastes. Using the lower capacity value of 18.3 million tons, and a high estimate of approximately 850,000 tons of hazardous waste landfilled at these facilities per year, results in a conservative estimate of at least 21 years of federal RCRA-C waste capacity in the northeast quarter of the country through at least 2028.

31. Comment: Residues produced by recycling and other types of treatment, which still require landfill disposal, as well as friable asbestos, and other specialized wastes, require the existence of landfill capacity beyond what is provided by a subtitle C landfill.

Response: As discussed in the previous comment, non-hazardous waste disposal in RCRA-C land disposal facilities was taken into account in the capacity calculations.

32. Comment: The Plan concludes there is 18 years of capacity in the northeast quarter based on capacity of only 3 of six landfills, but measured against volume for all 6. As such, the northeast quarter capacity estimates may be significantly understated, and this should be noted in Plan Findings.

Response: Findings have been deleted from the Executive Summary. Discussion of capacity can be found in revised Chapter 6 and is discussed in the response to comment # 30.

33. Comment: The Plan states that it does not discourage the consideration of private sector siting proposals. This contradicts the hierarchy, which discourages land disposal. It contradicts the objective to reduce shipment of hazardous wastes off-site and the fact that any market shortfall would be evident years in advance, in ample time for state or private industry to site a facility to meet the need.

Response: New York's policy to rely on the private sector for the siting and operation of hazardous waste management facilities does not contradict the hierarchy. The hierarchy allows land disposal of hazardous waste as the least preferred hazardous waste management method. Revised Chapter 2 addresses the preferred management choices as stated in the hierarchy. As stated in revised Chapter 8, the Siting Plan is required by law to be reviewed annually, and the Siting Plan will be updated as necessary if:

- a future USEPA assessment identifies a current or projected shortfall in national hazardous waste management capacity;
- changes in interstate or international transport law allow limitations on the transportation of hazardous waste. For example, Congress might choose to enact legislation giving states the authority to ban or limit the import of hazardous waste. Such legislation has been proposed for solid waste and was enacted many years ago for low level radioactive wastes;
- in the Department's annual review, it concludes that there is a trend showing a significant increase in State hazardous waste generation over time or changes in required management methods that would increase the need for additional management capacity; or
- in the Department's annual review, it identifies a significant decrease in commercial hazardous waste treatment or disposal capacity or required management methods without capacity available elsewhere in the nation.

34. Comment: The Plan should evaluate the possibility that TSCA and RCRA remedial wastes to landfills would be expected to decline significantly in comparison to the past 20 years. The Plan should make efforts to disclose the amounts of historical waste generated by brownfields remediation that was hazardous and how much as non-hazardous.

Response: The discussion of remedial waste in Chapter 3 has been expanded to discuss how much of the waste generated by clean up projects is hazardous. The capacity analysis in revised Chapter 6 takes a "worse case" approach and considers hazardous

waste generation to remain at present levels. Even with this approach, there is at least 20 years of capacity to meet possible land disposal needs.

35. Comment: The Plan states that when CWM reaches capacity in 2013 the use of out of state land disposal facilities by New York will increase accordingly. This may not be true. Removal of capacity from the market would seem to promote better preferences under the Hierarchy.

Response: This statement has been deleted from the Plan.

36. Comment: There is no data/analysis to support the Finding that in-state generation alone cannot support economically viable commercial TSDs (except transfer). Provide it or remove this. Pricing trends and factors for each management method were ignored in the Plan. Why?

Response: New York State's long standing policy is to rely on the private sector to build and operate hazardous waste management facilities in the State. From comments received on the draft Plan, industry stated, "The hazardous waste management industry has evolved to the point that market forces and the private sector have served to provide adequate capacity for a diverse interstate interdependent market place and that the market place and the regulators should continue to rely on market forces and the private sector to determine where and when new or expanded facilities should be sited and developed, subject to applicable siting criteria and environmental and public health considerations." Ultimately, it is up to the private sector to determine the economic viability of a commercial TSD facility. It is not necessary for the Siting Plan to complete a detailed analysis of this issue.

37. Comment: The Plan does not meet the legal requirements of the Statutory language with regard to the in-state capacity assurance need demonstration, is inconsistent with the requirements of 40 CFR 271.4(b), and does not provide guidance on evaluating whether a proposed facility is otherwise necessary or in the public interest.

Response: We believe the Plan meets all legal and technical requirements of the Statute. The Plan clearly states that 40 CFR 271.4(b) applies. New Chapter 9 now provides guidance on evaluating whether a proposed facility is otherwise necessary or in the public interest.

38. Comment: If you're going to permit a new facility, the lower Hudson Valley or the island of Manhattan should be considered for possible siting, not western New York.

Response: The Siting Plan does not preclude any area of New York State for the siting of a hazardous waste TSD facility.

39. Comment: The effects of climate change must be included in evaluating future sites for hazardous waste facilities.

Response: Agreed. This is discussed in Chapter 7 regarding transportation analysis and in new Chapter 9.

#### Equitable Geographic Distribution

40. Comment: The plan does not meet the test of geographically equitable siting. Disposal sites that are small and used only by companies for their own use should not be counted. A recycling facility downstate does not balance a landfill which keeps its waste forever. Equitable geographic distribution should consider management method, inventory and volume and then be compared to the hierarchy. Inventory should consider waste permanently disposed of at a facility. Historic practices in an area should be considered.

Response: The statute requires determination of the need for additional facilities, and the siting of these additional facilities must be consistent with “an equitable geographic distribution of facilities.” The Plan goes beyond this requirement by presenting information on various types of facilities, including by management method, in revised Chapter 6. Application of the hierarchy and past practices are discussed in new Chapter 9.

41. Comment: Sites in the Midwestern states should not be included in the northeast.

Response: In Chapter 5, the term “northeast quarter” is defined in the plan, for purposes of assessing available capacity within the larger region surrounding New York State. The description is not intended to have meaning beyond its usefulness as a way of looking at capacity.

42. Comment: The 2003 draft Plan accurately notes, “Commercial facilities are the main focus of the Hazardous Waste Siting Plan” (p. 1-4). Nevertheless, the 2008 Re-draft Plan mixes the inclusive statistics of on-site and captive facilities with commercial facilities to reflect an inaccurate picture of the current situation, so much so that the Re-draft Plan concludes that DEC Regions 1 and 2 bear the heaviest burden of hazardous waste, if you count the water collected in the manholes.

Response: The Statute uses the general term “industrial hazardous waste management facilities.” Revised Chapter 6 provides many alternative ways to describe industrial hazardous waste management facilities in the State.

43. Comment: Niagara County is the most environmentally burdened county in the State and is the only place in the State where the waste stays forever. This area is already overburdened with waste disposal in the form of solid waste, hazardous waste and

radioactive waste. CWM is the only hazardous waste landfill in the northeast. One landfill is not geographically equitable.

Response: New Chapter 9 now includes guidance on factors to be considered in determining if a facility is or is not in the public interest, such as past and present activities at the property.

44. Comment: The Plan takes into consideration a geographically diverse network of hazardous waste management facilities and methodologies. Having in-state facilities is crucial to New York State businesses that depend on a cost-effective means for disposal.

Response: To the extent that cost is a factor, it does not necessarily follow that an in-state facility necessarily provides cost savings. As discussed in the Plan, economics of scale allow larger regional facilities to offer competitive services.

45. Comment: “Equitable geographic distribution” must be defined in the Plan. It should include facility differentiation – specific analysis of disposal facilities is required. The acceptability of future proposals, given the geographic status quo, must be discussed, with specific attention to hazardous waste landfills in Niagara County. Distribution of types of facilities should be presented followed by analysis of impacts. Each individual facility should be mapped on each map. Detailed suggestions on what should be evaluated and presented on the issue of equitable geographic distribution were provided. Equitable Distribution of Facilities maps: ECL 27-1102.1 instructs the Department to look at methods according to the Hierarchy, and, to segregate treatment storage and disposal facilities. The maps look at facilities collectively. That’s not what the law says. ECL 27-1102.2(a) distinguishes treatment and storage facilities from disposal facilities. There is no list of captive facilities accompanying the maps to verify accuracy.

Response: The law does not require the suggested analyses. Distribution of facilities does not require discussion of impacts. Impacts of individual facilities on their particular communities are not required by the Plan, but are considerations on individual facility permitting processes. The discussion in revised Chapter 6 on equitable geographic distribution has, in fact, been expanded, and goes beyond the requirements of the law. Appendix C provides the detailed listing of all facilities included facility counts in the maps in Chapter 6, including captive facilities.

## Capacity

46. Comment: Concern regarding available capacity was expressed. Increased numbers of brownfield remediation and redevelopment projects will create a greater need for disposal and/or treatment capacity. The Siting Plan should take into account the anticipated increase in hazardous waste materials due to a greater number of brownfields being remediated under the new brownfields legislation. A number of them noted that they have benefited from in-state disposal of hazardous waste materials from various sites, both industrial and remedial and expressed support for continued in-state capacity.

Response: The discussion of remedial hazardous waste, including brownfields, has been expanded in Chapter 3.

47. Comment: The draft plan appears to overestimate the remaining life of the State's only in-state hazardous waste landfill. Concern was expressed that in-state landfill disposal capacity could be totally depleted before new capacity is constructed, making New York State entirely dependent on out-of-state facilities.

Response: Life expectancy for the existing in-state hazardous waste landfill was based on actual fill rates. This has been updated and can be found in Chapter 1.

48. Comment: Since the Siting Plan admits there is no need for additional capacity or new landfills and technologies exist for decontaminating wastes, the Siting Plan should call for no hazardous waste landfills in the State.

Response: Hazardous waste facility need is discussed in revised Chapters 6 and 9. Based on the national availability of facilities, there are sufficient available TSD facilities for management of hazardous waste generated in New York, and will be for the foreseeable future. The Siting Board must also consider if an application is or is not otherwise necessary or in the public interest.

49. Comment: The conclusion was questioned that there is currently sufficient capacity through 2026 and encouraged DEC to do further analysis.

Response: Updated and additional analysis is provided in revised Chapter 6 which concludes that there is capacity through at least 2028, not including facilities in the central, southern and western parts of the United States.

50. Comment: The U.S. Trade Commission reported that hazardous waste production in the U.S. has declined sharply due to technology advances to minimize or recycle waste and there is strong support for the expectation that it will continue to decline. Most remedial hazardous wastes (92%) did not go to a hazardous waste landfill in New York according to the draft Plan. Most brownfields cleanup waste is low-level and does not go to a hazardous waste landfill. The state Brownfield Programs therefore do not rely on having an in-state hazardous waste landfill.

Response: Discussion of pollution prevention and waste reduction efforts has been expanded in Chapter 2. The discussion of overall hazardous waste generation and management in New York, including remedial hazardous waste generation and management, has been expanded in Chapter 3.

51. Comment: More should be done to site and build newer facilities as state-of-the-art environmental processing centers to assure availability of acceptable hazardous waste management facilities for New York generated hazardous wastes.

Response: As stated by a commenter, “the hazardous waste management industry has evolved to the point that market forces and the private sector have served to provide adequate capacity for a diverse interstate interdependent market place.” The country depends on the private sector to operate hazardous waste management facilities. Revised Chapter 2 discusses actions being undertaken by the State and others to encourage moving up the hierarchy.

52. Comment: The Plan does not meet the requirement for a 20-year in-state hazardous waste disposal capacity or reach a written accommodation with other states on material disposal.

Response: In 1995, USEPA made a determination that sufficient national capacity for hazardous waste TSD facilities existed for years to come and no longer required states to make individual State capacity assurances. USEPA has assumed responsibility for the capacity assurance program on behalf of States, dropping the need for interstate agreements referenced in 27-1102. National capacity has continued to be available since that time to meet hazardous waste management needs across the country.

53. Comment: The Plan does not fully take into account the types of wastes that can be accepted at each of the land disposal facilities referenced in the plan nor any annual volume limitations imposed by the regulatory agencies overseeing these facilities.

Response: The Plan generally addresses the types of waste that can be accepted at each facility in sufficient detail. In the capacity analysis, which specific facility may receive the waste was not the factor considered, rather, the total facility capacity available to meet the need was evaluated.

#### Non-hazardous waste/ Imports/Exports

54. Comment: References to non-hazardous waste should not be included in the Siting Plan.

Response: Agreed. These are now deleted.

55. Comment: The impact of Revere on how much hazardous waste is imported to the State should be determined. This will make the State continue to be a net importer of hazardous waste.

Response: This information was obtained for recent years and incorporated into the Plan.

56. Comment: References to the Supreme Court decisions on interstate commerce should be deleted. The statutory mandate to prepare this plan does not envision such discriminatory planning. If the Agency concludes that additional landfilling capacity is unnecessary, the State's action will limit landfilling of hazardous waste in a wholly equitable manner without reference to its state of origin.

Response: The Department agrees that discriminatory planning was not envisioned under the Siting Plan Statute. However, based on past and present comments made to the Department about out-of-state waste coming across New York's borders, the commerce clause cases are very important to understanding certain limitations faced by the State. Since other agencies and the Siting Board will utilize the Plan as guidance, court decisions relevant to elements or factors within the Plan are useful.

57. Comment: New York hazardous waste imports primarily get landfilled, the least preferred handling method while New York hazardous waste exports are recycled, treated or stored, which are more preferred handling methods. The Plan should recognize this imbalance and provide a plan for better trade balance.

Response: Upon gathering additional information from Revere, the quantity of hazardous waste imported that is recycled has increased significantly. In fact, the suggested imbalance does not exist.

58. Comment: The State should charge an amount for every ton of hazardous waste coming into the State and this money would be made available for when a facility has a leak. All landfills leak.

Response: TSD facilities are no longer charged fees by New York State for hazardous waste received from out of state due a court ruling that such practice is unconstitutional. In any event, any new fees would have to be instituted by the State legislature. All permitted hazardous waste TSD facilities must provide financial assurance for closure and post closure care to cover activities such as long term maintenance, monitoring, security and physical integrity of the facility as needed.

### Transportation

59. Comment: Trucks transporting hazardous waste should be restricted from roads which also provide access to schools.

Response: The Siting Plan addresses transportation from a State-wide perspective. As such, transportation of hazardous materials in large trucks must occur on roads approved by NYSDOT for truck use. Hazardous waste transportation associated with hazardous waste facilities must be evaluated during the permitting process, taking into account site specific conditions.

60. Comment: Stating that health hazards from truck traffic transporting hazardous wastes across the state is negligible isn't true. CWM admits that trucks heading their way sometimes leak and have to be "diapered." The danger of health hazards from transporting hazardous wastes is high. The risk of release during transportation is based in grossly understated data.

Response: Updated data from USDOT on hazardous materials incidents was obtained and used in the revised Siting Plan. Data collected by the USDOT on hazardous materials incidents in New York State supports a conclusion that there aren't any significant risks associated with hazardous waste transport that would indicate a need for special statewide planning consideration.

61. Comment: If the one in-state hazardous waste landfill were to close, New York State will have to export materials to an out-of-state facility at a 30-50% increase in transportation cost. As a result, fewer brownfields would be cleaned and redeveloped. Transportation costs would increase by a minimum of four times their current rate if they had to ship to an out-of-state disposal facility. For a project in Glenville, New York, the town would have incurred and estimated added increased cost of \$1.2 million if the material from the site as diverted to Michigan rather than going to a facility in Niagara County. The cost to ship hazardous waste is obviously a critical element of any clean up of brownfield site redevelopment. Cost effective programs, such as the utilization of in-state hazardous waste facilities, is supported. If NYS businesses were forced to ship to out-of-state disposal sites, costs would increase significantly because of various factors, including transportation costs. The cost of doing business in NYS does not need any additional barriers.

Response: It's acknowledged that transporting hazardous waste longer distances generally increases cost. As discussed in revised Chapter 7, USEPA's CostPro, Closure and Post-Closure Care, Cost Estimating Software, Version 6.0, released in May 2009 shows a cost of transporting hazardous wastes within New York State of \$5.64 per mile per truck. One truckload can generally transport 20 cubic yards, 6250 gallons or 80 drums of waste.

62. Comment: The total environmental impact of transporting large volumes of hazardous waste from NYS to facilities located in the Midwest or regions even further away should be considered. The total carbon footprint of shipping NYS waste out of state is much greater than handling it within the state's borders.

Response: This is true for transport by truck. If rail transport is used, the environmental cost of shipping hazardous waste further distances compared to truck transport drops significantly. This is discussed in revised Chapter 7.

63. Comment: The Plan notes the low risks posed to the environment during transport regardless of the distance traveled. Given that, use of out of state facilities may be a viable option for New York generated hazardous waste.

Response: Use of out of state facilities is presently an option for New York generators.

64. Comment: Transportation costs and volumes (number of trucks or rail cars) by management method may be helpful. The Plan could trend figures for all truck and/or rail traffic volumes for each individual TSDf within the State during the past decade.

Response: Transportation costs are directly related to distance and mode of travel and not to the type of receiving facility. The approach taken in the Plan provides sufficient analysis of transportation cost and risk from an overall planning basis.

65. Comment: Additional data beyond DOT data for incidents or spills should be investigated. Violations for trucks identified at the entrance of CWM have in one year exceeded the number which the Plan reported for the entire State over many years.

Response: Other available data from State data bases did not allow breaking out of hazardous waste as a subset of hazardous materials. The description of the incidents reported in USDOT data were used to identify the incidents appropriate to include as in-transit events. Many of the reported events at the entrance of CWM were not included as they did not reflect in-transit events or did not involve hazardous waste.

#### Public Health Risk/Environmental Justice

66. Comment: Treatment methods should not be allowed that might harm developing children, land, water or air.

Response: Existing treatment technologies must meet current standards which have the goal of protection of human health and the environment. New technologies continue to be developed which will be held to the same protection standards.

67. Comment: The entire plan is a public health concern. As CWM is the only hazardous waste facility of its type in the State, reference to it in particular, certainly affects the totality of the Plan.

Response: The Siting Plan is a planning document as described in the enabling Statute. As such, all existing treatment, storage and disposal facilities are discussed as appropriate.

68. Comment: The information from the New York State Cancer Surveillance Study for Lewiston and Porter should be taken into account in the siting of hazardous waste landfills and in the formation of the Siting Plan. Public health studies that confirm statistically significant excesses of cancers and other illnesses that could be caused by exposure to excessive environmental contaminants should be considered relevant to future proposals to site TSD facilities. Embargoing these areas from additional siting of TSD facilities should be considered.

Response: The siting of a specific hazardous waste facility will take into account appropriate environmental and health information that is available. For this specific Department of Health (DOH) study, DOH stated that they cannot conclude that the higher number of different types of cancers were related to any exposures to any contaminants from the several sites in the study area because other possible risk factors are unknown.

69. Comment: Public health and environmental protection issues relevant to hazardous waste facilities in the State need discussion, not just the type of facilities and capacity issues. There are many complicating factors associated with the management of hazardous waste. The plan should also discuss the department's own current capacity to regulate hazardous waste generators and facilities and the current staff resources dedicated to these efforts. Compliance status of these facilities, or the contamination they have created in the state should be discussed.

Response: This document is a Siting Plan discussing overall State need. The law does not require public health and environmental analyses as these are site specific issues and would be included in the site specific permitting process. The Department has dedicated staff to regulate hazardous waste in New York State. Discussion of the details of the Department's regulatory processes and staffing is not mandated content for the Plan per the Statute. Each existing TSD facility is discussed in the Plan and a link to a web site which provides compliance history is provided.

70. Comment: The past contamination of Niagara County and the northwest region of New York State should cause these areas to be environmental justice communities. In New York, environmental justice is only for communities that are low income or minority. As burdened as Porter and Niagara County are, they don't count under the draft Siting Plan. That is a disgrace.

Response: The environmental justice program is discussed in revised Chapter 6. The Siting Plan cannot change existing State policy.

71. Comment: In the world of equity, Niagara County has done its share. It's time to find a new home for another landfill for the hazardous waste that cannot be reduced, recycled or treated.

Response: The Plan has a statewide focus and is meant to address a discreet set of issues related to capacity. Site specific considerations are appropriately addressed in the context of individual permit applications.

72. Comment: The Plan Recommendation to elevate Environmental Justice over other impacts to the surrounding community seems to unfairly disadvantage rural and overburdened communities. Present implementation of the EJ policy is restricted to minority and low-income populations. Until this policy is revised to provide fair protections to all unfairly overburdened communities, its special mention in the siting plan may be punitive to rural communities.

Response: The Plan states that Environmental Justice among other issues needs to be considered. It does not elevate it above other considerations.

73. Comment: A Siting Plan should guide siting boards to consider the existing condition of community health, regardless of the cause, and seriously weigh the potential of a TSD facility to exacerbating or contributing a community's existing health risks.

Response: New Chapter 9 states that, beyond the Siting Plan, information from the record, including the adjudicatory hearing record, the hearing officer's report, briefs from the parties, and any other information that the Siting Board has collected, must be taken into consideration in reviewing an individual application. Factors such as geography and the facility's impact on the surrounding area based on factual data, including data related to human health and the environment, must be considered in the context of what is in the public interest.

#### Comments related to CWM

74. Comment: The Plan's estimate of landfill capacity in the northeast through 2026 makes it sound like the State is already counting on CWM's proposed additional capacity. It seems like it is anticipating granting the permit for the new landfill.

Response: CWM's proposed additional capacity was not included in the analysis in the previous draft Siting Plan which concluded that there was landfill capacity in the northeast through 2026 and is not included in the present draft Siting Plan which concludes there is landfill capacity in the northeast through 2028.

75. Comment: One commentor provided a number of examples that they interpreted as encouragements and advice for CWM's permit to construct a new landfill.

Response: The Plan treats all hazardous waste TSD facilities equally. References to CWM's application have been deleted.

76. Comment: Several commentors stated that CWM's request for a permit to expand should be denied. Rational for denying the permit was presented.

Response: This is beyond the scope of the Siting Plan.

77. Comment: Several commentors stated concern that in-state landfill disposal capacity could be totally depleted before new capacity is constructed, making the State entirely dependent on out-of-State facilities. NYSDEC was encouraged to act in a timely manner to prevent a shortfall of hazardous waste disposal capacity that could impact the State's environment and economy. Accelerated permitting of new hazardous waste landfill capacity was requested while the Siting Plan is being completed.

Response: Comment noted. DEC will proceed with any siting TSD application and proceeding in accordance with law and with all due consideration and requisite inquiry. "Acceleration" is neither appropriate nor provided for in the law.

78. Comment: Numerous commentors provided reasons why they were opposed to further expansion of CWM in Model City.

Response: This is beyond the scope of the Siting Plan.

79. Comment: Numerous commentors provided reasons why they supported further expansion of CWM in Model City.

Response: This is beyond the scope of the Siting Plan.

80. Comment: Concern was expressed regarding transportation risks in the vicinity of CWM.

Response: Transportation risk is addressed in Chapter 7. Issues related to a specific facility are beyond the scope of the Siting Plan.

81. Comment: Discussion of CWM's pending application seems inappropriate to a Plan intended to guide boards in judging generic TSDF applications.

Response: References to CWM's application have been deleted.

### DGEIS

82. Comment: The environmental impact statement does not address the impact. If the Siting Plan is supposed to be a blueprint for how we handle and address hazardous waste, then shouldn't the environmental impact statement talk about that? What is the impact of land disposal of waste? Is there a need?

Response: This is a generic EIS for a guidance document. As such, planning for hazardous waste management is discussed on a general basis. The impact for a particular facility is not the subject for this DGEIS.