

**NEW YORK STATE  
DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
(NYSDEC)**

**6NYCRR PART 373  
HAZARDOUS WASTE MANAGEMENT  
PERMIT MODIFICATION  
FOR  
CWM CHEMICAL SERVICES L.L.C.  
MODEL CITY FACILITY  
NIAGARA COUNTY**

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**NYSDEC  
RESPONSIVENESS  
SUMMARY**

**INTRODUCTION**

## INTRODUCTION

### Background:

In April 2008, CWM Chemical Services, L.L.C. (CWM) submitted an application to the New York State Department of Environmental Conservation (NYSDEC), with revisions submitted in June 2008, for modification of its Part 373 Hazardous Waste Management Permit for the CWM Model City, New York facility. CWM's application to modify its Part 373 Permit proposes an alternative final cover design for the remaining operational area of its hazardous waste landfill known as Residuals Management Unit - One (RMU-1), which would increase its Permitted capacity by approximately 106,870 cubic yards. In November 2008, the NYSDEC determined this application to be complete, and the public was notified of this determination by newspaper, radio on November 14, 2008 and by the NYSDEC Environmental News Bulletin (ENB) on November 12, 2008. This notification informed the public that the NYSDEC had made a tentative determination to issue the Part 373 Hazardous Waste Management Permit Modification (Permit Modification) for the CWM facility, and indicated that a draft Permit Modification had been prepared and was available for public review along with CWM's application. The notification also indicated the beginning of a minimum forty-five (45) day written public comment period on the draft Permit Modification and CWM application, and a planned Legislative Public Hearing which was originally scheduled for December 15, 2008. In response to public requests, the Hearing was re-scheduled to take place on January 21, 2009 in the Town of Porter and the written comment period was extended through January 30, 2009. Notification of the re-scheduled Hearing date and comment period extension were provided to the public by newspaper and radio on December 12, 2008.

### NYSDEC's Decision on CWM Part 373 Permit Modification:

The NYSDEC received 84 written comment documents (i.e., letters, E-mails, comment forms, etc.) during the November 12, 2008 to January 30, 2009 comment period from individuals and organizations, regarding the CWM Part 373 draft Permit Modification. The NYSDEC has also received written transcripts from the Legislative Public Hearing held on January 21, 2009. In addition, the NYSDEC received 6 written comments from the applicant (CWM), mainly regarding draft Permit conditions. The NYSDEC's review of these comments, including those made during the January 21, 2009 Legislative Public Hearing, has not identified any substantive and significant issues specifically related to the CWM Permit Modification application. Therefore, the NYSDEC has determined in accordance with Part 621.7, that an adjudicatory hearing is not warranted with respect to this particular application, and has decided to issue this Permit Modification. The Permit Modification which has been issued to CWM is the same as the draft Permit Modification with the exception of some revisions made due to comments received from CWM. These specific revisions are described in this Responsiveness Summary. **It should be noted that while this Permit Modification does increase the capacity of CWM's RMU-1 landfill, it does not authorize an expansion in the physical size of the landfill.**

### Format & Content of the Responsiveness Summary:

This Responsiveness Summary is divided up into two (2) main Sections. The first, Section I, presents the public's general comments and the NYSDEC responses to these comments. The second, Section II, presents specific comments from the public and CWM, and the NYSDEC responses to these comments. The general content of each of these Sections is described below, and a Table of Contents is provided following this introduction.

As explained at the beginning of Section I, this section contains 22 comments which were paraphrased by NYSDEC from 109 public comment documents, including transcripts from the January 21, 2009 Legislative Public Hearing. Under each of these 22 comments, a NYSDEC response is provided. Also, each of the 22 paraphrased comments lists the individual public comment document from which the paraphrased comment was derived.

Section II, contains 15 specific comments from the public and 6 from CWM. Under each of these 21 specific comments, a NYSDEC response is provided, followed by any specific revisions made to the draft Permit prior to issuance, as a result of the comment.

A directory is included at the beginning of this Responsiveness Summary listing the names of individuals and/or organizations who submitted comments, and indicating the paraphrased and/or specific comment #s which pertain to their comments.

In addition, Appendix A of the Responsiveness Summary contains the actual comment documents received, including the Hearing transcripts (hard copy version only).

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**Appendix A:** Actual Public Comment Documents & Legislative Public Hearing Transcripts

## CWM PERMIT MODIFICATION COMMENT DIRECTORY

| List # | Commenter's Name and/or Organization   | Date of Comments | Form of Comments    | DEC Comment #s Which Pertain To Identified Commenter <sup>1</sup> |
|--------|--|------------------|---------------------|---|
| 1      | Abraham, Gary, Representing, Niagara County, Town of Lewiston, Villages of Lewiston & Youngstown | 1/21/09          | Letter              | G: 1,4,13   |
| 2      | Abraham, Gary, Special Counsel, Niagara County   | 1/21/09          | Hearing Transcript  | G: 1,4,13   |
| 3      | Agnello, Vincent   | 1/21/09          | Hearing Transcript  | G: 1,3,4,7,8,13<br>S: 37  |
| 4      | Alexander, Barbara   | 1/28/09          | Letter              | G: 2,10   |
| 5      | Anjarn, Saimi  | 1/30/09          | Letter              | G: 1,3,4,6,9,12   |
| 6      | Argona, Andrew   | 1/28/09          | Letter              | G: 2,10   |
| 7      | Aube, Charles  | 1/28/09          | Letter              | G: 2,10   |
| 8      | Banaszak, Jill, Technical Manager, CWM Chemical Services, L.L.C.                                 | 1/28/09          | Letter & Attachment | S: 38,39,40,41,42,43  |
| 9      | Barnett, Linton  | 1/28/09          | Letter              | G: 2,10   |
| 10     | Battaglia, John  | 1/22/09          | Comment Form        | G: 2  |
| 11     | Bertland, Alexander  | 1/28/09 recieved | Letter              | G: 1,3,7,16   |
| 12     | Bigia, Julie Ann   | 1/28/09          | Letter              | G: 2,10   |
| 13     | Bullis, Bryan  | 1/28/09          | Letter              | G: 2,10   |
| 14     | Bullock, Thomas  | 1/29/09 received | Letter              | G: 1,6,17   |
| 15     | Burmaster, Clyde, Vice Chair, Niagara County Legislature   | 1/21/09          | Hearing Transcript  | G: 1,3,4,6,11,16  |
| 16     | Burmeister, John   | 1/26/09          | Letter              | G: 1,5,8,9,11,16  |
| 17     | Cadwalader, Angela   | 1/28/09          | Letter              | G: 2,10   |
| 18     | Caso, Lori   | 1/28/09          | Letter              | G: 2,10   |
| 19     | Cassick, Donna-Ames  | 1/29/09          | Letter              | G: 2,10   |
| 20     | Cassick, Edward  | 1/28/09          | Letter              | G: 2,10   |

| <b>List #</b> | <b>Commenter's Name and/or Organization</b>                          | <b>Date of Comments</b> | <b>Form of Comments</b> | <b>DEC Comment #s Which Pertain To Identified Commenter<sup>1</sup></b> |
|---------------|--|-------------------------|-------------------------|---|
| 21            | Ceretto, John, Legislator, Niagara County Legislature                | 1/21/09                 | Hearing Transcript      | G: 1,4,11   |
| 22            | Champoux, Kristen  | 1/29/09 received        | Letter                  | G: 1,5,12,19  |
| 23            | Ciesielski, Robert, Sierra Club Atlantic Chapter                     | 1/29/09                 | Letter                  | G: 1,3,4,5,6,7,9,11,12,13,14,18<br>S: 23                                |
| 24            | Ciesielski, Robert, Chairman, Sierra Club Niagara Group              | 1/21/09                 | Hearing Transcript      | G: 1,3,4,5,7,9,11,12,13,18,21   |
| 25            | Colosi, Tony   | 1/28/09                 | Letter                  | G: 2,10   |
| 26            | Colton, Dan  | 1/29/09 received        | Letter                  | G: 1,5,7,18   |
| 27            | Custo, Kaila   | 1/28/09 received        | Letter                  | G: 1,6  |
| 28            | DelMonte, Francine, Assemblyperson NYS Assembly                      | 1/28/09                 | Letter                  | G: 1,3,6,7,8,12,13,15   |
| 29            | DelMonte, Francine, Assemblyperson NYS Assembly                      | 1/28/09                 | Letter to Governor      | G: 1,4,11   |
| 30            | Duling, Dennis   | 1/21/09                 | Hearing Transcript      | G: 1,3,8,9,12   |
| 31            | Farrell, Katie   | 1/22/09                 | Letter                  | G: 1,6  |
| 32            | Fideli, April, President, Residents for Responsible Government (RRG) | 1/21/09                 | Hearing Transcript      | G: 1,3,5,6,7,15,19,21   |
| 33            | Fleckenstein, Thomas   | 1/21/09                 | Hearing Transcript      | G: 1,3,7,9,19,20,21<br>S: 32,33,34                                      |
| 34            | Gabrielli, F.  | 1/26/09                 | Note                    | G: 1  |
| 35            | Gallo, Mark  | 1/21/09                 | Hearing Transcript      | G: 1,9,15   |
| 36            | Gang, Raymond  | 1/21/09                 | Hearing Transcript      | G: 1,5,11,14,19<br>S: 30  |
| 37            | Harden, Richard  | 1/28/09                 | Letter                  | G: 2,10   |
| 38            | Henderson, Timothy   | 1/21/09                 | Hearing Transcript      | G: 1,3,4,5,8,9,20   |
| 39            | Higgins, Brian, Congressman, U.S. House of Representatives           | 1/26/09                 | Letter                  | G: 1,3,6,13   |
| 40            | Hooker, Velma  | 1/28/09                 | Letter                  | G: 2,10   |

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|---------------|--|-------------------------|-------------------------|---|
| 41            | Hutchinson, Herbert  | 1/28/09                 | Letter                  | G: 2,10   |
| 42            | Ishman, Debra  | 1/29/09 received        | Letter                  | G: 1,5,17,19<br>S: 25,26  |
| 43            | Jackson, James   | 1/20/09                 | Letter                  | G: 1,4,6,7,9,12,14  |
| 44            | Jackson, Sandra  | 1/20/09                 | Letter & Attachments    | G: 1,5,7,11,18,19,20  |
| 45            | Jastrzemski, Joseph, Supervisor<br>Town of Wilson            | 1/26/09                 | Letter                  | G: 1,3,16   |
| 46            | Kaszubski, Liz, Chairperson,<br>Buffalo Audubon Society      | 1/21/09                 | Letter & Attachments    | G: 1,3,6,11   |
| 47            | Klein, Art, Vice Chairman,<br>Niagara Group Sierra Club      | 1/21/09                 | Hearing Transcript      | G: 1,3,7,8,12,18<br>S: 29   |
| 48            | Klein, Arthur  | 1/30/09                 | E-mail                  | G: 1,3,7,12   |
| 49            | Koerner, Robert, Director,<br>Geosynthetic Institute         | 1/27/09                 | Letter                  | G: 2,10   |
| 50            | Kot, Paula   | 1/28/09                 | E-mail                  | G: 1,3,4,7,16   |
| 51            | Krawczyk, Karen  | 1/28/09                 | Letter                  | G: 2,10   |
| 52            | Krouse, Cheryl   | 1/21/09                 | Comment Form            | G: 1,5,17   |
| 53            | Lamb, Charles  | 1/21/09                 | Hearing Transcript      | G: 1,3,5  |
| 54            | La Rue, Mark   | 1/28/09                 | Letter                  | G: 2,10   |
| 55            | Lazeski, William & Steven                                    | 1/28/09 received        | Letter                  | G: 1  |
| 56            | Le Gasse, Joseph   | 1/28/09                 | Letter                  | G: 2,10   |
| 57            | Le Gasse, Susanne  | 1/28/09                 | Letter                  | G: 2,10   |
| 58            | Le Gault, Cloe   | 1/22/09                 | Letter                  | G: 1,7,17   |
| 59            | Leonardi, John, CEO,<br>Buffalo / Niagara Assoc. of Realtors | 1/21/09                 | Hearing Transcript      | G: 1,12,13,16,18  |
| 60            | Lewis, Gregory, Niagara County<br>Manager                    | 1/28/09                 | Letter & Attachment     | G: 1,3,11,12,16,18  |
| 61            | Lis, Ami   | 1/28/09                 | Letter                  | G: 2,10   |
| 62            | Lyon, Howard   | 1/28/09                 | Letter                  | G: 2,10   |

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|---------------|---|-------------------------|-------------------------|---|
| 63            | Maciani, Mark   | 1/28/09                 | Letter                  | G: 2,10   |
| 64            | Martell, Kimberly   | 1/29/09 received        | Letter                  | G: 1,3,4,5,6  |
| 65            | Matthews, Heather   | 1/29/09 received        | Letter                  | G: 1,19<br>S: 27  |
| 66            | Mazur, Patricia   | 1/24/09                 | Letter                  | G: 1,5,7,20   |
| 67            | Mc Grath, Tim & Kathleen  | 1/26/09                 | Letter                  | G: 1,3,6,7,16   |
| 68            | Mokhiber, Judith  | 1/22/09                 | E-mail                  | G: 1,5,6,7  |
| 69            | Morgan, Tim   | 1/28/09                 | Letter                  | G: 2,10   |
| 70            | Newlin, Fred M. II, Supervisor,<br>Town of Lewiston                                   | 1/27/09                 | Letter                  | G: 1,3,16   |
| 71            | Okonczak, Michael   | 1/28/09                 | Letter                  | G: 2,10   |
| 72            | Olsen, R. Nils Jr., Special Counsel,<br>Residents for Responsible<br>Government (RRG) | 1/21/09                 | Letter                  | G: 1,4  |
| 73            | Olsen, R. Nils Jr., Special Counsel,<br>Residents for Responsible<br>Government (RRG) | 1/21/09                 | Hearing<br>Transcript   | G: 1,3,4,6,7,8,9,11   |
| 74            | Olszewski, Kathleen   | 1/26/09                 | Letter                  | G: 1,3,6,7,16   |
| 75            | Ordiway, Tyler  | 1/28/09 received        | Letter                  | G: 1,5,7,17,19<br>S: 24   |
| 76            | Piechowski, Lynn  | 1/28/09                 | Letter                  | G: 2,10   |
| 77            | Pillittere, Joe, Assembly, (Retired),<br>NYS Assembly                                 | 1/21/09                 | Hearing<br>Transcript   | G: 1,4  |
| 78            | Phoenix, Richard  | 1/15/09                 | Letter                  | G: 2,10   |
| 79            | Purchase, Eric  | 1/28/09                 | E-mail                  | G: 1,4,6,13,16,20   |
| 80            | Richardson, Jane  | 1/21/09                 | Hearing<br>Transcript   | G: 1,3,20   |
| 81            | Rickard, Rene,<br>Tuscarora Environment   | 1/21/09                 | Hearing<br>Transcript   | G: 1,16,18  |
| 82            | Rivera, Joseph  | 1/28/09                 | Letter                  | G: 2,10   |
| 83            | Rolland, Mary Ann   | 1/21/09                 | Hearing<br>Transcript   | G: 1,4,5,20<br>S: 31  |

| <b>List #</b> | <b>Commenter's Name and/or Organization</b>                              | <b>Date of Comments</b> | <b>Form of Comments</b> | <b>DEC Comment #s Which Pertain To Identified Commenter<sup>1</sup></b> |
|---------------|--|-------------------------|-------------------------|---|
| 84            | Ruble, David   | 1/28/09                 | Letter                  | G: 2,10   |
| 85            | Rydzik, Stephen  | 1/28/09                 | Letter                  | G: 2,10   |
| 86            | Saink, Rick  | 1/28/09                 | Letter                  | G: 2,10   |
| 87            | Schneekloth, Lynda   | 1/12/09                 | Memo                    | G: 1,3,7,16   |
| 88            | Smith, Brian, Western NY Director, Citizens Campaign for the Environment | 1/21/09                 | Hearing Transcript      | G: 1,3,4,5,6,8,11,13,18   |
| 89            | Smith, Sophia  | 1/26/09                 | Letter                  | G: 1,3,6,7,16   |
| 90            | Soluri, Richard, Mayor, Village of Lewiston                              | 1/21/09                 | Hearing Transcript      | G: 1,3,16,18  |
| 91            | Spira, George & Jean   | 1/29/09                 | Letter                  | G: 2,10   |
| 92            | Spry, William  | 1/22/09                 | Letter                  | G: 2,10   |
| 93            | Spuller, Christina   | 1/26/09                 | Letter                  | G: 1,3,6,7,16   |
| 94            | Stephens, Fred   | 1/30/09                 | E-mail                  | G: 2,10   |
| 95            | Stogner, Joe   | 1/29/09 received        | Letter                  | G: 1,3,11   |
| 96            | Swearingen, Wendy  | 1/21/09                 | Hearing Transcript      | G: 1,3,8,22   |
| 97            | Thomas, Gary Jr.   | 1/28/09                 | Letter                  | G: 2,10   |
| 98            | Thompson, Antoine, State Senator, NYS Senate                             | 1/30/09                 | Letter                  | G: 1,3,5,11,12  |
| 99            | Tourbin, Midge   | 1/26/09                 | Letter                  | G: 1,6,9,20   |
| 100           | Tower, Harriet Lane  | 1/21/09                 | Hearing Transcript      | G: 1,3,5,6,11,16,18,19, 22  |
| 101           | Wagner, Sherry   | 1/28/09                 | Letter                  | G: 2,10   |
| 102           | Weld, Marn   | 1/21/09                 | Hearing Transcript      | G: 1<br>S: 35   |
| 103           | Weller, Robert   | unknown                 | Note                    | G: 2  |
| 104           | Witryol, Amy   | 1/28/09                 | Letter                  | G: 1,4,15,21  |
| 105           | Witryol, Amy   | 1/29/09 (A)             | Letter & Attachment     | G: 1,3  |

| <b>List #</b> | <b>Commenter's Name and/or Organization</b> | <b>Date of Comments</b> | <b>Form of Comments</b> | <b>DEC Comment #s Which Pertain To Identified Commenter<sup>1</sup></b> |
|---------------|---|-------------------------|-------------------------|---|
| 106           | Witryol, Amy                                | 1/29/09 (B)             | Letter & Attachment     | G: 1,3  |
| 107           | Witryol, Amy                                | 1/29/09 (C)             | Letter                  | G: 1,3,8,9,17<br>S: 28  |
| 108           | Witryol, Amy                                | 1/21/09                 | Hearing Transcript      | G: 1,3,4,6,9,16,18<br>S: 36   |
| 109           | Wong, Meiki                                 | 1/28/09 received        | Letter                  | G: 1,3,5,6  |
|               |   |                         |                         |   |

**FOOTNOTE:**

1. The letter "G" in front of the Comment #s indicate that these are general paraphrased comments contained in Section I. The letter "S" in front of the Comment #s indicate that these are specific comments contained in Section II.

**NEW YORK STATE  
DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
(NYSDEC)**

**6NYCRR PART 373  
HAZARDOUS WASTE MANAGEMENT  
PERMIT RENEWAL  
FOR  
CWM CHEMICAL SERVICES L.L.C.  
MODEL CITY FACILITY  
NIAGARA COUNTY**

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**NYSDEC  
RESPONSIVENESS  
SUMMARY**

**SECTION I  
GENERAL PUBLIC COMMENTS  
&  
NYSDEC RESPONSES**

## **NOTICE**

**This Section presents comments which have been paraphrased by NYSDEC from the actual public comments received during the comment period on the CWM Draft Permit Modification. Public comments received, whether in written form or in verbal form through public hearing transcripts, are reflected in the paraphrased comments. NYSDEC has paraphrased the public comments in order to facilitate summarized responses and avoid unnecessary repetition of similar comments/responses. NYSDEC has made every effort to retain the meaning and intent of each original comment in these paraphrased comments.**

**With each paraphrased comment, this Section presents an NYSDEC response. Also, presented with each paraphrased comment is a list of those individuals and/or groups that provided the actual individual comment from which the paraphrased comment originated.**

**Copies of all actual public comments, including transcripts from the January 21, 2009 Legislative Public Hearing, are presented in Appendix A of this Responsiveness Summary (available in hard copy only).**

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 1

**Comment Topic:** General Opposition to CWM Permit Modification

**Paraphrased Comment:**

1. We wish to protest CWM's plan to add 160,000 tons of hazardous waste to an already unwanted landfill under the "this-is-not-an-expansion" guise of a new geosynthetic liner. While the proposed modification may not increase the width or height of CWM's landfill, it will increase its capacity for toxic waste. We don't need or want the additional hazardous waste. Based on CWM's analysis of permitted air space as of September 30, 2008, showing that RMU-1's remaining permitted capacity at that time was 543,368 cubic yards, the addition of 106,870 cubic yards of disposal capacity would increase the landfill's remaining volume available for disposal by about 20%. This allows the landfill to stay open for an additional year which is a major change. CWM's plan is a significant expansion and should go through the proper permitting process. Such a significant increase in capacity at CWM constitutes a potential for significant harm and requires further and through review. We urge NYSDEC to rescind your Negative Declaration and Completeness Determination for CWM's application to expand RMU-1.

2. The proposed permit modification is disappointing because the NYSDEC never seems to listen to residents of Niagara County. We have endured repeated proposals from CWM over the years to expand its operations in Porter. CWM's constant process of proposing ways to increase the size of its dump to continue earning money is not surprising, since increasing profit is what businesses do. What we have been most frustrated by is the NYSDEC's inability or unwillingness to do what State agencies should do first and foremost, and that is "protect its citizens". None of our pleas seem to make an impression on the NYSDEC and the NYSDEC never addresses our arguments. NYSDEC must surely realize that there are some very knowledgeable people in this area who are opposed to the idea of CWM receiving additional waste. It should be obvious to the NYSDEC that we are frustrated and angry at not being heard. We are frustrated and angry at possibly being heard, and then being ignored. Very often it seems like public hearings are held by the NYSDEC after a so called "tentative", but quite formal determination has been made, with primary purpose of having person after person come up and butt their head against the wall until they are bloodied and too tired to resist. We would like to be proven wrong this time.

3. Enough is Enough. People are sick. Our environment is damaged and continues to be threatened. This is our community and we as a community have a right to make the decision on whether more hazardous materials should be dumped in Porter. The materials are not good for our environment and destroy our community, just so CWM can make more money. These important issues should be up to the people who live in this area, not the people making money off the project. We don't find this fair and we think the community should be able to vote on whether or not more hazardous materials should be dumped here. This is wrong and we strongly disagree with NYSDEC's "tentative" determination.

4. Resolutions in opposition to this draft Permit Modification were provided to the NYSDEC by a number of entities, either in writing or by reference. These resolutions can be described as presenting a description of the situation and concluding with a statement similar to the following:

“RESOLVED, that [we] oppose the addition of any hazardous waste land disposal capacity in the State of New York, and specifically for the NYSDEC to deny CWM's Permit Modification application to expand their toxic waste disposal at the Model City site in the Town of Porter in Niagara County.”

These resolutions were submitted or referenced by the following entities:

- Episcopal Church in Western New York;
- Niagara County Legislature;
- Erie County Legislature;
- Town of Lewiston; and
- Buffalo Niagara Association of Realtors.

NYSDEC Response:

1. The NYSDEC carefully considered CWM's request for the proposed modification to the RMU-1 landfill's approved final cover system to utilize a geosynthetic clay liner (GCL) in lieu of the compacted the clay barrier layer. The NYSDEC determined that the proposed permit modification modernizes the approved final cover system by taking advantage of the best available technology and construction materials to improve the long-term performance of the existing RMU-1 landfill's final cover system. The CWM proposal is similar to requests made of many other New York State landfills and has been recognized nationally as a preferred final cover system for landfills from a long-term performance perspective. Based upon its careful evaluation of the NYSDEC's past experiences with similar permit modifications at other landfills and the applicable regulatory and statutory requirements, it was determined that the improved final cover system modification should be dealt with in a similar administrative manner. The NYSDEC determined that the permit modification would not result in a significant impact or change to the existing permitted facility. This modification affords improved long-term performance over the existing approved final cover system and did not result in

any other physical changes to the approved size or operation of the existing landfill.

The NYSDEC has carefully considered the waste capacity increase associated with the CWM proposal. Since this is a Permit modification, the NYSDEC considers it appropriate to judge this capacity increase against the previous “permitted” capacity limit, and not against how it relates to the landfill’s remaining capacity. The 106,870 cubic yards added disposal capacity is a 3 percent increase in the Permitted disposal capacity, and as such, it is considered by the NYSDEC to represent a de-minimis capacity increase. Also, this will not result in a change of the landfill’s approved final contours and overall footprint. For these reasons, the NYSDEC does not consider it appropriate to rescind the previous State Environmental Review Act (SEQRA) Negative Declaration with respect to this Permit modification.

Understanding that the resultant and de-minimis capacity increase of only 3 percent, and the fact that the proposal received a negative declaration under SEQRA, the NYSDEC determined that the proposal for a final cover system modification was be exempt from the siting certificate requirements of the Environmental Conservation Law (ECL) Section 27-1105(1) and as such was not subject to the requirements of ECL Section 27-1109(6) regarding completeness determinations in absence of a final approved Statewide Hazardous Waste Siting Plan, as detailed in our response to Comment #4.

With respect to the extended length of operation that the added capacity would afford the RMU-1 landfill, the NYSDEC estimated that it could represent an additional 8 to 12 months of operations. However, the NYSDEC realizes that its permits are not written for a particular period of time and that CWM has control over its own site life by determining how much waste to accept in a given period of time and as such if CWM decided to accept waste at a faster or slower rate it will substantially effect the NYSDEC’s 8 to 12 month estimate. Also, even without the capacity increase, CWM can substantially effect the landfill’s operational life by adjusting the rate at which it accepts waste for disposal. Regardless of the landfill’s operational life, CWM is obligated to operate in accordance with its operational permit which was issued on the premise that the operation will not result in harm of impact to human health or the environment and the daily operations at this facility are closely monitored by NYSDEC staff.

2. The NYSDEC is obligated to follow the provisions of SEQRA and the Uniform Procedures Act (UPA) which have built in means for seeking out and considering public input. CWM’s permit modification application was subject to these provisions and the application was duly noticed and hearings were held. The NYSDEC gave due consideration to all public comments received through this public participation process and has determined that the proposed modification will afford improved protection of the environment and that the public is assured adequate protection during the facility’s continued operation under the conditions of its existing permit.

3. & 4. The RMU-1 Landfill permit modification fits into the existing regulatory framework that exists in the current statute of the ECL and the State regulations under Part 373. The facility, with its permit modification, has met all the regulatory obligations of these requirements and as such, the proposed application for permit modification to enhance the existing landfill's final cover system has been issued. In all instances, the issuance of this permit modification still requires that the Permittee continue to comply with its existing Permit and with all other local ordinances and requirements that are legally obligated.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |   |
|---|---|
| 1. Gary Abraham, Niagara County (1/21/09 Letter)        | 2. Gary Abraham, Niagara County (1/21/09 Hearing)       |
| 3. Vincent Agnello (1/21/09 Hearing)                    | 4. Saimi Anjarn (1/30/09 Letter)                        |
| 5. Alexander Bertland (1/28/09 Letter)                  | 6. Thomas Bullock (1/29/09 Letter)                      |
| 7. Clyde Burmaster, Niagara County (1/21/09 Hearing)    | 8. John Burmeister (1/26/09 Letter)                     |
| 9. John Ceretto, Niagara County (1/21/09 Hearing)       | 10. Kristen Champoux (1/29/09 Letter)                   |
| 11. Robert Ciesielski, Sierra Club (1/29/09 Letter)     | 12. Robert Ciesielski, Sierra Club (1/21/09 Hearing)    |
| 13. Dan Colton (1/29/09 Letter)                         | 14. Kaila Custo (1/28/09 Letter)                        |
| 15. Francine DelMonte, NYS Assembly (1/28/09 Letter)    | 16. Francine DelMonte, NYS Assembly (1/28/09 Letter)    |
| 17. Dennis Duling (1/21/09 Hearing)                     | 18. Katie Farrell (1/22/09 Letter)                      |
| 19. April Fideli, RRG (1/21/09 Hearing)                 | 20. Thomas Fleckenstein (1/21/09 Hearing)               |
| 21. F. Gabrielli (1/26/09 Note)                         | 22. Mark Gallo (1/21/09 Hearing)                        |
| 23. Raymond Gang (1/21/09 Hearing)                      | 24. Timothy Henderson (1/21/09 Hearing)                 |
| 25. Brian Higgins, US Congress (1/26/09 Letter)         | 26. Debra Ishman (1/29/09 Letter)                       |
| 27. James Jackson (1/20/09 Letter)                      | 28. Sandra Jackson (1/20/09 Letter)                     |
| 29. Joseph Jastrzemski, Town of Wilson (1/20/09 Letter) | 30. Liz Kaszubski, Buffalo Audubon (1/21/09 Letter)     |
| 31. Art Klein, Sierra Club (1/21/09 Hearing)            | 32. Arthur Klein (1/30/09 E-mail)                       |
| 33. Paula Kot (1/28/09 E-mail)                          | 34. Cheryl Krouse (1/21/09 Comment Form)                |
| 35. Charles Lamb (1/21/09 Hearing)                      | 36. William & Steven Lazeski (1/28/09 Letter)           |
| 37. Cloe Le Gault (1/22/09 Letter)                      | 38. John Leonardi, Buf./Nia. Realtors (1/21/09 Hearing) |
| 39. Gregory Lewis, Niagara County (1/28/09 Letter)      | 40. Kimberly Martell (1/29/09 Letter)                   |
| 41. Heather Matthews (1/29/09 Letter)                   | 42. Patricia Mazur (1/24/09 Letter)                     |
| 43. Tim & Kathleen Mc Grath (1/26/09 Letter)            | 44. Judith Mokhiber (1/22/09 E-mail)                    |
| 45. Fred Newlin, Town of Lewiston (1/27/09 Letter)      | 46. R. Nils Olsen Jr., RRG (1/21/09 Letter)             |
| 47. R. Nils Olsen Jr., RRG (1/21/09 Hearing)            | 48. Kathleen Olszewski (1/26/09 Letter)                 |
| 49. Tyler Ordiway (1/28/09 Letter)                      | 50. Joe Pillittere, NYS Assembly Ret. (1/21/09 Hearing) |
| 51. Eric Purchase (1/28/09 E-mail)                      | 52. Jane Richardson (1/21/09 Hearing)                   |
| 53. Rene Rickard, Tuscarora Env. (1/21/09 Hearing)      | 54. Mary Ann Rolland (1/21/09 Hearing)                  |
| 55. Lynda Schneekloth (1/12/09 Memo.)                   | 56. Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing)  |
| 57. Sophia Smith (1/26/09 Letter)                       | 58. Richard Soluri, Vill. of Lewiston (1/21/09 Hearing) |
| 59. Christina Spuller (1/26/09 Letter)                  | 60. Joe Stogner (1/29/09 Letter)                        |
| 61. Wendy Swearingen (1/21/09 Hearing)                  | 62. Antoine Thompson, NYS Senate (1/30/09 Letter)       |
| 63. Midge Tourbin (1/26/09 Letter)                      | 64. Harriet Tower (1/21/09 Hearing)                     |
| 65. Marn Weld (1/21/09 Hearing)                         | 66. Amy Witryol (1/28/09 Letter)                        |
| 67. Amy Witryol (1/29/09 Letter A)                      | 68. Amy Witryol (1/29/09 Letter B)                      |
| 69. Amy Witryol (1/29/09 Letter C)                      | 70. Amy Wtryol (1/21/09 Hearing)                        |
| 71. Meiki Wong (1/28/09 Letter)                         |   |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:**            2

**Comment Topic:**            General Support for CWM Permit Modification

**Paraphrased Comment:**

Chemical Waste Management is a competently operated local division of a national firm. It appropriately stores or treats chemical waste. Every man, woman and child generates toxic waste. CWM provides this valuable disposal service with hi-tech methods that the DEC monitors and regulates. Various studies and health surveys show that it operates safely with regard to public health and safety. The firm has been completely cooperative with rational local concerns related to it's operation and is a longtime stable employer for approximately 85 local personnel and their families. As one of the few such waste management firms in the northeastern United States, it is subject to continued and effective scrutiny by all health agencies.

As long time residents of the Youngstown area, we are first hand observers of the CWM operation, and have absolutely no concerns as to any adverse impact on the environment if this minor alteration were to be approved. We strongly recommend approval for the installation of the new cap cover design requested by CWM for its Porter landfill.

**NYSDEC Response:**

The NYSDEC has thoroughly reviewed CWM's proposed final cover system modification and has determined that the proposed modification will afford added environmental protection and improved performance over the existing final cover system. The NYSDEC has determined that use of GCL in lieu of the compacted clay barrier in the final cover system rectifies the well documented shortcomings of the compacted clay barriers when used in final cover systems. In fact, the NYSDEC's proposed solid waste landfill regulations are being revised to preclude the use of compacted clay barrier layers in final cover systems and instead calls for use of an appropriately designed GCL barrier layer in a landfill's final cover system similar to the proposed action. As a result, the NYSDEC has issued CWM's permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |                                      |                                   |
|--------------------------------------|-----------------------------------|
| 1.Barbara Alexander (1/28/09 Letter) | 2.Andrew Argona (1/28/09 Letter)  |
| 3.Charles Aube (1/28/09 Letter)      | 4.Linton Barnett (1/28/09 Letter) |

5. John Battaglia (1/22/09 Comment Form)
  7. Bryan Bullis (1/28/09 Letter)
  9. Lori Caso (1/28/09 Letter)
  11. Edward Cassick (1/28/09 Letter)
  13. Richard Harden (1/28/09 Letter)
  15. Herbert Hutchinson (1/28/09 Letter)
  17. Karen Krawczyk (1/28/09 Letter)
  19. Joseph Le Gasse (1/28/09 Letter)
  21. Ami Lis (1/28/09 Letter)
  23. Mark Maciani (1/28/09 Letter)
  25. Michael Okonczak (1/28/09 Letter)
  27. Richard Phoenix (1/15/09 Letter)
  29. David Ruble (1/28/09 Letter)
  31. Rick Saink (1/28/09 Letter)
  33. William Spry (1/22/09 Letter)
  35. Gary Thomas Jr. (1/28/09 Letter)
  37. Robert Weller (Date Unknown, Note)
6. Julie Ann Bigia (1/28/09 Letter)
  8. Angela Cadwalader (1/28/09 Letter)
  10. Donna Cassick (1/29/09 Letter)
  12. Tony Colosi (1/28/09 Letter)
  14. Velma Hooker (1/28/09 Letter)
  16. Robert Koerner, Geosyn. Institute (1/27/09 Letter)
  18. Mark La Rue (1/28/09 Letter)
  20. Susanne Le Gasse (1/28/09 Letter)
  22. Howard Lyon (1/28/09 Letter)
  24. Tim Morgan (1/28/09 Letter)
  26. Lynn Piechowski (1/28/09 Letter)
  28. Joseph Rivera (1/28/09 Letter)
  30. Stephen Rydzyk (1/28/09 Letter)
  32. George & Jean Spira (1/29/09 Letter)
  34. Fred Stephens (1/30/09 E-mail)
  36. Sherry Wagner (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:**           3

**Comment Topic:**           Associated SEQR Determination

**Paraphrased Comment:**

1. There are many discrepancies in the Full Environmental Assessment Form (EAF) submitted by CWM which served as the basis for the NYSDEC's Negative Declaration under the State Environmental Quality Review (SEQR) Act. For instance, under "Impact on Land" the EAF states "Construction on land where the depths of the water table is less than three feet." There was no checkmark whether it was a small, moderate or large potential impact. By CWM's own admission in their application they said the water table was two feet. So isn't the lack of a checkmark contrary to the statement within CWM's own application? The EAF asks if the "Proposed action may cause a risk of explosion or a release of hazardous substances in the event of an accident?" No answer. What happened to the truck at the end of Creek Road when there was an accident and a release. Under "activity" they talk about who's going to see this landfill when it's finished. There are a number of locations where it will be visible that the EAF does not identify. These include, but may not be limited to, the Niagara Falls Country Club up on top of the hill, Bond Lake which is land dedicated to public enjoyment, and the parkway which is part of the National Scenic Byway and Seaway Trail.

The CWM EAF is faulty. We would ask that NYSDEC review CWM's EAF once again, very carefully, with input from all related bureaus and divisions including wildlife, fishing, hunting, water, radiation, parks and siting, as well as other agencies within the State. Clearly there are grounds for requiring a full Environmental Impact Statement.

2. CWM's environmental assessment also states that the action would not affect the character of the existing community. The community disagrees. The extended operation interferes with the community's ability to create a positive environment for others to come here and play. It continues the stigma that deters our ability to attract new business to our communities. In determining significance of the application under SEQR regulation, NYSDEC must evaluate whether the action will create a material conflict with the community's plans or goals as officially approved or adopted. Niagara County and all local municipalities empowered to do so are on record as opposing any increase to hazardous waste landfill capacity, as it represents a material conflict to their environmental and economic goals. These local impacts have been completely ignored in this process.

3. An agency can only determine that an Environmental Impact Statement (EIS) is not necessary if it can demonstrate that the proposed action will have no significant effect on the natural, cultural and social resources of the state and/or the health, safety and welfare of the public. As a matter of common sense, you wouldn't expect to be able to reach this conclusion very often in the hazardous waste landfilling business. Notwithstanding this common sense, fair approach, the NYSDEC gives CWM a free pass and an expedited push forward with a negative declaration, which means no time-consuming and revealing environmental impact process will be required as a condition for changing the cap and capacity of the landfill. NYSDEC's reasoning, simply put, is that since they consider the new geosynthetic cap to be the only real issue, and further since they consider it to be better technology than the current design, no adverse environmental or health effects can be anticipated. Even if we don't spend time debating the technology and whether the change in capping design requires an EIS, you still have the effect that the new cap will inexorably produce more than 106,000 tons of additional hazardous waste being driven through our community, unloaded at CWM and buried in our community forever. While it may be true that the eventual topographical configuration of the landfill will not be changed as a result of this redesign, we disagree with the notion that less cap and more waste is an environmentally even trade, even if the new cap is of higher quality. If an EIS is required when CWM proposes to create a new landfill, it should equally be required when they seek to increase the amount of waste they will receive by more than 100,000 tons, and to extend the life of the facility for a year. There is simply no rational basis to conclude otherwise.

4. While it may be true that the cover design would allow for a 3% increase in the ultimate size of the dump, it will result in an approximately 20% increase in the remaining available capacity at the dump. It is more than 5000 additional truck loads, which is significant.

5. CWM's proposal is an expansion that allows one more year's operation of RMU-1. The NYSDEC says that there will be no adverse affect from this CWM proposal. We disagree. Some examples of significant environmental impact that can happen here in such a 12-month period is illustrated by the violations noted in CWM's most recent fine. These incidents are a direct conflict with NYSDEC's determination under regulation 617.7.

Section 617.7 of the SEQR Act says that the lead agency must rescind its negative declaration and issue a positive declaration requiring the preparation of a draft EIS if it receives substantive comments that identify potentially significant adverse environmental impacts that were not previously identified or assessed, or were inadequately assessed in the review. We would submit that this is the case here. We urge NYSDEC to rescind its Negative Declaration for this application.

## **NYSDEC Response:**

1. Several comments were received that criticized the way Department staff reviewed and completed the Full Environmental Assessment Form (FEAF). We believe that the remarks received do not accurately apply to the discussion items in the FEAF and may have occurred because of the lack of understanding. For instance, “there was no checkmark” for the following statement: “Construction on land where the depths of the water table is less than 3 feet.” Since the Department was reviewing a landfill modification relating to the final cover at the top of the landfill, it is obvious that there would be greater separation distance than 3 feet from the landfill final cover to the water table that exists under the landfill. The present action under review is the change in final cover system, rather than the initial design and construction of the landfill. Therefore, no checkmark was made and the same is true for other items noted below.

“Proposed action may cause a risk of explosion or a release of hazardous substances in the event of an accident? No answer.” The change in final cover is being proposed because it is more protective, especially in respect to possible releases of hazardous substances and the chance of an accidental explosion would be a rare occurrence. Furthermore, the effects of such an explosion would still be primarily confined to within the landfill and CWM’s property. Finally, NYSDEC does not believe that operations related to the construction of the revised GCL final cover system will cause a greater likelihood for explosion incidents during the installation process or upon completion.

The Creek Road truck accident remark has no bearing on the proposed GCL final cover modification. That accident occurred off the CWM property and was the sole responsibility of the private trucking company. After the accident occurred, the accident site was thoroughly cleaned up.

The RMU-1 landfill is and will be visible in the future from selected locations beyond the CWM property limits. However, as described in the CWM permit modification application, the GCL design substitution will not result in any change in the proposed outside dimensions of RMU-1, including its final height as previously permitted. Accordingly, visual impacts remain the same as previously permitted and will not be exacerbated as a result of the final cover modification.

NYSDEC staff consider that the environmental review and documentation prepared to satisfy SEQR requirements was done comprehensively and, with appropriate interdisciplinary input for necessary documentation purposes. Furthermore, the NYSDEC believes that the State Supreme Court decision dated April 29, 2009 provides a strong rebuttal to the public comment which stated “The CWM EAF is faulty” and subsequent allegations that the NYSDEC failed to take “a hard look” pursuant to SEQR requirements. In that decision, the NYSDEC’s preparation of the FEAF and Negative Declaration were reviewed by the Court in order to address whether the NYSDEC’s decision was “rational, not arbitrary or capricious and in accordance with law” and the NYSDEC’s actions were found to be so.

2. As noted in the NYSDEC's response to Comment # 16, we believe that CWM's continued operation, for a period of 8 to 12 months, does not represent a significant impact which would affect the presently existing character of the community and as referenced below, when the superior GCL final cover is installed over the RMU-1 Landfill, the community should be benefitted by the extra protection that the permit modification provides.

3. We consider the issuance of the Negative Declaration to allow the superior GCL final cover to be installed was carefully reviewed and was a rational decision. We do not consider that "if an EIS is required when CWM proposes to create a new landfill, it should equally be required when they seek to increase the amount of waste they will receive by more than 100,000 tons, and to extend the life of the facility for a year." As previously stated, this modification to the CWM permit only represents a 3% increase in the amount of waste that can be disposed of within the existing landfill, simply because the thickness of the protective GCL final cover layers would not be as thick as the traditional compacted clay liner final cover designs previously approved pursuant to the NYSDEC's solid waste regulatory program. Again, the use of GCL for final cover purposes is proposed in NYSDEC's new Solid Waste Regulations since it is so superior to the compacted clay liner option.

4. To state that the 3% increase in waste volume represents approximately a 20% increase in the remaining available capacity at the landfill may be an accurate description; however, it is unrealistic to use the remaining RMU-1 landfill volume statistic in this manner since this approach results in an ever higher percentage only because of the ever decreasing volume left within RMU-1 due to CWM's continuing disposal operations, as previously explained in our response to Comment #1.

5. Although this modification will result in an increase in the landfill's Permitted capacity, the NYSDEC does not consider this to be an "expansion" since the overall dimensions of the final landfill are not changed. This fact supports the negative Declaration. The NYSDEC response to matters regarding CWM's compliance history are presented in our response to Comment #8.

Based on NYSDEC's review of these comments, we do not consider them to have identified new or inadequately assessed potential significant adverse environmental impacts that would warrant rescinding the NYSDEC's SEQR Negative Declaration related to this Permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |   |
|---|---|
| 1.Vincent Agnello (1/21/09 Hearing)               | 2.Saimi Anjarn (1/30/09 Letter)                     |
| 3.Alexander Bertland (1/28/09 Letter)             | 4.Clyde Burmaster, Niagara County (1/21/09 Hearing) |
| 5.Robert Ciesielski, Sierra Club (1/29/09 Letter) | 6.Robert Ciesielski, Sierra Club (1/21/09 Hearing)  |

7. Francine DelMonte, NYS Assembly (1/28/09 Letter)
9. April Fideli, RRG (1/21/09 Hearing)
11. Timothy Henderson (1/21/09 Hearing)
13. Joseph Jastrzemski, Town of Wilson (1/20/09 Letter)
15. Art Klein, Sierra Club (1/21/09 Hearing)
17. Paula Kot (1/28/09 E-mail)
19. Gregory Lewis, Niagara County (1/28/09 Letter)
21. Tim & Kathleen Mc Grath (1/26/09 Letter)
23. Jane Richardson (1/21/09 Hearing)
25. Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing)
27. Richard Soluri, Vill. of Lewiston (1/21/09 Hearing)
29. Joe Stogner (1/29/09 Letter)
31. Antoine Thompson, NYS Senate (1/30/09 Letter)
33. Amy Witryol (1/29/09 Letter A)
35. Amy Witryol (1/29/09 Letter C)
37. Meiki Wong (1/28/09 Letter)
8. Dennis Duling (1/21/09 Hearing)
10. Thomas Fleckenstein (1/21/09 Hearing)
12. Brian Higgins, US Congress (1/26/09 Letter)
14. Liz Kaszubski, Buffalo Audubon (1/21/09 Letter)
16. Arthur Klein (1/30/09 E-mail)
18. Charles Lamb (1/21/09 Hearing)
20. Kimberly Martell (1/29/09 Letter)
22. Fred Newlin, Town of Lewiston (1/27/09 Letter)
24. Lynda Schneekloth (1/12/09 Memo.)
26. Sophia Smith (1/26/09 Letter)
28. Christina Spuller (1/26/09 Letter)
30. Wendy Swearingen (1/21/09 Hearing)
32. Harriet Tower (1/21/09 Hearing)
34. Amy Witryol (1/29/09 Letter B)
36. Amy Wtryol (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 4

**Comment Topic:** Applicability of Hazardous Waste Facility Siting Law

**Paraphrased Comment:**

There can be no doubt that the request now before the NYSDEC is principally for approval to expand CWM's permitted landfill capacity. Such a proposal cannot be accepted as complete by the NYSDEC until the Commissioner adopts a state hazardous waste siting plan pursuant to ECL § 27-1102, under an amendment to the ECL in 2005 adding subsection 6 to ECL § 27-1109. With this amendment the Legislature mandated that no "application for a disposal facility subject to section 27-1105" be accepted as complete until the plan is "adopted." The purpose of the 2005 amendment is to freeze further expansion of hazardous waste landfills until a state siting plan can be prepared that determines whether the state needs additional hazardous waste disposal capacity as described in the Bill Memo to A.8484 in 2005.

NYSDEC believes CWM's proposal is not subject to Section 27-1105 by virtue of ECL § 27-1105.2.c, which exempts from Section 27-1105 "[a] facility that has been determined by the department to have no significant environmental impact pursuant to [SEQR]". NYSDEC's position is in error. The legislative history of New York's hazardous waste siting law makes it clear that any expansion of landfill capacity is subject to section 27-1105. The Legislature made a change to the law in 1982 (Chapter 853 of the Laws of 1982, A.11216-A) which exempted certain industrial hazardous waste facilities from Siting Board review. The exemption (formerly ECL § 27-1105.1.d) applied to "facilities located at the site of an existing facility" which would allow for an increase in capacity or expansion of such facilities without requiring Siting Board review. However, any ambiguity regarding these rules was clarified by amendments to the ECL in 1987.

In 1987, the Legislature made changes to the law (Chapter 618 of the Laws of 1987, A.7835-C), amending, in part, the above exemption to read "[a]dditional facilities, *other than land disposal facilities*, to be located at the site of an existing facility" (language added is italicized). Thus, specifically excluding land disposal facilities from the exemptions under ECL § 27-1105.2, including exemption ECL § 27-1105.2.c. Also, in 1987, new statutory requirements were added providing specific scenarios where a certificate of environmental safety and public necessity (siting certificate) from a Siting Board would be required, including "any expansion, wherever situated, of the aggregate land disposal capacity of an existing land disposal facility" (ECL § 27-1105.1.e). The

intent of these 1987 changes to the law was to close loopholes to Siting Board review for expansion of landfills, as the bill memo by then-Commissioner Langdon Marsh explains:

“Section eight of the legislation [adding current ECL § 27-1105.2] clarifies when new or expanded facilities are subject to the provisions of the statute. Most significantly, while the addition of ‘substantially similar’ facilities at an existing site still is not subject to the siting board, the expansion of most landfill disposal facilities would be subject to siting board approval.”

Thus, land disposal facilities are never exempt from the applicability of the requirement that a siting certificate be obtained for “any expansion, wherever situated, of the aggregate land disposal capacity of an existing land disposal facility”. Therefore, NYSDEC’s effort to avoid ECL § 27-1109.6, which precludes the NYSDEC from accepting as complete CWM’s application to expand RMU-1 until a siting plan is finally adopted, is unlawful.

For these reasons, we respectfully request that any action on CWM’s application to expand RMU-1 be stayed until the NYSDEC prepares and adopts a final state hazardous waste siting plan.

**NYSDEC Response:**

The subject comment rests upon an overly broad reading of ECL Sec. 27-1109(6), the so-called Maziarz amendment of the siting law, and an overly narrow interpretation of ECL Sec. 27-1105, the primary provision governing siting law applications. The comment asserts very broadly that subdivision 6 of Section 1109 precludes processing any application that would entail expansion of a hazardous waste facility in capacity, regardless of the size of such an expansion. However, the language of this provision specifically relates back to ECL Sec. 27-1105 by specifying that the provisions of the application apply to any application “subject to Section 27-1105.” With respect to ECL Sec. 27-1105, the comment maintains that prior amendments of that section reflected a legislative intent to subject all applications for expansion of hazardous waste facilities to the requirement for a siting certificate. Recourse to statutory history, however, is only necessary or appropriate where the ambiguity, lack of specificity, or other source of confusion leaves the meaning of the statute on its face unclear. Notwithstanding the referenced amendments of Sec. 27-1105, which date back to the 1980’s, these changes in the law left intact subdivision 2(c) of Sec. 27-1105 which exempts from the requirement of siting certificate a “facility that has been determined by the Department to have no significant environmental impact pursuant to Article 8 of this chapter” [SEQRA]. This provision thus continued to authorize exemption from the siting certificate requirement of applications receiving a negative declaration. After an extensive review, the Department had determined that a negative declaration was appropriate for this application. The primary bases for the determination were the overwhelming advantages of the new geosynthetic clay liner as a substitute for the original compacted clay liner and the comparatively brief additional life span afforded for the continuing operation of this

existing facility. The Department's determinations relative to this application, both its interpretation of the law and its determination of non-significance, were upheld by the State Supreme Court in Albany. With respect to the determination of non-significance, the Court said that "The DEC's decision to allow a minimal expansion of the landfill capacity and brief limited extension of the life of the site in order to allow the site to use the improved GCL cover for the remaining portion of the landfill was a reasoned and rationally based decision made after extensive consideration.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |  |   |
|--|---|
| 1. Gary Abraham, Niagara County (1/21/09 Letter)       | 2. Gary Abraham, Niagara County (1/21/09 Hearing)       |
| 3. Vincent Agnello (1/21/09 Hearing)                   | 4. Saimi Anjarn (1/30/09 Letter)                        |
| 5. Clyde Burmaster, Niagara County (1/21/09 Hearing)   | 6. John Ceretto, Niagara County (1/21/09 Hearing)       |
| 7. Robert Ciesielski, Sierra Club (1/29/09 Letter)     | 8. Robert Ciesielski, Sierra Club (1/21/09 Hearing)     |
| 9. Francine DelMonte, NYS Assembly (1/28/09 Letter)    | 10. Timothy Henderson (1/21/09 Hearing)                 |
| 11. James Jackson (1/20/09 Letter)                     | 12. Paula Kot (1/28/09 E-mail)                          |
| 13. Kimberly Martell (1/29/09 Letter)                  | 14. R. Nils Olsen Jr., RRG (1/21/09 Letter)             |
| 15. R. Nils Olsen Jr., RRG (1/21/09 Hearing)           | 16. Joe Pillittere, NYS Assembly Ret. (1/21/09 Hearing) |
| 17. Eric Purchase (1/28/09 E-mail)                     | 18. Mary Ann Rolland (1/21/09 Hearing)                  |
| 19. Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing) | 20. Amy Witryol (1/28/09 Letter)                        |
| 21. Amy Wtryol (1/21/09 Hearing)                       |   |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:**           5

**Comment Topic:**           Regional Cancer Incidence Studies

**Paraphrased Comment:**

The Bureau of Chronic Disease Epidemiology and Surveillance, Center for Community Health in the New York State Department of Health (NYSDOH) conducted cancer surveillance studies in 2003 and 2008 for the area surrounding the Lake Ontario Ordance Works (LOOW) site on which the CWM facility is located. They issued a report of significantly elevated numbers of cancers in the area surrounding CWM. The report does not identify the causes, but neither does it rule out that exposure from CWM operations is a contributing factor. While we don't know the cause of these cancers, bringing more toxic waste here, we're certainly not reducing the danger, and might very well be adding to it.

The September 2008 NYSDOH report presents the results of the survey covering a ten year period. The first study area generally corresponds to the Lewiston and Porter Central School Districts. It reports 15 cases of cancer diagnosed among children residing in this study area, and says that was statistically, significantly greater than the 8 cases expected. That's almost double the expected cases of childhood cancer in the school district which surrounds the CWM facility. Table 1 in the report for this study area (Study Area 1) lists 20 categories of cancer and shows statistically elevated cases of prostate, bladder and breast cancers for this study area. Other cancers cases in Study Area 1 found to be higher than expected in number were cancer of the esophagus, testes, pancreas, kidneys, thyroid, and also lymphomas and leukemias. In Study Area 2, primarily the Town of Porter, the report shows cases of colo-rectal cancer were 25% higher than expected for both males and females, and for females, lymphomas, multiple myeloma and leukemia were 14% higher than expected. It should be noted that the report for Study Area 2 delineates cancer in only 8 categories, not 20, so there are more likely variances that could not be publically reported. Study Area 3 in the report covers Ransomville and some parts of Lewiston, downwind of CWM. In this area, lung cancer in males is 23% higher than expected. In a previous 2003 NYSDOH report on their website, Ransomville lung cancer in females was 53% higher than expected and in males, 16% higher.

Subsequent to the 2008 report, NYSDOH disclosed that cases of thyroid cancer in females was 60% higher than expected in Study Area 2. Like some of the other cancers identified, thyroid cancer is not predominantly attributed to lifestyle or heredity according to health agencies, but is usually associated with environmental exposures. Local cancer

patients have been told by their surgeons that their thyroid tumors were caused by the area in which they live.

In summary, the SEQR Negative Declaration issued by the NYSDEC presupposes that they have clear evidence that the CWM operation of RMU-1 is wholly unrelated to the elevated cancer incidence identified in the NYSDOH reports. However, there is no such proof offered by the CWM application or by NYSDEC. In the absence of any evidence that CWM operations are not contributing to these elevated cases of cancer, we believe any application contemplating additional hazardous waste for the CWM site requires a full environmental impact study, and that this requested modification be denied.

**NYSDEC Response:**

To assist in providing a response to this comment, the New York State Department of Health (NYSDOH) has provided the following synopses of their Cancer Incidence Studies referred to by this comment:

The NYSDOH conducts studies of cancer incidence in small areas that show whether the amount and type of cancer experienced by the community is different from what would normally be expected. These studies cannot show a cause-and-effect relationship between potential or known exposure to contaminants and cancer incidence.

In September 2008, the Department of Health released a report on cancer incidence for three study areas in the vicinity of the Lake Ontario Ordnance Works (LOOW), which contains the CWM site. The three study areas were:

- Study Area #1 – an area approximating the Lewiston-Porter School District;
- Study Area #2 –the Town of Porter, Ransomville and parts of Lewiston; and
- Study Area #3 – Ransomville and parts of Lewiston.

These study areas were selected after discussions with the community. The report summarizes the cancer incidence experience of these three study areas, noting both higher and lower than expected numbers of cancers.

In Study Area #1, statistically significant excesses were found for prostate, breast, testicular, and female bladder cancers and for total cancers among children. For prostate, breast and female bladder cancers, most of the individuals were old enough that they could not have attended school at the current Lewiston-Porter campus (near the CWM site). The excesses of cancer in children and testicular cancer did occur among individuals who could have attended the current school campus. Further investigation revealed:

- not all of the children diagnosed with cancer attended school at the Lewiston-Porter campus;

- when the excess of total childhood cancers was examined by individual types of cancer, only one type showed a statistically significant excess and this type is not known to be associated with any environmental exposures. The numbers of the remaining types of cancer that occurred in children were consistent with normal variations in cancer incidence;
- not all of the young men with testicular cancer attended school at the Lewiston-Porter campus; and,
- testicular cancer is associated with employment in certain industries and with certain occupational exposures, therefore accounting for occupational exposures among these young men is important. Information on potential occupational exposures for most of these young men was not available for review.

While other types of cancer in Study Area #1 were found to be higher than expected (esophagus, pancreas, kidney, thyroid, lymphomas [in males] and leukemias), others were found to be lower than expected (stomach and brain in males, lung in males and females, and cervix, uterus and lymphomas in females). Variations such as these are common in cancer incidence.

In Study Area #2 the only statistically significant finding was a higher than expected number of cases of prostate cancer. This excess is part of a region-wide elevation in prostate cancer diagnoses, believed to be due to higher levels of prostate cancer screening and other medical care factors. While the number of cases of colorectal cancers in males and females and lymphomas, multiple myeloma and leukemia in females were higher than expected, these findings are not unusual and are most likely due to the normal variations seen in cancer incidence. While the percent differences noted in the public comments appear large, they are based on small numbers where the addition or subtraction of one or two cases (as occurs in normal cancer incidence variation) could change the percentage greatly. Several cancer sites were also found to have a lower than expected number of cases (digestive system other than colorectal in both males and females, lymphomas, multiple myeloma and leukemias in males, and female breast and genital system). In addition, while only 8 categories of cancer were reported for Study Area #2 to preserve confidentiality, all cancer sites were examined and no other statistically significant excesses were found.

The public comments also cite a 60% higher than expected number of thyroid cancers among females in Study Area #2. There were 8 cases of thyroid cancer among females, with 5.5 cases expected. This difference of 45%, based on an excess of only 2.5 cases over the 10-year study period, is not statistically significant. As indicated above, these percentages are based on small numbers where the addition or subtraction of one or two cases can greatly affect the percentage difference. As with many other cancers, the causes of most cases of thyroid cancer are unknown. Genetic factors and dietary factors account for a small number of cases. The only known environmental cause of thyroid cancer is exposure to ionizing radiation and probably radioactive iodine in children. There are no known links between thyroid cancer and any chemical exposures.

In Study Area #3 no statistically significant excesses of cancer were found. A statistically significant lower than expected number of cases of lymphomas in males was found.

End of NYSDOH synopses.

The NYSDEC is very aware of the data gathering and research being conducted by the NYSDOH in the Town of Lewiston and Porter relating to Chronic Disease Epidemiology and Surveillance. We also understand that environmental conditions (“environmental exposure”) can be a causal factor(s) for certain cancer and other diseases in humans. As noted in the public comment, it is acknowledged that while the NYSDOH reports do not identify the causes of apparently increased incidences of cancer within the referenced towns, it does not preclude the possibility of the CWM landfill’s operation being “a contributing factor”.

Understood, but as long as numerous other contributing factors for the referenced higher than average cancer cases in the area, such as lifestyle, heredity, predisposition, patient age and work environment are considered and other possible environmental sources (one of them being the Lake Ontario Ordinance Work’s former operations and long-term onsite radioactive storage issues) are considered, it is not reasonable to conclude that the limited continuation of CWM operations, based on the proposed permit modification, will have a measurable effect on any locally high cancer rates in the future.

Such a conclusion would be construed as patently arbitrary and capricious, especially if there is no research which definitively links CWM with the local cancer problem. Requiring CWM to prove that its operations do not contribute to the cancer problem is beyond the scope of NYSDEC’s normally mandated authority.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |  |  |
|--|--|
| 1. John Burmeister (1/26/09 Letter)                | 2. Kristen Champoux (1/29/09 Letter)                   |
| 3. Robert Ciesielski, Sierra Club (1/29/09 Letter) | 4. Robert Ciesielski, Sierra Club (1/21/09 Hearing)    |
| 5. Dan Colton (1/29/09 Letter)                     | 6. April Fideli, RRG (1/21/09 Hearing)                 |
| 7. Raymond Gang (1/21/09 Hearing)                  | 8. Timothy Henderson (1/21/09 Hearing)                 |
| 9. Debra Ishman (1/29/09 Letter)                   | 10. Sandra Jackson (1/20/09 Letter)                    |
| 11. Cheryl Krouse (1/21/09 Comment Form)           | 12. Charles Lamb (1/21/09 Hearing)                     |
| 13. Kimberly Martell (1/29/09 Letter)              | 14. Patricia Mazur (1/24/09 Letter)                    |
| 15. Judith Mokhiber (1/22/09 E-mail)               | 16. Tyler Ordiway (1/28/09 Letter)                     |
| 17. Mary Ann Rolland (1/21/09 Hearing)             | 18. Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing) |
| 19. Antoine Thompson, NYS Senate (1/30/09 Letter)  | 20. Harriet Tower (1/21/09 Hearing)                    |
| 21. Meiki Wong (1/28/09 Letter)                    |  |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 6

**Comment Topic:** Cover Re-Design & Capacity Increase Inter-Relationship

**Paraphrased Comment:**

CWM has offered a proposal seeking approval from the NYSDEC for a new cap for their landfill. We have heard CWM engineering consultants and the NYSDEC refer to the associated capacity increase as “collateral” or “peripheral”. There is a significant difference in the thickness of the cap, and this will “collaterally” result in another 106,000 tons of hazardous waste being driven into this community and buried here forever. This is not a “collateral” result from our perspective. In simple English, this request is, in fact, a request to increase the capacity of the landfill.

The problem with NYSDEC’s focus is clear. If all that is at issue is the nature and thickness of the cap, just approve the new cap itself. If it is much better, we are all in favor of it. But leave the amount of waste that can be landfilled constant. Lower the height and modify the slope of the landfill to reflect the change. This would probably save about 5 feet in height that would lessen obstructions of the view. Even better, for once why not use a “belt and suspenders” approach and replace the additional space with compacted clay and then put the geosynthetic cap on top of that. This approach would help NYSDEC fulfill its obligation and mandate to protect the community and the environment. There is no compelling reason to tie a request for new capacity to a request for a cap re-design.

**NYSDEC Response:**

The NYSDEC has considered the possibility of merely approving the final cover system and thus requiring the redesign of the final cover system to new final contours. In this instance, the NYSDEC evaluated how similar proposed permit modifications at other solid and hazardous waste landfills around the State were being handled. In all of the other cases, these similar proposals were allowed to make up the difference in cap thickness by taking in the de-minimis amount of added waste and not revising the landfill’s final contours. While this does result in the “collaterally” derived capacity increase, those previous determinations allowed the other landfills to optimize their disposal capacity and continue operations under permit conditions and continued environmental monitoring. The NYSDEC also took into consideration that permits issued under SEQRA and UPA are issued under the premise that no adverse impact would result from the permitted activity to the environment or public health.

The other determining factor to consider with these proposals is that they were all volunteered and offered a superior final cover system. Requiring the final cover systems to be redesigned to new final contours with continued effective stormwater drainage or to simply use both a GCL and compacted clay (as suggested in the comment), would have added un-necessary engineering and/or material costs to these proposals which, if imposed, may have resulted in these volunteered improvements to the final cover systems being withdrawn. Also a factor in the NYSDEC's decision was that the use of clean soil in place of the compacted clay to use as fill material to meet the originally designed contours would be wasteful of such natural resources. As in previous cases, the proposed changes improve the long-term performance of the final cover system over that of the previous final cover systems without increasing a landfill's physical size or footprint. The NYSDEC typically looks to precedence for guidance in these sort of determinations and as such precedence weighed in this decision.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |   |
|---|---|
| 1.Saimi Anjarn (1/30/09 Letter)                     | 2.Thomas Bullock (1/29/09 Letter)                     |
| 3.Clyde Burmaster, Niagara County (1/21/09 Hearing) | 4.Robert Ciesielski, Sierra Club (1/29/09 Letter)     |
| 5.Kaila Custo (1/28/09 Letter)                      | 6.Francine DelMonte, NYS Assembly (1/28/09 Letter)    |
| 7.Katie Farrell (1/22/09 Letter)                    | 8.April Fideli, RRG (1/21/09 Hearing)                 |
| 9.Brian Higgins, US Congress (1/26/09 Letter)       | 10.James Jackson (1/20/09 Letter)                     |
| 11.Liz Kaszubski, Buffalo Audubon (1/21/09 Letter)  | 12.Kimberly Martell (1/29/09 Letter)                  |
| 13.Tim & Kathleen Mc Grath (1/26/09 Letter)         | 14.Judith Mokhiber (1/22/09 E-mail)                   |
| 15.R. Nils Olsen Jr., RRG (1/21/09 Hearing)         | 16.Kathleen Olszewski (1/26/09 Letter)                |
| 17.Eric Purchase (1/28/09 E-mail)                   | 18.Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing) |
| 19.Sophia Smith (1/26/09 Letter)                    | 20.Christina Spuller (1/26/09 Letter)                 |
| 21.Midge Tourbin (1/26/09 Letter)                   | 22.Harriet Tower (1/21/09 Hearing)                    |
| 23.Amy Wtryol (1/21/09 Hearing)                     | 24. Meiki Wong (1/28/09 Letter)                       |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:**           7

**Comment Topic:**           Extended Hazardous Waste Hauling Period

**Paraphrased Comment:**

1. Bringing an extra 106,000 cubic yards (approximately 160,000 tons) of waste will result in another year of potentially dangerous trucks passing through the community. In the Commissioner's August 15, 2008 letter, the NYSDEC estimates that each truck will generally haul 32-34 tons of hazardous waste, which translates into another 5000 trucks full of hazardous waste past Lewiston-Porter public schools. These trucks continually break blackout times in front of these schools, speed, leave the designated routes, convoy and leak. There have already been many trucks cited for leakage and other violations over the past year. These are just a few such citations under Part 364 and Subpart 372.3:

Allstate Power Vac, leaking truck;  
Weavertown Transport, leaking trailer;  
Goulet Trucking, leaking trailer;  
Page Trucking, leaking trailer;  
U.S. Bulk, leaking trailer;  
IVS Hydro Inc., leaking trailer;  
Enviroserve, leaking trailer;  
Miller Environmental, leaking trailer;  
Ameritech, leaking trailer;  
Price Trucking, leaking trailer;  
ETGI, leaking trailer and entering outside normal operating hours;  
Protech, leaking trailer.

Further, there has already been at least one hazardous waste truck overturn in the Lewiston community. Additionally, in 1995, a tractor trailer carrying 23 tons of waste to CWM, overturned in Lockport, requiring evacuation of two homes. Another year of CWM landfill operation will increase the chance of environmental damage caused by either improperly sealed trucks or an accident. These types of problems have significant environmental impact and the potential to contaminate our neighborhoods and harm our citizens. They cannot be ignored.

2. There is no record that the NYSDEC considered the impact of replacing trucks carrying locally mined clay with trucks full of hazardous waste from as far away as Texas. How can the NYSDEC conclude that substituting hazardous waste trucks for clay

trucks would have no significant negative impact on the environment? If hazardous waste is no more dangerous than clay, why do we have regulations for hazardous waste disposal in the United States? In addition, since clay is mined locally, the effect of this Permit modification would dramatically expand the carbon footprint of CWM operations by substituting local clay traffic distances with national hazardous waste traffic distances. It is troubling that an environmental agency in New York could find such a substitution insignificant.

**NYSDEC Response:**

1. The impacts of truck traffic were evaluated extensively during the permitting of RMU1 and strongly considered in the composition of the various permit conditions for RMU1. These conditions go beyond those authorized by NYS and Federal law and regulation and even include some conditions negotiated between CWM and the Host Communities. A 3% capacity increase and its accompanying time extension will not impact this evaluation nor require a change in conditions. While violations of special conditions for traffic impacts have occurred, there have been no significant environmental or public health impacts. Also, it is important to note that the single accident referenced in the comments in Lewiston did not involve hazardous waste.

2. This Permit modification does not require a reevaluation of truck traffic conditions. The reference to clay trucks was simply meant to point out that even the net increase in total traffic over time will be minimal. More importantly the rate of hazardous waste disposal truck deliveries are expected to remain similar to present day CWM deliveries.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |  |
|---|--|
| 1.Vincent Agnello (1/21/09 Hearing)               | 2.Alexander Bertland (1/28/09 Letter)              |
| 3.Robert Ciesielski, Sierra Club (1/29/09 Letter) | 4.Robert Ciesielski, Sierra Club (1/21/09 Hearing) |
| 5.Dan Colton (1/29/09 Letter)                     | 6.Francine DelMonte, NYS Assembly (1/28/09 Letter) |
| 7.April Fideli, RRG (1/21/09 Hearing)             | 8.Thomas Fleckenstein (1/21/09 Hearing)            |
| 9.James Jackson (1/20/09 Letter)                  | 10.Sandra Jackson (1/20/09 Letter)                 |
| 11.Art Klein, Sierra Club (1/21/09 Hearing)       | 12.Arthur Klein (1/30/09 E-mail)                   |
| 13.Paula Kot (1/28/09 E-mail)                     | 14.Cloe Le Gault (1/22/09 Letter)                  |
| 15.Patricia Mazur (1/24/09 Letter)                | 16.Tim & Kathleen Mc Grath (1/26/09 Letter)        |
| 17.Judith Mokhiber (1/22/09 E-mail)               | 18.R. Nils Olsen Jr., RRG (1/21/09 Hearing)        |
| 19.Kathleen Olszewski (1/26/09 Letter)            | 20.Tyler Ordiway (1/28/09 Letter)                  |
| 21.Lynda Schneekloth (1/12/09 Memo.)              | 22.Sophia Smith (1/26/09 Letter)                   |
| 23.Christina Spuller (1/26/09 Letter)             |  |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 8

**Comment Topic:** CWM Compliance History

**Paraphrased Comment:**

Increased capacity and extended landfill life provide more opportunities for CWM accidents and violations that threaten public health and the environment. CWM has been charged with a laundry list of violations that have occurred in recent years. Most recently, in November 2008, NYSDEC fined CWM \$175,000 for some 85 violations of its Permit. While these violations occurred over several years, it is clear from the monthly reports submitted by both NYSDEC and CWM that numerous violations occur in the course of one year, which represents the additional year of operation CWM has effectively requested with its application for additional capacity.

Documentation from NYSDEC shows that a number of these violations are fires, leaks, spills, overflowing tanks, overflowing sludge and improper landfilling of solid and aqueous waste, all of which are potentially hazardous. Some examples of significant environmental impact that can happen here in a 12-month period is illustrated by the following violations noted in CWM's most recent fine:

- Failure to identify reactive hazardous wastes that did cause uncontrolled reactions and fires;
- Failure to operate air pollution control equipment while releasing hydrogen sulfide gas and shredding toxic waste containers;
- Landfilling of hazardous waste such as cyanide which exceed land disposal restrictions;
- Failure to inspect several operating areas of the facility;
- Failure to obtain NYSDEC approval for landfilling of drums and baghouse dust from stabilization of toxic wastes;
- Failure to implement the contingency plan;
- Failure to send warning letters to transport companies operating during blackout hours;
- Discharge of foam into the Niagara River; and
- Spills and overflows of hazardous materials into the environment too numerous to mention.

Again, the NYSDEC's proposed action permitting this expansion would increase the number of such incidents compared to un-expanded limits in the current Permit. It is

remarkable how the NYSDEC has chosen to ignore these serious problems, serious enough to result in fines, all for the sake of avoiding a meaningful environmental evaluation of the proposed action.

**NYSDEC Response:**

The NYSDEC considers violations by CWM as serious matters and responds via the appropriate enforcement mechanism to violations. Unlike the 2005 permit renewal, this proposed major permit modification was not subject to a Record of Compliance review. During the 2005 permit renewal process CWM's Record of Compliance (ROC), both in state and out-of-state, was reviewed.

In making the final decision on CWM's Permit renewal, the NYSDEC considered the results from the ROC review and the following related factors:

- The CWM Model City Facility has a well documented history of self-reporting compliance incidents and taking quick action in each case to mitigate any potential threat to human health and/or the environment, and/or prevent future occurrences of similar incidents.
- The renewed CWM Permit contained a Compliance Schedule (Permit Module I, Condition K) which required CWM to implement actions to improve compliance.
- The NYSDEC maintains on-site staff which serve to encourage compliance.

The NYSDEC has not ignored the violations mentioned in this comment, the violations have been addressed by enforcement action. The NYSDEC feels that an appropriate environmental evaluation of the proposal has been conducted.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |  |  |
|--|--|
| 1.Vincent Agnello (1/21/09 Hearing)                | 2.John Burmeister (1/26/09 Letter)                   |
| 3.Francine DelMonte, NYS Assembly (1/28/09 Letter) | 4.Dennis Duling (1/21/09 Hearing)                    |
| 5.Timothy Henderson (1/21/09 Hearing)              | 6.Art Klein, Sierra Club (1/21/09 Hearing)           |
| 7.R. Nils Olsen Jr., RRG (1/21/09 Hearing)         | 8.Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing) |
| 9.Wendy Swearingen (1/21/09 Hearing)               | 10.Amy Witryol (1/29/09 Letter C)                    |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:**           9

**Comment Topic:**           Unproven Final Cover Design

**Paraphrased Comment:**

The NYSDEC has not given the proposed cap's new geosynthetic lining a substantive environmental review and therefore cannot say definitively that no risks are involved in making this change. The fact is that the use of GCLs after only about 20 years is not time tested.

While EPA conducted research on the proposed material at solid waste landfills several years ago, we are not aware of studies conducted for performance at commercial hazardous waste landfills. This is a chemical landfill. Will the GCL be resistant to chemical degradation and deterioration over time? If the GCL is made of bentonite, ion exchange reactions of the sodium and calcium in the bentonite with with other chemical compounds can occur which will lead to the decomposition and destruction of the GCL layer.

Is the slope of the landfill appropriate for this new technology? Since the GCL is rolled out in pieces and has seams, does it have enough shear strength to stay on the slope?

With this thinner layer comes the worry about rips or tears or other perforations. While we know this material has the ability to swell, will that swelling property break down over time?

Also, is this addition of more waste material underneath this cap appropriate from a hydro-geologic consideration since we now are adding more stuff to the landfill than it was originally designed to hold?

Based on the above unanswered questions, the thing that we should be most concerned about with this new layer is what is the permanency of this GCL?

Further, this new cover design is not presently incorporated into NYSDEC's solid or hazardous waste regulations. The cover re-design has not even had the benefit of a peer review by an independent expert. We have been advised that the comments in favor of the GCL from the Geosynthetic Institute were of a conceptual nature and that they did not review the design specific to this application. Furthermore, the Geosynthetic Institute is funded by its membership which is largely industry and there are no environmental

groups represented. Also, the NYSDEC is an associate member (according to the NYSDEC web site), and Waste Management, CWM's parent company, chairs the Board of Directors of the Geosynthetic Institute. This is not to diminish the potential benefits of the GCL indicated by the Geosynthetic Institute, but to highlight the need for a full independent evaluation.

**NYSDEC Response:**

The NYSDEC has fully and carefully evaluated the application of the GCL in the final cover system and has found that the proposed permit modification meets all the appropriate slope stability requirements. The use of GCLs in final cover systems as well as liner systems have been approved in other landfills across the nation. These geosynthetic materials are carefully manufactured for all sorts of environmental containment systems and have stood the test of time at a number of these other locations.

The Geosynthetic Institute (GSI) is a World renowned organization devoted entirely to overseeing and advising the geosynthetic industry relative to proper manufacturing, fabrication and application of a multitude of geosynthetics used in environmental containment systems including GCLs. The GSI has developed guidance and specifications for the use of GCLs in landfill final cover and liner system applications and has recognized the enhanced performance of GCLs over compacted clay barriers in certain applications.

The benefits of GCL over that of compacted clay barrier in a landfill final cover system have also been dully noted in literature that substantially supports the permit modification application on its technical merits. Two noted sources of literature were research funded by the Federal Government: "Assessment and Recommendations for Improving the Performance of Waste Containment Systems" by the United States Environmental Protection Agency, publication number EPA /600/R-02/099, dated December 2002; and, "Assessment of the Performance of Engineered Waste Containment Barriers" by the National Research Council, Copyright 2007.

It was for these reasons that the NYSDEC has determined that the revised solid waste management regulations, when promulgated, will remove the requirement for a compacted clay barrier from its composite final covers systems and replace it with a required GCL layer instead.

This permit modification is not new to the NYSDEC. Many of the State's double-lined solid waste landfills, permitted at about the same time period as the current RMU-1 landfill in the mid-1990s, have requested NYSDEC approval of this same modification to substitute the problem laden compacted clay layer component of the approved final cover design for a new better performing GCL component.

In fact, the only other (non-commercial) hazardous waste landfill in the State, also requested this same permit modification in the late 1990's. In all of these cases, the

NYSDEC has determined that a SEQRA Negative Declaration was appropriate for such Permit modifications that have been issued to modify these outdated final cover designs with the new and improved final cover system. In all of these cases, the NYSDEC did not prohibit these solid or hazardous waste landfills from optimizing their disposal capacity gains that were an artifact of the proposed permit modification. There have been no known negative consequences from these actions. From both a technical and administrative basis the NYSDEC is obligated to make rationale and consistent judgements under the provisions of Part 373 and SEQRA on similar activities and accordingly has approved CWM's permit modification in compliance with all applicable statutory and regulatory requirements.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |  |
|---|--|
| 1.Saimi Anjarn (1/30/09 Letter)                   | 2.John Burmeister (1/26/09 Letter)                 |
| 3.Robert Ciesielski, Sierra Club (1/29/09 Letter) | 4.Robert Ciesielski, Sierra Club (1/21/09 Hearing) |
| 5.Dennis Duling (1/21/09 Hearing)                 | 6.Thomas Fleckenstein (1/21/09 Hearing)            |
| 7.Mark Gallo (1/21/09 Hearing)                    | 8.Timothy Henderson (1/21/09 Hearing)              |
| 9.James Jackson (1/20/09 Letter)                  | 10.R. Nils Olsen Jr., RRG (1/21/09 Hearing)        |
| 11.Midge Tourbin (1/26/09 Letter)                 | 12.Amy Witryol (1/29/09 Letter C)                  |
| 13.Amy Wtryol (1/21/09 Hearing)                   |  |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 10

**Comment Topic:** Improved Final Cover Design

**Paraphrased Comment:**

The new component of the final cover, the GSE Bentoliner Geosynthetic Clay Liner (GCL) is an impressive improvement. In contrast to the various approved local clay sources, the use of a selectively mined bentonite provides an improved uniformity of mineralogy and the sodium bentonite has vastly superior surface area and adsorption properties. The encapsulation between reinforced nonwoven fabric provides for precision thickness, density and stability. The construction using the wide sheets of product from a lengthy roll with both side and end overlapping seams provides a technically superior enclosure that is specifically suited for containment and sealing of waste materials.

While Compacted Clay Liners (CCLs) do belong beneath a landfill solid waste mass, they do not belong above a landfill's solid waste mass for the following reasons:

- Total settlement of the underlying waste mass will distort the CCL leading to tensile cracking. The GCL is not sensitive in this regard.
- Differential settlement of the underlying heterogeneous waste mass leads to even greater localized distortions and concentrated tensile cracking. The GCL can distort significantly (up to 20%) without losing its sealing capability.
- Wet versus dry cycling of the CCL leads to shrinkage, cracking, and less than full healing when re-hydrated. This does not occur with GCLs which recover fully.
- Freeze versus thaw cycling of the CCL produces essentially the same phenomenon in the CCL as wet versus dry cycling. Again, the GCL is not sensitive in this regard.
- Proper construction of a CCL is significantly more difficult and complex than "rolling-out" a GCL with a nominal overlap and no mechanical seaming.
- Intimate contact of the overlying geomembrane (FML) to the GCL is enhanced over that of a CCL and also avoids possible puncture of the geomembrane by stones in the CCL.

Based on the reduced permeability, the more stable physical configuration and the above noted barrier behaviors making a GCL preferable to a CCL as a final cover component, this substitution is highly recommended for this particular landfill.

**NYSDEC Response:**

The NYSDEC agrees with the comments made and has issued CWM's requested Permit modification to revise the RMU-1 landfill's final cover system to utilize a GCL in its final cover system.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |  |
|---|--|
| 1.Barbara Alexander (1/28/09 Letter)                  | 2.Andrew Argona (1/28/09 Letter)       |
| 3.Charles Aube (1/28/09 Letter)                       | 4.Linton Barnett (1/28/09 Letter)      |
| 5.Julie Ann Bigia (1/28/09 Letter)                    | 6.Bryan Bullis (1/28/09 Letter)        |
| 7.Angela Cadwalader (1/28/09 Letter)                  | 8.Lori Caso (1/28/09 Letter)           |
| 9.Donna Cassick (1/29/09 Letter)                      | 10.Edward Cassick (1/28/09 Letter)     |
| 11.Tony Colosi (1/28/09 Letter)                       | 12.Richard Harden (1/28/09 Letter)     |
| 13.Velma Hooker (1/28/09 Letter)                      | 14.Herbert Hutchinson (1/28/09 Letter) |
| 15.Robert Koerner, Geosyn. Institute (1/27/09 Letter) | 16.Karen Krawczyk (1/28/09 Letter)     |
| 17.Mark La Rue (1/28/09 Letter)                       | 18.Joseph Le Gasse (1/28/09 Letter)    |
| 19.Susanne Le Gasse (1/28/09 Letter)                  | 20.Ami Lis (1/28/09 Letter)            |
| 21.Howard Lyon (1/28/09 Letter)                       | 22.Mark Maciani (1/28/09 Letter)       |
| 23.Tim Morgan (1/28/09 Letter)                        | 24.Michael Okonczak (1/28/09 Letter)   |
| 25.Lynn Piechowski (1/28/09 Letter)                   | 26.Richard Phoenix (1/15/09 Letter)    |
| 27.Joseph Rivera (1/28/09 Letter)                     | 28.David Ruble (1/28/09 Letter)        |
| 29.Stephen Rydzyk (1/28/09 Letter)                    | 30.Rick Saink (1/28/09 Letter)         |
| 31.George & Jean Spira (1/29/09 Letter)               | 32.William Spry (1/22/09 Letter)       |
| 33.Fred Stephens (1/30/09 E-mail)                     | 34.Gary Thomas Jr. (1/28/09 Letter)    |
| 35.Sherry Wagner (1/28/09 Letter)                     |  |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 11

**Comment Topic:** NYS Draft Siting Plan - Un-equitable Facility Distribution

**Paraphrased Comment:**

Several years ago, the issue of landfilling hazardous waste came to the forefront in the form of a lawsuit challenging why the Town of Porter should be the dumping ground as the only New York State government-authorized hazardous waste landfill. The case was heard by the NYS Supreme Court who agreed with the people and ordered the NYSDEC to produce a hazardous waste facility siting plan, now 20 years late. We mention the failure of the NYSDEC to issue a hazardous waste siting plan because that failure is directly linked to this proposed Permit modification. Also, major amendments to the state siting law were intended to protect one community from being unduly burdened with a hazardous waste landfill facility. They order no new dumping capacity beyond that which is already approved until such time as a siting plan was approved that would provide equitable distribution of hazardous waste facilities in New York State. It's shameful that NYSDEC is trying to figure out ways around its failure to comply with these legally-mandates.

Elizabeth Royte, in her book "Garbage Land", says: "Garbage follows a strict class topography. It tumbles downhill to settle in the places of least resistance, among the poor and disenfranchised." She says the Gold Coast of Manhattan's Upper East Side produces far more waste than Brooklyn, but city officials never tried to site a waste facility on Park Avenue. There are parallels here with toxic waste. New York State, and in particular Niagara County, has been a large net importer of hazardous waste for land disposal since at least 1991 according to the NYSDEC. NYSDEC Annual Hazardous Waste Reports, the largest hazardous waste import to New York has been PCB-contaminated wastes, all of which was landfilled in Niagara County at CWM. We don't understand why this inherent unfairness has been thrust upon one community. There is no acceptable reason why Niagara County, and the Towns of Porter and Lewiston in particular should continue being the burial ground for hazardous waste from across the Northeast and Canada. This seems inconsistent with Governor Paterson's expressed concern for Environmental Justice.

**NYSDEC Response:**

The next draft of the Hazardous Waste Facility Siting Plan is presently under development. The decision on whether the fact that the Siting Plan is not final impacts this Permit modification was decided by the NYS Supreme Court. The community's

concerns regarding the history of land use in the Towns of Porter and Lewiston in Niagara County and the public concerns regarding past practices are noted in the record.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |  |
|---|--|
| 1.Clyde Burmaster, Niagara County (1/21/09 Hearing) | 2.John Burmeister (1/26/09 Letter)                     |
| 3.John Ceretto, Niagara County (1/21/09 Hearing)    | 4.Robert Ciesielski, Sierra Club (1/29/09 Letter)      |
| 5.Robert Ciesielski, Sierra Club (1/21/09 Hearing)  | 6.Francine DelMonte, NYS Assembly (1/28/09 Letter)     |
| 7.Raymond Gang (1/21/09 Hearing)                    | 8.Sandra Jackson (1/20/09 Letter)                      |
| 9.Liz Kaszubski, Buffalo Audubon (1/21/09 Letter)   | 10.John Leonardi, Buf./Nia. Realtors (1/21/09 Hearing) |
| 11.R. Nils Olsen Jr., RRG (1/21/09 Hearing)         | 12.Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing)  |
| 13.Joe Stogner (1/29/09 Letter)                     | 14.Antoine Thompson, NYS Senate (1/30/09 Letter)       |
| 15.Harriet Tower (1/21/09 Hearing)                  |  |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 12

**Comment Topic:** NYS Preferred Hazardous Waste Management Hierarchy

**Paraphrased Comment:**

According to the mandated preferred hazardous waste management hierarchy in state law (Environmental Conservation Law, 27-0105), preventing and reducing hazardous waste generation should be a top priority of New York State. Any hazardous waste which is still generated is expected to be recovered, reused or recycled to the extent which is practical. Detoxification, treatment or destruction technologies should be used for hazardous waste which cannot be reduced, recovered, reused or recycled. Finally, land disposal of industrial hazardous waste should be phased out, as it is the least preferable method of industrial hazardous waste management. It should be discouraged wherever possible.

The completeness determination made by NYSDEC for this application adds hazardous waste disposal capacity to the market which discourages the use of the preferred alternatives to land disposal under the State's Hierarchy, and contradicts the State's objective to reduce shipment of hazardous waste off-site. There is no compelling reason to tie a request for a new cap design to a request for additional capacity. By allowing additional capacity at the RMU-1 facility, the NYSDEC is continuing to encourage the state to move contrarily to the hazardous waste management hierarchy. Having a cheap method of dumping these wastes at the CWM site rather than modernizing the hazardous waste management process encourages an ever-growing burden of poison to be dealt with at this site in some future time.

**NYSDEC Response:**

The NYSDEC agrees that use of the hazardous waste management hierarchy is a major component of hazardous waste management. While, we agree that land disposal of industrial hazardous wastes, except treated residuals, posing no significant threat to the public health or to the environment, should be phased out, as it is the least preferable method of industrial hazardous waste management, this statutory requirement also recognizes that landfill capacity for treated residuals does remain necessary. Regulatory requirements under the Land Disposal Restrictions have had and will continue to have a major impact on the use of the hazardous waste management hierarchy within the State and beyond the State, as it is a national requirement.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |  |  |
|--|--|
| 1.Saimi Anjarn (1/30/09 Letter)                    | 2.Kristen Champoux (1/29/09 Letter)                |
| 3.Robert Ciesielski, Sierra Club (1/29/09 Letter)  | 4.Robert Ciesielski, Sierra Club (1/21/09 Hearing) |
| 5.Francine DelMonte, NYS Assembly (1/28/09 Letter) | 6.Dennis Duling (1/21/09 Hearing)                  |
| 7.James Jackson (1/20/09 Letter)                   | 8.Art Klein, Sierra Club (1/21/09 Hearing)         |
| 9.Arthur Klein (1/30/09 E-mail)                    | 10.Gregory Lewis, Niagara County (1/28/09 Letter)  |
| 11.Antoine Thompson, NYS Senate (1/30/09 Letter)   |  |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 13

**Comment Topic:** NYS Draft Siting Plan - Necessity of Additional Capacity

**Paraphrased Comment:**

The USEPA indicates that hazardous waste land disposal is a national marketplace and capacity is adequate now for the foreseeable future. NYSDEC's statewide draft Hazardous Waste Siting Plan found that New York does not need additional land disposal capacity to serve business or to cleanup brownfields, and reflects EPA's conclusion that such capacity is adequate for decades to come, without adding any hazardous waste land disposal capacity, anywhere.

Furthermore, the NYSDEC has stated that while most brownfield waste is contaminated, it does not meet the regulatory definition of hazardous waste and does not require disposal at a hazardous waste landfill. The state brownfield programs, therefore, do not rely on having an in-state hazardous waste landfill to succeed. The notion that there needs to be a hazardous waste dump in Western New York or the brownfield cleanups around the state will screech to a halt has been demonstrated to be an absolute fallacy.

The purpose of the 2005 change in the Siting Law (ECL § 27-1109.6) which precludes final action on landfill expansions until the state siting plan is adopted, is to require "development of a [State Siting] Plan in order to determine the hazardous waste disposal needs of the state and to determine whether proposed facilities were consistent with that Plan for the purposes of the siting process", according to sponsors' memos in both Houses (2005 Bill Memos to A.8484 & S.5564). Thus, before accepting CWM's action as complete, and taking any further action on it, the NYSDEC must, among other things, determine whether the expansion of hazardous waste landfilling in the state is needed and whether any such expansion proposal is consistent with the NYSDEC's determination of need. The NYSDEC's completeness determination on this CWM application is inconsistent and incompatible with NYSDEC's recent draft hazardous waste siting plan which found that New York does not need additional land disposal capacity to serve business or cleanup brownfields.

**NYSDEC Response:**

The decision on whether the fact that the Siting Plan is not final impacts the permit modification was decided by the NYS Supreme Court. While the surrounding community is free to bring up the issues discussed in the Siting Plan for consideration, the Siting Plan is not a factor in this Permit modification process. The CWM permit

modification addresses a change to technically improve the cap design that also results in increased capacity. The decision on this Permit modification cannot and should not be based on the capacity increase alone.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |  |   |
|--|---|
| 1.Gary Abraham, Niagara County (1/21/09 Letter)    | 2.Gary Abraham, Niagara County (1/21/09 Hearing)      |
| 3.Vincent Agnello (1/21/09 Hearing)                | 4.Robert Ciesielski, Sierra Club (1/29/09 Letter)     |
| 5.Robert Ciesielski, Sierra Club (1/21/09 Hearing) | 6.Francine DelMonte, NYS Assembly (1/28/09 Letter)    |
| 7.Brian Higgins, US Congress (1/26/09 Letter)      | 8.John Leonardi, Buf./Nia. Realtors (1/21/09 Hearing) |
| 9.Eric Purchase (1/28/09 E-mail)                   | 10.Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing) |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 14

**Comment Topic:** NYS Great Lakes Agreements

**Paraphrased Comment:**

Last Year the state Assembly and Senate took specific action to deny applications for additional waste capacity at the CWM site on the account of the potential to discharge toxins into the Great Lakes water system, but the legislation was vetoed by then-Governor Elliot Spitzer. However, NYSDEC's completeness determination on this application for additional hazardous waste disposal capacity contradicts the primary goal of other major Great Lakes agreements that were signed into law since these agreements seek to eliminate discharges of persistent toxic chemicals like PCBs and mercury into the Great Lakes system. Prequalification reports indicate the NYSDEC continues to permit CWM to discharge mercury into the Niagara River and PCBs have circumvented CWM pollution control measures allowing discharge into streams which feed Lake Ontario. The Great Lakes represent the largest surface fresh drinking water supply in the United States. We do not consider Great Lakes protection from such persistent toxic chemicals as insignificant with respect to this application.

**NYSDEC Response:**

The NYSDEC regulates all discharges to the surface waters from the CWM facility. These discharges are routinely monitored for compliance with conditions in a NYSDEC State Pollution Discharge Elimination System's (SPDES) Permit.

The NYSDEC has determined that this permit modification will improve the long-term performance of the landfill's final cover and, as such, will afford enhanced long-term environmental protection over the approved final closure system. This Permit modification does nothing to change the permissible discharges of toxics or any contaminants to the Great Lakes. If anything, the proposed improved cover design will further minimize the likelihood of discharges to the environment.

**Permit Revisions:**

\_\_\_\_\_None proposed.

**Persons/Groups That Submitted This Comment:**

1. Robert Ciesielski, Sierra Club (1/29/09 Letter)
2. Raymond Gang (1/21/09 Hearing)
3. James Jackson (1/20/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 15

**Comment Topic:** Cost of Proposed Final Cover

**Paraphrased Comment:**

The NYSDEC has stated that the advantages of the proposed cap re-design outweigh the disadvantages of an additional 160,000 tons of hazardous waste going into the CWM landfill. However, CWM would apparently save upwards of \$1 million with the proposed re-design based on the following facts from an industry paper:

- A geosynthetic cap design saved \$42,000 per acre in construction costs alone, at the GE landfill in Waterford, New York in 2001. Multiplied by the 21 acres of capping CWM says its proposing, would save CWM \$882,000 over the current design. This calculation excludes CWM's cost of clay material since GE reportedly had access to on-site clay. Also, EPA indicates that "Landfill operators can install all available GCL products much faster and more easily than compacted clay liners".
- It is noted in the paper that when 78% of the landfill cover had been completed, leachate generation had been reduced by approximately 71%, which resulted in the drastic reduction in the cost of treating leachate, that is not included in the \$880,000 estimated savings.
- The proposed geosynthetic clay can be maintained less expensively because it can be patched, a factor that is also not included in the savings estimate.

So why is a capacity increase needed if the applicant already has abundant financial incentive to redesign the cover without such an increase?

**NYSDEC Response:**

The NYSDEC does not take costs into consideration when making decisions relative to improved environmental performance. The NYSDEC also points out that true projected cost savings need to be made on a site-specific basis, and cannot be accurately extrapolated from a paper that addresses another facility's experiences.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Francine DeMonte, NYS Assembly (1/28/09 Letter)  
3.Mark Gallo (1/21/09 Hearing)

2.April Fideli, RRG (1/21/09 Hearing)  
4.Amy Witryol (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 16

**Comment Topic:** Detrimental Community Effects

**Paraphrased Comment:**

Hosting a large toxic waste landfill poses an economic development challenge. The negative stigma associated with such sites deters private investors from locating their businesses in the Lewiston-Porter area. The deterrence of private investors not only affects Niagara County, but the region as a whole because of the indirect and induced economic effects that result from the loss of businesses. The requested 160,000 ton addition to the hazardous waste landfill capacity in Niagara County and New York State is counterproductive to sustainable and attractive growth. Niagara County, Town of Lewiston and other area communities are on record as opposing any increase in CWM landfill capacity, as it is counterproductive to economic development and the environmental goals and plans of these communities.

These additional cubic yards of landfill capacity will conflict with the community's ability to attract business, homeowners and the vision Niagara County has for economic development. We have been trying to develop tourism and to improve the quality of life in the area through our abundant natural, cultural and historic resources. The continued landfill operation and the relays of trucks carrying hazardous waste through our area detract from the image we are trying to project. Further, people are looking to leave the area because they do not want their children going to school next to a hazardous waste truck route. This is evident by the continued presence of "For Sale" signs on Creek Road, where it seems difficult to sell property along this hazardous waste route. This continued economic impact should be studied before a Permit modification is issued.

**NYSDEC Response:**

While there may be some truth to some of the items included in this General Public Comment, the issues stated are set forth in very general terms, without specific documentation that connects the described negatives apparently happening directly to the present CWM facility's operations. For instance, the "For Sale signs on Creek Road" and "people looking to leave the area" may be merely reflective of high state and local taxes, loss of jobs due to downsizing or the recent steep economic decline of the American Stock Market precipitated by the devaluation of properties in the housing market. There are many different reasons beyond CWM's continued operations that can be perceived as also responsible for the local concerns that have been expressed.

The present proposal to change the landfill's closure plan to include a superior GCL will enhance and likely extend the final cover's effectiveness over a long period of time while and only extending the existing CWM landfill's disposal operations in RMU-1 for a brief period of time (an anticipated 8-12 months). Also, the 3% increase in the landfill's Permitted disposal capacity (106,870 cubic yards) within the RMU-1 facility is not large when compared to the facility's overall volume. The continued brief use of this disposal facility, with its existing operations, is not viewed by the NYSDEC as warranting preparation of an Environmental Impact Statement, particularly when the overall long term benefit to the community of the superior landfill cover protection afforded by the GCL is considered.

**Permit Revisions:**

None proposed

**Persons/Groups That Submitted This Comment:**

- |  |   |
|--|---|
| 1.Alexander Bertland (1/28/09 Letter)                  | 2.Clyde Burmaster, Niagara County (1/21/09 Hearing)   |
| 3.John Burmeister (1/26/09 Letter)                     | 4.Joseph Jastrzemski, Town of Wilson (1/20/09 Letter) |
| 5.Paula Kot (1/28/09 E-mail)                           | 6.John Leonardi, Buf./Nia. Realtors (1/21/09 Hearing) |
| 7.Gregory Lewis, Niagara County (1/28/09 Letter)       | 8.Tim & Kathleen Mc Grath (1/26/09 Letter)            |
| 9.Fred Newlin, Town of Lewiston (1/27/09 Letter)       | 10.Kathleen Olszewski (1/26/09 Letter)                |
| 11.Eric Purchase (1/28/09 E-mail)                      | 12.Rene Rickard, Tuscarora Env. (1/21/09 Hearing)     |
| 13.Lynda Schneekloth (1/12/09 Memo.)                   | 14.Sophia Smith (1/26/09 Letter)                      |
| 15.Richard Soluri, Vill. of Lewiston (1/21/09 Hearing) | 16.Christina Spuller (1/26/09 Letter)                 |
| 17.Harriet Tower (1/21/09 Hearing)                     | 18.Amy Wtryol (1/21/09 Hearing)                       |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 17

**Comment Topic:** Site Radiological Issues

**Paraphrased Comment:**

CWM is subject to a radiation plan under its NYSDEC Permit because of a 1972 NYSDOH Order limiting excavation on CWM property. NYSDEC ignored this Order for 20 years until residents brought it to the attention of NYSDOH in February 2004, after NYSDEC had declined in November of 2003 to take action to uphold the Order. The 1972 DOH Order was issued because the then-Health Commissioner disagreed with U.S. Atomic Energy Commission clean-up standards used for the area including CWM. As part of the protocol required under its Permit, CWM is to report radiation results from all excavations immediately for gamma detection, and within 90 days for required soil sampling. This has not happened. NYSDEC has failed to consistently monitor and enforce Permit conditions for radiation issues, including in suspect areas of the site. For instance, a former Atomic Energy Commission burial site known as the “Castle Garden Dump” sits beneath Fac Ponds 1 & 2 on the CWM property. This site contains high-activity residues from the Linde site in Tonawanda. CWM took core samples on the berm of these ponds that are subject to the above excavation reporting requirements, but apparently did not supply the data to the NYSDEC. However, in the past, evidence indicates that NYSDEC reviewed similar results with CWM which would render those results FOIL-able, but told citizens requesting these results that they had “not yet been submitted”. Further, unlike other radiological contaminated sites in New York being remediated by the Army Corp of Engineers where NYSDEC oversight is provided by qualified staff, on the CWM site, NYSDEC has chosen to use RCRA permitting staff which has worked closely with CWM for 20 years. In addition, an NYSDEC radiation staff member responsible for oversight of CWM’s radiation plan is a recent, former radiation staff member of the Army Corp of Engineers responsible for this same site. The absence of a technical audit function within NYSDEC and these unusual staffing assignments for radiological oversight, points to the need for a full environmental assessment for this site.

In 2002, defense contractors (SAIC) performed a radiation survey of the Lew-Port School. An anomalous rock found on property behind the elementary school registered at 38,222 counts per minute. This is an outrage. Get the government to work on cleaning up this mess instead of working on CWM expansions. The communities’ health is more important than making CWM millions.

NYSDEC is shirking its duty to protect people's help by allowing more radioactive waste that would just make residents sick. This landfill cover technology that CWM has proposed would increase the space for more waste instead of clay cover. This poses a danger to citizens who must drive down the roads with trucks carrying radioactive material passing them. If more clay was added instead of waste, it can create an effective insulation so that radioactive waste cannot be released. We need more trucks carrying loads of clay, rather than those carrying radioactive waste.

**NYSDEC Response:**

Much of the concerns expressed in this comment with regard to radiological site issues are beyond the scope of this Permit modification. However, the NYSDEC would like to take this opportunity to clarify the record with regard to some of the points raised in this comment.

During the CWM Hazardous Waste Permit renewal process (2003-2005), a number of public comments expressed concerns over enforcement of a 1972/74 NYSDOH Order limiting excavation on the site, as well as concerns related to the site's radiological history. In response to these comments, the NYSDEC approached CWM about including conditions in its Part 373 Hazardous Waste Permit to address these radiological concerns. Although questions were raised regarding NYSDEC's authority to regulate potential radiological contamination on CWM property, CWM agreed to a series of conditions being incorporated into its Permit to address this historic (pre-CWM) contamination. In addition to requiring CWM to submit and implement site soil monitoring and management plans for excavations, similar to requirements in the 1972/74 NYSDOH Order, the referenced Permit conditions go beyond the requirements in said Order, in that they compel CWM to perform a site-wide radiological survey and to conduct radiological monitoring of air, surface water, groundwater and wastewater discharges. The NYSDEC considers that the monitoring and management activities required by these Permit conditions have effectively addressed concerns over the potential presence of historic radiological contamination at the CWM facility.

In 2008, CWM performed some investigatory soil sampling and radiological/chemical analysis to support its application and Draft Environmental Impact Statement (DEIS) for their proposed RMU-2 landfill. These soil sampling activities were not required by the above-noted conditions in CWM's current Permit, but these conditions do require CWM to follow approved plans during these soil disturbance activities, including stipulated timeframes for submission of "screening" data, as indicated in the comment. The NYSDEC addressed this matter in a March 4, 2009 letter to CWM which required CWM's submission of the radiological screening data from the RMU-2 related soil corings by May 1, 2009. CWM has since submitted this data which is undergoing review by NYSDEC staff.

The activities conducted by CWM with regard to potential radiological contamination are solely of an investigatory nature. They are not remedial activities similar to the U.S.

Army Corp of Engineers, post-remedial surveys, which are performed to verify that cleanup objectives are achieved. When and if such intrusive remedial work is performed on areas of the CWM property, it will be overseen by health physicist support and the NYSDEC radiation staff. It should also be noted that on-site NYSDEC staff involved in overseeing CWM radiological investigations routinely discuss findings with NYSDEC radiation staff and notify them of any identified areas of concern.

With regard to the alleged areas of high activity residues, such as the Castle Garden dump area, there is only anecdotal information regarding the presence of such residues, which does not constitute as sufficient information to assume presence.

As to the former employment of NYSDEC radiation staff by the USACE, said staff member is a capable professional. Any question regarding said staff member's abilities and professionalism are not shared by NYSDEC.

Lastly, with regard to the reference in the comment to transporting of radioactive wastes to this CWM facility, this CWM facility is not allowed to accept radioactive wastes.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |  |                                  |
|--|----------------------------------|
| 1.Thomas Bullock (1/29/09 Letter)      | 2.Debra Ishman (1/29/09 Letter)  |
| 3.Cheryl Krouse (1/21/09 Comment Form) | 4.Cloe Le Gault (1/22/09 Letter) |
| 5.Tyler Ordiway (1/28/09 Letter)       | 6.Amy Witryol (1/29/09 Letter C) |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 18

**Comment Topic:** Effects of Continued Period of Potential Site Releases

**Paraphrased Comment:**

CWM Pre-qualification Reports indicate that the NYSDEC continues to Permit CWM to discharge mercury into the Niagara River. While CWM has met its currently Permitted limits for contaminants discharged to the Niagara River, that is because those limits are antiquated in many cases. This is evident by the fact that CWM's last discharge did not meet the standards proposed by NYSDEC's Division of Water in a pending SPDES Permit modification. Also, in 2007, strange white foam was discovered to have emerged from the CWM outfall on the Niagara River. Since the site has no updated Permit, we never heard of what caused the formation of that foam, but it probably wasn't edible.

Four Mile Creek and Twelve Mile Creek both run through the CWM property and receive CWM storm water run-off. They subsequently flow through the community and state parks before discharging into Lake Ontario. The NYSDEC has determined that PCBs have circumvented storm water pollution prevention measures at CWM, resulting in discharges into these major creeks in violation of CWM's SPDES Permit.

Currently, there is a NYSDOH health advisory about eating fish from the Niagara River and Lake Ontario. The general advisory says eat no fish from this area if you are a woman of child-bearing age, an infant or a child under 15. That's more than 50% of the population. The rest of the people should eat no channel cat fish, carp, lake trout over 25 inches, brown trout over 20 inches or white perch. Men, older women and children over 15 can eat some other fish from the river and lake, but no more than one serving per month. These advisories are mostly due to PCBs, mirex, dioxin and mercury, which are chemicals that lead to permanent brain damage, and damage to our nervous systems and kidneys. They impact our children's ability to learn, as well as their memory, language development, attention span, thyroid and reproductive hormone levels. Some also cause cancer in lab animals. We should note that fishing has taken place at CWM during its annual employee picnic as a way to attract children to the facility. While NYSDEC assures us that water from Four and Twelve Mile Creeks is not used for this children's fishing derby, does the NYSDEC always honor the NYSDOH findings?

The Great Lakes contain 20% of the world's fresh water, more than 90% of the U.S. supply, and provide drinking water to 40 million people. Scientists recognize that the Graet Lakes are already at the tipping point of ecological collapse, and further chemical

contamination is extremely detrimental to their ecosystem. The proposed Permit modification will mean another year of CWM operation, which means another year of CWM discharges and potential leaks, spill and releases, both from the site as well as from possible waste transportation accidents. That is why we consider Great Lakes protection from persistent toxic chemicals to be significant with respect to this application.

**NYSDEC Response:**

The discharge of toxic substances in wastewater and storm water by an industrial facility to the environment is controlled by a facility's SPDES Permit. The NYSDEC understands the concerns expressed in this comment regarding the release of toxic substances from the CWM site to Lake Ontario and would like to make a number of clarifications concerning the administration of the facility's SPDES Permit.

The NYSDEC agrees that there are numerous areas of CWM's current SPDES Permit which are out of date, and this is why the Permit is presently being modified. Concerning the control of toxics in discharges, particularly PCBs and Mercury, analytical methodologies have improved significantly over the last several years, and incorporating these requirements into the Permit, as well as new monitoring points for assurance of acceptable effluent quality, are key considerations in the pending SPDES Permit modification. The SPDES Permit modification process has been ongoing for the past several years due to its complexity, and the NYSDEC anticipates that the modification will be complete before the end of this year. However, until the time the modified Permit becomes effective, the current limits will remain applicable and enforceable. CWM's last discharge of treated industrial wastewater from SPDES Outfall 001 to the Niagara River met current permit limits and did not have to meet planned future permit limits.

Concerning the foam that was created at the CWM discharge to the Niagara River, NYSDEC staff from both the Division of Solid and Hazardous Materials and Division of Water visited the CWM site immediately after receiving reports of its occurrence. After extensive consultation and consideration, all involved NYSDEC staff determined that testing was not necessary because the wastewater being discharged had previously gone through extensive pre-qualification testing, including for numerous toxic substances. It is likely that the source of the foam was surfactants, cleaning agents commonly used by many industries, and the NYSDEC concluded that creation of the foam was the result of excessive turbulence and a malfunctioning vent line at the outfall. Following recommendations by NYSDEC staff, CWM took several corrective actions, including modification of the outfall's energy dissipation chamber, and the foaming problem has been eliminated. Nonetheless, a violation of the SPDES regulations did occur, and the NYSDEC executed an order on consent with CWM, with stipulated penalties, in 2008.

Concerning PCBs in storm water being discharged to Four Mile Creek or Twelve Mile Creek, neither of these streams flow over CWM property, as stated in the comment. Twelve Mile Creek flows just off the southeast corner of the property and receives storm water from a small site area for discharge from SPDES Outfall 004. Four Mile Creek is

located a substantial distance from the northwest corner of the CWM site. This stream receives storm water which is discharged via SPDES Outfalls 002 and 003 at the edge of the site to a drainage channel, before actually flowing into Four Mile Creek. Several years ago, following PCB detections in the storm water at these outfalls, CWM installed a solids control system consisting of a rock check dam and carbon filter cloth at several upstream *internal* outfalls, and since that time, very few PCB detections (and no violations) have occurred. With the pending SPDES Permit modification, the NYSDEC is imposing even stricter PCB monitoring and analytical requirements, and an EPA-required “Industrial Pollutant Minimization Plan” for PCBs in storm water. Additionally, separate Industrial Pollutant Minimization Plans will be required for both PCBs and Mercury in the treated wastewater effluent discharged to the Niagara River.

With regard to fish consumption advisories, it is not clear what the comment is asking when inquiring if the NYSDEC is “honoring” New York State Department of Health (DOH) “findings.” We believe that an explanation of the inter-relationship between NYSDEC and NYSDOH would be of value in understanding how the fish advisory system works. First, the NYSDEC annually gathers information on various contaminant levels in various fish species, with samples from different water bodies and areas of the state. The NYSDOH then makes an annual review of the NYSDEC contaminant data to determine if an advisory should be issued or revised for a given body of water or fish species. Therefore, the NYSDEC actually plays a role in the development of these advisories in conjunction with the NYSDOH. This process, along with much more information on this subject, is described in a NYSDOH publication entitled *Chemicals in Sportfish and Game*, available online at [www.nyhealth.gov/environmental/outdoors/fish/fish.htm](http://www.nyhealth.gov/environmental/outdoors/fish/fish.htm). Information on contaminant levels in fish is also available from the NYSDEC by calling (518) 402-8920.

This comment expresses concern about a fishing event for children which takes place annually at the CWM site. This event does not expose anybody to any contaminants in the environment. The event is sponsored by the “Niagara River Anglers” and involves bringing in a plastic swimming pool to the CWM site, which is filled with water from an onsite ornamental pond and aerated, for temporarily holding the fish for the children to catch. Water from either Four Mile Creek or Twelve Mile Creek, or any contaminated site waters, are not used for this purpose.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |   |
|---|---|
| 1. Robert Ciesielski, Sierra Club (1/29/09 Letter)    | 2. Robert Ciesielski, Sierra Club (1/21/09 Hearing)     |
| 3. Dan Colton (1/29/09 Letter)                        | 4. Sandra Jackson (1/20/09 Letter)                      |
| 5. Art Klein, Sierra Club (1/21/09 Hearing)           | 6. John Leonardi, Buf./Nia. Realtors (1/21/09 Hearing)  |
| 7. Gregory Lewis, Niagara County (1/28/09 Letter)     | 8. Rene Rickard, Tuscarora Env. (1/21/09 Hearing)       |
| 9. Brian Smith, Cit. Camp. for Env. (1/21/09 Hearing) | 10. Richard Soluri, Vill. of Lewiston (1/21/09 Hearing) |
| 11. Harriet Tower (1/21/09 Hearing)                   | 12. Amy Wtryol (1/21/09 Hearing)                        |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 19

**Comment Topic:** Love Canal Comparison

**Paraphrased Comment:**

Despite the new cap design, this amount of hazardous waste will have a definite impact on the surrounding areas. Western New York has already had one instance of leaked hazardous waste and it is still reeling from the effects. Love Canal, a hazardous waste dump that was also capped, has been disastrous to surrounding areas, forced people to move out of their homes and even caused birth defects because the hazardous waste seeped into the ground and leaked into people's basements. Citizen of the Love Canal area continue to deal with health issues. CWM can make all the claims in the world that they will have a modernized repository that will keep hazardous waste well away from public harm, but even the NYSDEC has stated that there is no foolproof way of keeping refuse in the landfill. If more hazardous waste is added to the CWM landfill, a situation like Love Canal could happen and hazardous chemicals could contaminate the water supply.

**NYSDEC Response:**

The NYSDEC is aware of the perils associated with improper management of solid and hazardous wastes. In fact, the incidents at Love Canal acted as a catalyst that spurred both the NYSDEC, as well as the Federal Government to implement strict mandatory regulatory programs to ensure that such incidents do not happen again. The NYSDEC's regulatory and permit requirements imposed on CWM's RMU-1 landfill are more stringent than federal standards. The daily operations at this site are subject to a comprehensive environmental monitoring program that rigorously checks for operational compliance to ensure protection of public health and the environment. The Permit modification for the final cover system of the existing RMU-1 landfill will improve upon the existing conditions at this site and therefore has been issued by the NYSDEC.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

- |   |                                       |
|---|---------------------------------------|
| 1.Kristen Champoux (1/29/09 Letter)     | 2.April Fideli, RRG (1/21/09 Hearing) |
| 3.Thomas Fleckenstein (1/21/09 Hearing) | 4.Raymond Gang (1/21/09 Hearing)      |
| 5.Debra Ishman (1/29/09 Letter)         | 6.Sandra Jackson (1/20/09 Letter)     |
| 7.Heather Matthews (1/29/09 Letter)     | 8.Tyler Ordiway (1/28/09 Letter)      |
| 9.Harriet Tower (1/21/09 Hearing)       |                                       |

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 20

**Comment Topic:** Improper CWM Influence

**Paraphrased Comment:**

The area populace is disgruntled with the appearance that the NYSDEC shows favoritism toward CWM. It is fascinating that the NYSDEC has an almost unbroken track recorded of approving CWM requests. There has got to be an incentive somewhere, something in it for NYSDEC or they wouldn't be granting these approvals. Whether or not, the "need" for the services of CWM by the NYSDEC has anything to do with this appearance of favoritism is anyone's guess. As an example of a NYSDEC "need" for CWM services, there are the PCBs from a Queensbury, New York remediation that arrived at the CWM facility. Regardless of any incentives, the NYSDEC ought to focus more on promoting the interests of the environment and New York State residents and not do favors for a corporation that isn't even headquartered in the state.

Private citizens have gone through the CWM proposal and showed it to be flawed from beginning to end. The NYSDEC has either not noticed these flaws or are choosing to ignore them. Does the NYSDEC have to answer to anybody for its performance? Are they their own entity or do they have a higher authority to whom they have to account? If there is a higher authority, it is obvious that they are not paying attention and are letting NYSDEC do whatever they want.

**NYSDEC Response:**

The NYSDEC is obligated to consider requests from Permittees to modify their existing Permits. The daily operations of a hazardous waste landfill are closely regulated under strict Permit conditions. Under this form of permitting, it is not long before a daily operation may need to be either updated or revised. In these instances, the NYSDEC's Permit provisions and regulations have a defined processes for a Permittee to follow to request such changes. CWM's request to modify the final cover system of the RMU-1 landfill was made in accordance with these regulatory requirements. The NYSDEC has carefully evaluated CWM's request in accordance with the process and has decided to issue CWM's requested Permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Thomas Fleckenstein (1/21/09 Hearing)

3.Sandra Jackson (1/20/09 Letter)

5.Eric Purchase (1/28/09 E-mail)

7.Mary Ann Rolland (1/21/09 Hearing)

2.Timothy Henderson (1/21/09 Hearing)

4.Patricia Mazur (1/24/09 Letter)

6.Jane Richardson (1/21/09 Hearing)

8.Midge Tourbin (1/26/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 21

**Comment Topic:** Proposed RMU-2 & RMU-1 Capacity Relationship

**Paraphrased Comment:**

This CWM application represents a crucial bridge to another pending CWM landfill application, representing 40 more years of hazardous waste coming to this New York State site. It is concerning that CWM seems to be seeking this RMU-1 capacity increase for the purpose of completing its new RMU-2 landfill application. Recent comments on NYS draft Hazardous Waste Facility Siting Plan by supporters of CWM cite the shortage of remaining capacity at the current RMU-1 landfill as a primary concern. These comments asserted that CWM has two to four years of capacity left, and it takes two to three years to construct a new landfill. As such CWM supporters urge the NYSDEC to adopt a Siting Plan as quickly as possible, even suggesting that NYSDEC adopt the July 2008 draft Plan right now, without NYSDEC fulfilling its commitment and requirement to conduct another round of public comment on the draft Plan.

Further, CWM's decision to reduce their request for additional RMU-1 capacity by 30,000 cubic yards seems intended to promote a SEQR Negative Declaration by NYSDEC, and thereby try to avoid the requirement to wait for adoption of a Siting Plan for the RMU-1 capacity increase. This all appears motivated to avoid a period of absent income from operations at this CWM facility after RMU-1 capacity is reached, since CWM's parent company may not be willing to continue to invest in the RMU-2 application under such circumstances.

**NYSDEC Response:**

The NYSDEC's decision on CWM's proposed Permit modification, for enhancing RMU-1 landfill's final cover system, in no way is connected to CWM's application for the proposed RMU-2 landfill. These are two separate Permit proceedings, each subject to specific requirements of the ECL and regulation. The previously submitted CWM request to increase the height of the RMU-1 landfill by 10 feet was withdrawn by CWM, and as such, was not part of the NYSDEC's decision on this Permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1. Robert Ciesielski, Sierra Club (1/21/09 Hearing)  
3. Thomas Fleckenstein (1/21/09 Hearing)

2. April Fideli, RRG (1/21/09 Hearing)  
4. Amy Witryol (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section I - General Public Comments & Responses**

**Comment No:** 22

**Comment Topic:** CWM Community Relations

**Paraphrased Comment:**

For more than a year, CWM has boycotted Community Advisory Committee (CAC) meetings. The CWM CAC was established pursuant to New York State Environmental Conservation Law (ECL 27-1113.2) which provide, in part:

“A County within which an industrial hazardous waste treatment, storage and disposal facility subject to this title is to be situated, shall constitute a committee for the purpose of entering into a dialogue with the applicant to develop mutually-acceptable solutions to problems which may be created by the siting of the facility in the community.”

The CWM CAC is a representative body of the Towns of Lewiston and Porter and of Niagara County, and exists solely because the northeast’s only hazardous waste landfill is sited within their boundaries, and is mandated by law. The CAC represents the only effective venue for these communities to be informed of the regulatory and factual issues at the CWM facility. However, we have not seen any correspondence from NYSDEC to CWM emphasizing the fact that the ongoing CAC process is statutorily mandated and that CWM’s presence is required for the process to be effective.

CWM has refused to meet with the CAC except at its facility, which is subject to a NYSDOH Order and where most members do not feel comfortable or safe, as well as the fact that meeting at the facility would be inconsistent with the State’s open meetings policy.

CWM efforts to engage the public are not a substitute for the CAC, and have not been particularly effective or credible. Of the reported 900 people visiting the facility last summer, most were employees, vendors and their families, and few attended the on-site information sessions. It is disappointing that CWM has chosen to divide and conquer the public, and not deal with its critics in an open, accessible, and comfortable venue such as a public building.

**NYSDEC Response:**

The NYSDEC’s position with respect to the Community Advisory Committee has been clearly spelled out in letters dated November 27, 2008 (Dassatti to Bax); March 17, 2009

(Snyder to Ross, et. al.); and April 13, 2009 (Snyder to Mahar). In summary, while the NYSDEC encourages an effective forum for continuing dialogue between CWM and the community, we do not agree that the ECL mandates such dialogue outside of the formal siting process.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Wendy Swearingen (1/21/09 Hearing)

2.Harriet Tower (1/21/09 Hearing)

**NEW YORK STATE  
DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION  
(NYSDEC)**

**6NYCRR PART 373  
HAZARDOUS WASTE MANAGEMENT  
PERMIT RENEWAL  
FOR  
CWM CHEMICAL SERVICES L.L.C.  
MODEL CITY FACILITY  
NIAGARA COUNTY**

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**NYSDEC  
RESPONSIVENESS  
SUMMARY**

**SECTION II  
SPECIFIC COMMENTS  
&  
NYSDEC RESPONSES**

## **NOTICE**

**This Section presents specific comments which have been received during the comment period on the CWM Draft Permit Modification from individual members of the public and from the applicant (CWM). Specific comments received, whether in written form or in verbal form through public hearing transcripts, appear in Section II unaltered (i.e., not paraphrased). Each of these comments are from a specific individual or the applicant, and pertain to a specific topic.**

**With each comment, this Section presents an NYSDEC response. Also, presented with each comment is the individual and/or group that provided the actual comment.**

**Copies of all actual public comments, including transcripts from the January 21, 2009 Legislative Public Hearing, are presented in Appendix A of this Responsiveness Summary (available in hard copy only).**

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II- Specific Comments & Responses**

**Comment No:** 23

**Comment Topic:** Basis for Major Modification

**Comment:**

We want to emphasize that treated residuals classified as hazardous waste still pose a significant threat to human health and the environment. This position is highlighted by DEC regulation which mandates that any application for an increase in hazardous waste land disposal capacity be considered a Major Modification.

**NYSDEC Response:**

While treated residuals pose a significantly reduced threat to human health and the environment, current State and Federal regulations pertaining to hazardous waste disposal require the same degree of containment (i.e., double, composite liner systems) as afforded un-treated waste, so there is no reduced level of environmental protection with regard to treated residuals.

With respect to this CWM application being treated as a “Major Modification”, it was categorized as such because Part 373-1.7(d)(9)(iii) of the State hazardous waste regulations requires that modifications of landfill final cover systems be treated as major modifications of a facility’s Permit.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Robert Ciesielski, Sierra Club (1/29/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 24

**Comment Topic:** Liquid Hazardous Waste Transportation

**Comment:**

The fact that over thirty other states would be depositing hazardous waste in it [RMU-1 landfill] would mean that regular truckloads of waste would need to move through the surrounding area. A spill of a tanker truck could mean disaster for miles around as liquid waste evaporated and released into the air.

**NYSDEC Response:**

As previously stated in response to Comment #7, the rate of waste hauler traffic to the CWM facility is not expected to significantly increase as a result of this Permit modification. It should also be noted that while this CWM facility accepts liquid hazardous waste in tanker trucks for treatment and/or trans-shipment, the regulations do not allow the placement of liquids in landfills. Therefore, this Permit modification of the RMU-1 final cover will not effect tanker truck traffic associated with this CWM facility.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Tyler Ordiway (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 25

**Comment Topic:** Landfilling of Additional Waste

**Comment:**

Although the landfill would be deepened instead of expanded outward, we must stop burying our problems and face them now.

**NYSDEC Response:**

This Permit modification will not result in any “deepening” of the landfill, but instead will allow for some additional waste capacity on the upper surface of the landfill without increasing its final overall size.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1. Debra Ishman (1/29/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 26

**Comment Topic:** Possible Future Development

**Comment:**

What if in 20 years homes are built over this landfill, with the purchasers of the land unaware of the secrets buried under their land.

**NYSDEC Response:**

State regulations and CWM's Permit require that a notice be placed in the Property's Deed restricting any future development on land where waste has been disposed.

**Permit Revisions:**

None proposed

**Persons/Groups That Submitted This Comment:**

1. Debra Ishman (1/29/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 27

**Comment Topic:** Legal Landfill Capacity Limit

**Comment:**

First off, the proposed storage of this hazardous waste would exceed the capacity limit at this landfill set by New York State law.

**NYSDEC Response:**

The capacity limit of this landfill is not set by State law, but rather by conditions in CWM's Hazardous Waste Permit which can be modified through provisions provided in State regulations.

**Permit Revisions:**

None proposed

**Persons/Groups That Submitted This Comment:**

1.Heather Matthews (1/29/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 28

**Comment Topic:** Timing/Length of Comment Period

**Comment:**

Please consider that this community was overwhelmed with analysis and preparation of comments on DEC's lengthy and detailed draft 2008 New York State Hazardous Waste Facility Siting Plan. Statewide hearings on this Plan started in October, before the Completeness Determination for this modification was issued, and ended in November 20, 2008 after the Determination.

This community has had less than 60 days, over Thanksgiving, Christmas, New Year's and the Martin Luther King holidays, not to mention a presidential inauguration, in which to analyze this application. I asked for a 60 or 90-day extension of the public comment period. The notice indicates public comment was extended for just 14 days.

**NYSDEC Response:**

A Hearings Request was forwarded on October 14, 2008 to the Department's Office of Hearings and Mediation Services requesting a Legislative Public Hearing on the permit modification application. The scheduling of that hearing was at the discretion of the Administrative Law Judge (ALJ) assigned to the hearing. A Notice of Complete Application (NOCA) was published on November 12, 2008 under DEC Hearings in the Environmental Notice Bulletin (ENB). The NOCA stated that a Legislative Public Hearing was scheduled for CWM's application on December 15, 2008 with written comments to be received by January 14, 2009. In consideration of a request to extend the public comment period, a Notice of Rescheduled Legislative Public Statement Hearing was published on December 10, 2008 under DEC Hearings in the ENB. That notice stated that a Legislative Public Hearing was scheduled on January 21, 2009 with written comments to be received by January 30, 2009. Hard copies of the draft permit modification, CWM's application and a fact sheet were available for public review during normal business hours at DEC's Region 9 Office in Buffalo, and at the Youngstown Free Library, Lewiston Public Library and Porter Town Hall for a period of over two months from November 12, 2008. Electronic copies of the draft permit modification documents, fact sheet and SEQR Negative Declaration (in "pdf" form) were also available by downloaded from DEC's public website at <http://www.dec.ny.gov/chemical/8766.html> for at least one month prior to the end of the public comment period. Although Thanksgiving, Christmas, New Year's and Martin Luther King holidays, and the presidential inauguration occurred during the public comment period, the actual length of

the extended comment period was 79 days which is substantially more than the required 45 days for this type of Permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Amy Witryol (1/29/09 Letter C)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 29

**Comment Topic:** Potential for Catastrophic Landfill Failure

**Comment:**

It's not too far fetched to disregard catastrophic failure in the landfill. Within the past year, we have seen extreme weather destroying entire communities in the Northwest US, incredible flooding in middle America. Anything from an earthquake to a 40-day rainstorm could cause the entire CWM facility to become part of Lake Ontario and destroy the water source for upwards of 20 million people.

**NYSDEC Response:**

The NYSDEC's regulatory requirements for hazardous waste landfills in New York State exceed the maximum requirements of the Federal Regulations. The state's regulations require applicant's to evaluate the implications that extreme weather conditions and other events such a earthquakes could have on their activities. Beyond this the physical conditions and changes in the environs of a Permitted facility are duly monitored at each Permitted site pursuant to a comprehensive environmental monitoring program such that any such changes can be duly noted, and problems anticipated problems and rectified.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Art Klein, Sierra Club (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 30

**Comment Topic:** GE Hudson River Cleanup

**Comment:**

For years, General Electric was dumping PCB's in the Hudson River. The DEC said they must clean it up. GE fought it in court for 30 years and finally they had to – they were forced to do something about it. And guess where it came? Right here, to Niagara County.

**NYSDEC Response:**

The cleanup wastes from remediation of PCB laden sediment in the Hudson River which are related to former General Electric facility releases, are not being shipped to the CWM Model City facility. They are being shipped by rail to an appropriate out-of-state disposal facility of the contractor's choice.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Raymond Gang (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 31

**Comment Topic:** Thickness of Final Cover

**Comment:**

My primary objection is that the film being used is only six inches from the surface of the cap. Erosion and displacement of the dirt on top would allow the hazardous waste to be exposed and travel to surrounding areas by high winds and air currents ripping the film and dislodging it. An example would be of plastic tarps. I know we all have experience with those blue plastic tarps used to cover up roofs and boats and garden soil and so on. They didn't bother to bring a sample of this high-tech film that they are planning to use, so, we can't really see what it is like. I do not see this as a permanent solution, especially for hazardous waste.

**NYSDEC Response:**

The CWM proposal will place the GCL beneath a properly installed and seamed geomembrane, and will be at least 18 inches below the surface of the vegetative layer of the final cover system. The composite final cover system using a GCL in lieu of a compacted clay barrier layer represents the best available technology for long-term capping of solid and hazardous waste landfills. The condition of the closed landfill is subject to a comprehensive long-term post-closure maintenance program that requires repair of any portions of final cover system damaged by weather or other conditions at the site.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Mary Ann Rolland (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 32

**Comment Topic:** Landfill Expansion

**Comment:**

Recently Mahar of CWM and Gollwitzer of the DEC made statements stating this is not an expansion. Under Part One, Section B, Subpart 1-E of the project description, CWM, by its own application, states that this [is] an expansion. There is no – there’s no dispute that they have admitted in their application process to the DEC that the project is an expansion. Indicate percent of expansion proposed, 3 percent. It’s pretty clear right there that it’s an expansion by their own admission.

**NYSDEC Response:**

While the proposed modification does increase the landfill’s Permitted disposal capacity which can be characterized as an “expansion” of the landfill’s capacity, it is not an expansion of the landfill’s ultimate Permitted size in terms of its horizontal and vertical limits.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Thomas Fleckenstein (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 33

**Comment Topic:** Performance of Existing Landfill Containment System

**Comment:**

They're saying that this existing, stated by CWM, they're stating this is better technology than what they have in place because what they have in place could possibly crack due to settling. Well, think about thousands of tons of pressure on the bottom liner, which is the same material as the top liner. What's happening underneath this landfill?

**NYSDEC Response:**

The compacted clay which is a component of this landfill's bottom liner system is not exposed to the detrimental effects of freeze-thaw cycles since it is protected from freezing conditions by the waste above and final cover. Also, the pressure created by the upper waste mass is expected to further consolidate (i.e., compact) the bottom liner clay over time, improving its impermeability (i.e., improving its ability to contain leachate).

With regard to the clay component in the existing final cover, it is overlain by 36 inches of clean fill and topsoil which helps protect it from detrimental freeze-thaw and drying conditions.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Thomas Fleckenstein (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 34

**Comment Topic:** CWM Self-Reported Non-Compliance

**Comment:**

The other thing that I think is, from a DEC standpoint, is a joke, is self-policing that the DEC allows CWM to do. That's like – might as well call up the state troopers today and say I've been speeding, so why don't you fine me for speeding? That's what CWM has the ability to do. Well, we'll call the DEC and we will tell them we broke the law. Did they do that out of convenience to show people it works? You know, come up with some of these bogus things that they can say, well, look it really works if we self-police ourselves. I've never heard of anything so ludicrous in my life where you have the fox guarding the hen house. And that's basically what this is.

**NYSDEC Response:**

CWM's Hazardous Waste Permit (Module I, Condition C.4.m) and State regulations (Part 373-1.6(a)(12)) require that CWM report any non-compliance it is aware of or anticipate, to the NYSDEC. Failure of CWM to report known or anticipated non-compliance can result in additional violations and penalties on top of those associated with the non-compliance item itself. However, it is improper to characterize this as a totally "self-policing" situation. In addition to regular inspections of this facility by NYSDEC staff, this facility has trained NYSDEC staff on-site during normal operating hours, who continuously inspect the storage, treatment and disposal units/areas at this facility and report any observed non-compliance to NYSDEC Regional staff for appropriate enforcement action.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Thomas Fleckenstein (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 35

**Comment Topic:** Previously Covered RMU-1 Landfill Cells

**Comment:**

I learned today from the head of our DEC that this GCL proposed cover is superior to what was used on approximately 18 acres of previously-buried toxic waste in our RMU-1 site using a compact[ed] clay layer. Therefore, the remaining 21 acres should have this new and better cover. Now I wonder, for the future, if we are to have contractual, superior lifetime maintenance of CWM's total ten cells, when will this superior cover be placed on the originally-covered five cells?

**NYSDEC Response:**

While a GCL is a superior barrier to compacted clay in a final cover application, the final cover compacted clay component in the previously closed portions of the RMU-1 landfill, is overlain by 36 inches of clean fill and topsoil, which helps protect it from detrimental freeze-thaw and drying conditions, as stated in response to Comment #33. In addition, CWM is required to continually implement a comprehensive post-closure maintenance and monitoring plan for both cover system types (GCL and clay). Should at anytime it be determined that these final cover systems have been compromised or are in need of repair, the facility owner is responsible for conducting any necessary repairs.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Marn Weld (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 36

**Comment Topic:** Cover Design's Effect on Leachate Generation

**Comment:**

In addition, leachate volumes may unnecessarily increase as a result of this application.

**NYSDEC Response:**

The proposed modification of CWM's RMU-1 landfill's final cover system is expected to be more effective at controlling leachate generation than the previously used compacted clay barrier layer, in terms of both short and long term performance. As such NYSDEC does not anticipate increased leachate generation resulting from the approval of this proposed final cover system change.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Amy Wtryol (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 37

**Comment Topic:** Potential CWM Impact on Migratory Fowl

**Comment:**

CWM brought on a specially-trained K-9 [canine] to deter [the] geese population. Aside from the Environmental Impact Statement, I'm sorry, the environmental SEQR [regulation] requires as a – as a adverse impact, substantial interference with movement of any resident or migratory fish or wildlife species.

**NYSDEC Response:**

The NYSDEC's public website ([www.dec.ny.gov/animals/7003.html](http://www.dec.ny.gov/animals/7003.html)) has information for dealing with nuisance Canada geese. The website references a fact sheet that provides general information on Canada geese in New York, and describes the most effective measures currently available to prevent or alleviate problems that geese can cause. One of the most effective techniques identified is the use of trained dogs to chase geese.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1.Vincent Agnello (1/21/09 Hearing)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 38

**Comment Topic:** CWM #1 - RMU-1 Waste Mass Stability

**NYSDEC Draft Permit Condition:** Module VI, Condition E.2

In addition, any and all slope stability analyses required by the conditions of this Permit, must evaluate both “circular” and “sliding block” failure modes under both “static” and “seismic” conditions. All such stability analyses must yield a minimum static safety factor of 1.5 and a minimum seismic safety factor of 1.0 with zero liner system displacement and a maximum of 12 inches final cover system displacement, to demonstrate adequate landfill stability.

**CWM Proposed Modified Condition:**

In addition, any and all slope stability analyses required by the conditions of this Permit, must evaluate both “circular” and “sliding block” failure modes under both “static” and “seismic” conditions. All such stability analyses must yield a minimum static safety factor of 1.5 to demonstrate adequate landfill stability. For the design seismic event, a pseudo-dynamic analysis must yield a minimum seismic safety factor of 1.0 with zero liner system displacement and a displacement analysis must yield a permanent seismic deformation of less than 12 inches for the final cover system.

**CWM Reason for Proposed Modified Condition:**

The proposed modification clarifies the requirements for seismic stability analyses. It separates the requirements for the liner system and the final cover system to eliminate the potential misinterpretation contained in the draft condition. The type of seismic analysis for each requirement is specified.

**NYSDEC Response:**

The NYSDEC agrees that the text of Module VI, Condition E.2 referenced by the above comment, should be revised to better clarify its meaning with respect to the intended difference in seismic criteria between bottom liner and final cover systems. The present text could be mis-interpreted to mean that the zero displacement criteria also applies to the final cover system due to the word “and” in the last sentence. The NYSDEC has revised this condition (as indicated below) in a similar manner to that reflected in this CWM comment.

**Permit Revisions:** Module VI, Condition E.2

In addition, any and all slope stability analyses required by the conditions of this Permit, must evaluate both “circular” and “sliding block” failure modes under both “static” and “seismic” conditions. All such stability analyses must yield a minimum static safety factor of 1.5 to demonstrate adequate bottom liner and final cover static stability. For bottom liner system seismic stability, a pseudo-dynamic analysis must yield a minimum seismic safety factor of 1.0 with zero liner system displacement. For final cover system seismic stability, a displacement analysis must yield a seismic deformation of less than 12 inches and a maximum of 12 inches final cover system displacement, to demonstrate adequate final cover seismic landfill stability.

**Persons/Groups That Submitted This Comment:**

1. Jill Banaszak, CWM - Applicant (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 39

**Comment Topic:** CWM #2 - Intermediate Cover

**NYSDEC Draft Permit Condition:** Module VI, Condition E.4.b

The Permittee may place intermediate cover on waste mass areas that are near, but not above, six (6) inches below the grades depicted on the “Top of Waste Grades” Drawing No.11 in Attachment J, Appendix D-6 of this Permit. Intermediate cover may only be placed by the Permittee in cases where there is not sufficient time left in a year’s construction season (April 1 to November 30) to place final cover over the same area. In such cases where the Permittee places intermediate cover on an area of waste, the Permittee must complete placement of final cover during the subsequent year’s construction season, in accordance with **Condition I** of this Module.

**CWM Proposed Modified Condition:**

For a compacted clay Final Cover system, the Permittee may place intermediate cover on waste mass areas that are near, but not above, six (6) inches below the grades depicted on the “Top of Waste Grades” Drawing No.11 in Attachment J, Appendix D-6 of this Permit. For a GCL Final Cover system, the Permittee may place intermediate cover on waste mass areas that are near, but not above, the grades depicted on the “Top of Waste Grades” Drawing No.11 in Attachment J, Appendix D-6 of this Permit. Intermediate cover may only be placed by the Permittee in cases where there is not sufficient time left in a year’s construction season (April 1 to November 30) to place final cover over the same area. In such cases where the Permittee places intermediate cover on an area of waste, the Permittee must complete placement of final cover during the subsequent year’s construction season, in accordance with **Condition I** of this Module.

**CWM Reason for Proposed Modified Condition:**

The proposed modification is consistent with CWM’s April 4, 2008, and June 13, 2008, permit modification requests. It is also consistent with Section 3.2.5.4 of the RMU-1 Operations and Maintenance (O&M) Manual which NYSDEC has included in the draft modification as a reference document. The NYSDEC’s draft condition is inconsistent with the RMU-1 O&M Manual and imposes unnecessary restrictions for future intermediate cover installation as described below.

As described in the RMU-1 O&M Manual, installation of intermediate cover clay (prior to its subsequent use in either a compacted clay final cover or GCL final cover system) includes placement and compaction of at least 12 inches of clay,

using the same procedures as liner system clay. However, the lower 6 inches does not get tested and the upper 6 inches only gets tested for moisture/density.

The draft condition limits the height of waste placement to 6 inches below the permitted top of waste elevation in areas where intermediate cover will be placed. This is only necessary where the intermediate cover is subsequently converted to a compacted clay final cover system. Where 12 inches of intermediate clay has been installed, and it is desired to utilize the intermediate clay as part of the compacted clay final cover system, only the top 6 inches will be reworked, tested for permeability and qualified as the initial layer of the final clay cover component (see Comment #3). The bottom 6 inches is not tested and becomes part of the waste fill. Therefore, the waste contours must be kept at least 6 inches below the top of waste elevation shown on Drawing No. 11 to provide space for the 6 inches of unqualified clay.

However, for a GCL final cover system, there is no qualified clay component. The waste may be brought up to the waste elevation shown on Drawing No. 11. The 12 inches of intermediate clay cover is placed directly on this final waste surface. When the intermediate cover is converted to a GCL final cover, the top 6 inches is removed and the bottom 6 inches remains as the grading soil layer below the GCL. This remaining 6 inches of soil is regraded, proof rolled and demonstrated to meet the general fill requirements for the grading layer portion of the GCL final cover system. It is not part of the waste fill (see Comment #3).

CWM's request for a permit modification to incorporate the GCL final cover system states that all remaining uncapped sections of RMU-1 will be closed using the GCL final cover system. This is required by "Top of Waste Grades" Drawing No. 11 in Attachment J, Appendix D-6 of the NYSDEC draft permit. The procedures for installing intermediate cover in areas that will be converted to a compacted clay final cover system are retained in the permit for historical purposes only. Therefore, there is no need to anticipate a possibility where new intermediate cover would be installed in an area that will be converted to a compacted clay final cover system, and there is no need to keep the waste contours 6 inches lower than the permitted waste grades when installing future intermediate cover.

**NYSDEC Response:**

The NYSDEC understands the different situations that are created by a GCL versus a Compacted Clay cover system design, with respect to intermediate cover as pointed out by this comment. The NYSDEC agrees that it is not necessary to leave the waste grades 6 inches lower than the Permitted grades when placing intermediate clay cover on areas where the GCL final cover system will be employed. Therefore, the NYSDEC has revised this condition (as indicated below) in a manner similar to that suggested in this comment; however, with the added stipulation that intermediate clay cover used in GCL final cover areas must meet the technical specifications for GCL subbase material.

**Permit Revisions:** Module VI, Condition E.4.b

For a compacted clay Final Cover system, the Permittee may place intermediate cover on waste mass areas that are near, but not above, six (6) inches below the grades depicted on the “Top of Waste Grades” Drawing No.11 in Attachment J, Appendix D-6 of this Permit. For a GCL Final Cover system, the Permittee may place intermediate cover on waste mass areas that are near, but not above, the grades depicted on the “Top of Waste Grades” Drawing No.11 in Attachment J, Appendix D-6 of this Permit, however, such intermediate clay cover must meet the specifications for GCL subbase material contained in Attachment J, Appendix D-7 of this Permit. Intermediate cover may only be placed by the Permittee in cases where there is not sufficient time left in a year’s construction season (April 1 to November 30) to place final cover over the same area. In such cases where the Permittee places intermediate cover on an area of waste, the Permittee must complete placement of final cover during the subsequent year’s construction season, in accordance with **Condition I** of this Module.

**Persons/Groups That Submitted This Comment:**

1. Jill Banaszak, CWM - Applicant (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 40

**Comment Topic:** CWM #3 - Intermediate Cover

**NYSDEC Draft Permit Condition:** Module VI, Condition E.4.b.i

Immediately prior to the construction of the Final Cover on the area of intermediate cover placement, the Permittee must remove the temporary geomembrane to facilitate Final Cover construction. For intermediate cover areas where a compacted clay Final Cover system is to be constructed, as depicted on the “Top of Waste Grades” Drawing No. 11 in Attachment J, Appendix D-6 of this Permit, the Permittee must re-grade, re-compact and test the upper six (6) inches of intermediate cover clay to meet Final Cover construction requirements in **Condition I.5.a** of this Module. For intermediate cover areas where a Geosynthetic Clay Liner (GCL) Final Cover system is to be constructed, as depicted on the “Top of Waste Grades” Drawing No. 11 in Attachment J, Appendix D-6 of this Permit, the Permittee must re-grade, proof roll and demonstrate that the upper six (6) inches of intermediate cover clay meets the GCL placement “general fill” Final Cover construction requirements in **Condition I.5.a** of this Module. Any intermediate cover clay that does not meet Final Cover moisture/density and/or permeability requirements for a compacted clay Final Cover or GCL placement “general fill” for a GCL Final Cover system, in accordance with **Condition I.5.a** of this Module, must be removed and replaced.

**CWM Proposed Modified Condition:**

Immediately prior to the construction of the Final Cover on the area of intermediate cover placement, the Permittee must remove the temporary geomembrane to facilitate Final Cover construction. For intermediate cover areas where a compacted clay Final Cover system is to be constructed, as depicted on the “Top of Waste Grades” Drawing No. 11 in Attachment J, Appendix D-6 of this Permit, the Permittee must re-grade, re-compact and test the upper six (6) inches of intermediate cover clay to meet Final Cover construction requirements in **Condition I.5.a** of this Module. For intermediate cover areas where a Geosynthetic Clay Liner (GCL) Final Cover system is to be constructed, as depicted on the “Top of Waste Grades” Drawing No. 11 in Attachment J, Appendix D-6 of this Permit, the Permittee must remove the upper six (6) inches of intermediate cover and re-grade, proof roll and demonstrate that the lower six (6) inches of intermediate cover clay meets the “general fill” construction requirements for GCL in **Condition I.5.b** of this Module. Any intermediate cover clay that does not meet Final Cover moisture/density and/or permeability requirements for a compacted clay Final Cover or “general fill”

requirements for a GCL Final Cover system, in accordance with **Conditions I.5.a and I.5.b**, respectively, of this Module, must be removed and replaced.

**CWM Reason for Proposed Modified Condition:**

The proposed modification is consistent with CWM's April 4, 2008, and June 13, 2008, permit modification requests. The NYSDEC's draft condition for converting intermediate cover to a GCL final cover system is not consistent with CWM's proposed procedures as described below. It also incorrectly references Condition I.5.a for the GCL final cover system construction requirements instead of Condition I.5.b.

It is CWM's intention to place waste up to, but not above, the grades depicted on the "Top of Waste Grades" Drawing No.11 (see Comment #2). The 12 inches of intermediate clay cover is placed directly on this final waste surface. When the intermediate cover is converted to a GCL final cover, the top 6 inches is removed and the bottom 6 inches remains as the grading soil layer below the GCL. This remaining 6 inches of soil is regraded, proof rolled and demonstrated to meet the general fill requirements for the grading layer portion of the GCL final cover system as contained in the RMU-1 Technical Specifications in Attachment J, Appendix D-7, of the Permit. The proposed modification clarifies these procedures.

Care must be taken in removing the top 6 inches of intermediate cover clay. Typically, a qualified and experienced earthworks contractor would perform this removal using sophisticated grade control and surveying techniques. These techniques allow very specific thicknesses of material to be removed at a high degree of accuracy. CWM and the contractor may consider performing this removal in stages, e.g., two passes at 3 inches each, in order to maximize this control. Between clay removal stages, CWM and the contractor would perform additional surveys to verify clay thickness. The 6 inches of removed intermediate clay would remain in the landfill. The clay will either be pushed or trucked to an appropriate area within the landfill utilizing approved construction techniques. It could potentially be used as the grading layer of the next phase of GCL final cover or the lower 6 inches of subsequent intermediate cover.

**NYSDEC Response:**

As similarly expressed in response to Comment #39 above, the NYSDEC agrees with this comment. Therefore, NYSDEC has revised this condition as indicated below.

**Permit Revisions:** Module VI, Condition E.4.b.i

Immediately prior to the construction of the Final Cover on the area of intermediate cover placement, the Permittee must remove the temporary geomembrane to facilitate Final Cover construction. For intermediate cover areas where a compacted clay Final Cover system is to be constructed, as depicted on the "Top of Waste Grades" Drawing No. 11 in Attachment J, Appendix D-6 of this Permit, the Permittee must re-grade, re-compact and test the upper six (6) inches of intermediate cover clay to meet Final Cover construction requirements in **Condition I.5.a** of this Module. For intermediate cover areas where a

Geosynthetic Clay Liner (GCL) Final Cover system is to be constructed, as depicted on the “Top of Waste Grades” Drawing No. 11 in Attachment J, Appendix D-6 of this Permit, the Permittee must remove the upper six (6) inches of intermediate cover and re-grade, proof roll and demonstrate that the ~~upper~~ lower six (6) inches of intermediate cover clay meets the “general fill” construction requirements for GCL in **Condition I.5.ba** of this Module. Any intermediate cover clay that does not meet Final Cover moisture/density and/or permeability requirements for a compacted clay Final Cover or GCL placement “general fill” requirements for a GCL Final Cover system, in accordance with **Conditions I.5.a and I.5.b**, respectively, of this Module, must be removed and replaced.

**Persons/Groups That Submitted This Comment:**

1. Jill Banaszak, CWM - Applicant (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 41

**Comment Topic:** CWM #4 - Major/Minor Modifications

**NYSDEC Draft Permit Condition:** Attachment O

Document: Att. J, App.

Old Page Numbers: iii, vi, 2-3, 2-5, 6-1, 6-2, 13-3, 13-4, 13-6 & A1-A7

New Page Numbers: iii, vi, 2-3, 2-5, 6-1, 6-2, 13-3, 13-4, 13-6 & A1-A8

**CWM Proposed Modified Condition:**

Document: Att. J, App. D-8

Old Page Numbers: iii, vi, 2-3, 2-5, 6-1, 6-2, 13-3, 13-4, 13-5, 13-6 & A1-A7

New Page Numbers: iii, vi, 2-3, 2-5, 6-1, 6-2, 6-3, 13-3, 13-4, 13-5, 13-6 & A1-A8

**CWM Reason for Proposed Modified Condition:**

The entries for Att. J, App. D-8, in the draft table do not include all of the affected pages.

**NYSDEC Response:**

NYSDEC agrees with this comment and has revised Attachment O as indicated below.

**Permit Revisions:** Attachment O

Old Page Numbers: iii, vi, 2-3, 2-5, 6-1, 6-2, 13-3, 13-4, 13-5, 13-6 & A1-A7

New Page Numbers: iii, vi, 2-3, 2-5, 6-1, 6-2, 6-3, 13-3, 13-4, 13-5, 13-6 & A1-A8

**Persons/Groups That Submitted This Comment:**

1. Jill Banaszak, CWM - Applicant (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 42

**Comment Topic:** CWM #5 - RMU-1 O&M Manual

**NYSDEC Draft Permit Condition:** RMU-1 O&M Manual Cover Page  
Revised: March 2008

**CWM Proposed Modified Condition:**  
Revised: June 2008

**CWM Reason for Proposed Modified Condition:**

The NYSDEC draft does not include a necessary revision submitted by CWM in its June 13, 2008, permit modification request (see Comment #6). The cover page must indicate the latest revision.

**NYSDEC Response:**

Revisions to the RMU-1 O&M Manual will be addressed by the NYSDEC through the normal approval process associated with documents that are incorporated into the Permit by reference, which in this case, will be concurrent with issuance of this Permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1. Jill Banaszak, CWM - Applicant (1/28/09 Letter)

**CWM PERMIT MODIFICATION  
NYSDEC RESPONSIVENESS SUMMARY**

**Section II - Specific Comments & Responses**

**Comment No:** 43

**Comment Topic:** CWM #6 - RMU-1 O&M Manual

**NYSDEC Draft Permit Condition:** RMU-1 O&M Manual - Section 3.2.7.1

The rate of vertical waste placement in any given location within RMU-1 should be no greater than 30 feet/month or 37 feet/year for 3 on 1 slopes and 26 feet/month or 31 feet/year for 2 on 1 slopes. These operational limitations insure that landfill loading allows shear strengths to develop in the glaciolacustrine clay layer beneath the landfill which are necessary for its stability.

**CWM Proposed Modified Condition:**

The rate of vertical waste placement in any given location within RMU-1 shall be no greater than 23 feet per month while not exceeding 100 feet annually. These operational limitations insure that landfill loading allows shear strengths to develop in the glaciolacustrine clay layer beneath the landfill which are necessary for its stability.

**CWM Reason for Proposed Modified Condition:**

The proposed modification is consistent with CWM's June 13, 2008, permit modification request. The NYSDEC's draft condition imposes additional conditions on the requirements for vertical waste placement into the RMU-1 O&M Manual which are not consistent with the permit, as described below.

NYSDEC has revised Module VI, Condition E.2.c, of the Permit in this Draft Permit Modification to add requirements for the maximum rate of vertical waste placement in RMU-1. This condition specifies that "The rate of vertical waste placement in any given location within RMU-1 shall be no greater than 23 feet per month, and shall not exceed 100 feet per year, so as to allow the development of adequate shear strength in the underlying Glaciolacustrine Clay layer, based on the landfill stability analyses assumptions used in the RMU-1 Engineer Report...". It is inappropriate to have two separate conflicting requirements for the same issue in two separate documents. The proposed modification is consistent with the requirements of the permit.

**NYSDEC Response:**

Revisions to the RMU-1 O&M Manual will be addressed by the NYSDEC through the normal approval process associated with documents that are incorporated into the Permit by reference, which in this case, will be concurrent with issuance of this Permit modification.

**Permit Revisions:**

None proposed.

**Persons/Groups That Submitted This Comment:**

1. Jill Banaszak, CWM - Applicant (1/28/09 Letter)

**NYSDEC  
RESPONSIVENESS  
SUMMARY**

**APPENDIX A  
ACTUAL COMMENT  
DOCUMENTS**

**&**

**LEGISLATIVE PUBLIC  
HEARING TRANSCRIPTS**

**(Available in Hard Copy Only)**

**WRITTEN COMMENT  
DOCUMENTS**

**WRITTEN COMMENT  
DOCUMENTS**

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| 2             | Alexander, Barbara   | 1/28/09                     | Letter                      |
| 3             | Anjarn, Saimi  | 1/30/09                     | Letter                      |
| 4             | Argona, Andrew   | 1/28/09                     | Letter                      |
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| 7             | Barnett, Linton  | 1/28/09                     | Letter                      |
| 8             | Battaglia, John  | 1/22/09                     | Comment Form                |
| 9             | Bertland, Alexander  | 1/28/09 (received)          | Letter                      |
| 10            | Bigia, Julie Ann   | 1/28/09                     | Letter                      |
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| 17            | Cassick, Edward  | 1/28/09                     | Letter                      |
| 18            | Champoux, Kristen  | 1/29/09 (received)          | Letter                      |
| 19            | Ciesielski, Robert,<br>Sierra Club Atlantic Chapter  | 1/29/09                     | Letter                      |
| 20            | Colosi, Tony   | 1/28/09                     | Letter                      |
| 21            | Colton, Dan  | 1/29/09 (received)          | Letter                      |
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| 23            | DelMonte, Francine, Assemblyperson NYS Assembly               | 1/28/09                 | Letter                  |
| 24            | DelMonte, Francine, Assemblyperson NYS Assembly               | 1/28/09                 | Letter to Governor      |
| 25            | Farrell, Katie  | 1/22/09                 | Letter                  |
| 26            | Gabrielli, F.   | 1/26/09                 | Note                    |
| 27            | Harden, Richard   | 1/28/09                 | Letter                  |
| 28            | Higgins, Brian, Congressman,<br>U.S. House of Representatives | 1/26/09                 | Letter                  |
| 29            | Hooker, Velma   | 1/28/09                 | Letter                  |
| 30            | Hutchinson, Herbert   | 1/28/09                 | Letter                  |
| 31            | Ishman, Debra   | 1/29/09 (received)      | Letter                  |
| 32            | Jackson, James  | 1/20/09                 | Letter                  |
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| 34            | Jastrzemski, Joseph, Supervisor<br>Town of Wilson             | 1/26/09                 | Letter                  |
| 35            | Kaszubski, Liz, Chairperson,<br>Buffalo Audubon Society       | 1/21/09                 | Letter &<br>Attachments |
| 36            | Klein, Arthur   | 1/30/09                 | E-mail                  |
| 37            | Koerner, Robert, Director,<br>Geosynthetic Institute          | 1/27/09                 | Letter                  |
| 38            | Kot, Paula  | 1/28/09                 | E-mail                  |
| 39            | Krawczyk, Karen   | 1/28/09                 | Letter                  |
| 40            | Krouse, Cheryl  | 1/21/09                 | Comment Form            |
| 41            | La Rue, Mark  | 1/28/09                 | Letter                  |
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| 44            | Le Gasse, Susanne   | 1/28/09                 | Letter                  |
| 45            | Le Gault, Cloe  | 1/22/09                 | Letter                  |
| 46            | Lewis, Gregory, Niagara County Manager                        | 1/28/09                 | Letter &<br>Attachment  |
| 47            | Lis, Ami  | 1/28/09                 | Letter                  |
| 48            | Lyon, Howard  | 1/28/09                 | Letter                  |

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| 49            | Maciani, Mark  | 1/28/09                     | Letter                      |
| 50            | Martell, Kimberly  | 1/29/09 (received)          | Letter                      |
| 51            | Matthews, Heather  | 1/29/09 (received)          | Letter                      |
| 52            | Mazur, Patricia  | 1/24/09                     | Letter                      |
| 53            | Mc Grath, Tim & Kathleen   | 1/26/09                     | Letter                      |
| 54            | Mokhiber, Judith   | 1/22/09                     | E-mail                      |
| 55            | Morgan, Tim  | 1/28/09                     | Letter                      |
| 56            | Newlin, Fred M. II, Supervisor,<br>Town of Lewiston                                | 1/27/09                     | Letter                      |
| 57            | Okonczak, Michael  | 1/28/09                     | Letter                      |
| 58            | Olsen, R. Nils Jr., Special Counsel,<br>Residents for Responsible Government (RRG) | 1/21/09                     | Letter                      |
| 59            | Olszewski, Kathleen  | 1/26/09                     | Letter                      |
| 60            | Ordiway, Tyler   | 1/28/09 (received)          | Letter                      |
| 61            | Piechowski, Lynn   | 1/28/09                     | Letter                      |
| 62            | Phoenix, Richard   | 1/15/09                     | Letter                      |
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| 64            | Rivera, Joseph   | 1/28/09                     | Letter                      |
| 65            | Ruble, David   | 1/28/09                     | Letter                      |
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| 68            | Schneekloth, Lynda   | 1/12/09                     | Memo                        |
| 69            | Smith, Sophia  | 1/26/09                     | Letter                      |
| 70            | Spira, George & Jean   | 1/29/09                     | Letter                      |
| 71            | Spry, William  | 1/22/09                     | Letter                      |
| 72            | Spuller, Christina   | 1/26/09                     | Letter                      |
| 73            | Stephens, Fred   | 1/30/09                     | E-mail                      |
| 74            | Stogner, Joe   | 1/29/09 (received)          | Letter                      |
| 75            | Thomas, Gary Jr.   | 1/28/09                     | Letter                      |
| 76            | Thompson, Antoine, State Senator,<br>NYS Senate                                    | 1/30/09                     | Letter                      |

| <b>List #</b> | <b>Commenter's<br/>Name and/or Organization</b> | <b>Date of<br/>Comments</b> | <b>Form of<br/>Comments</b> |
|---------------|---|-----------------------------|-----------------------------|
| 77            | Tourbin, Midge                                  | 1/26/09                     | Letter                      |
| 78            | Wagner, Sherry                                  | 1/28/09                     | Letter                      |
| 79            | Weller, Robert                                  | unknown                     | Note                        |
| 80            | Witryol, Amy                                    | 1/28/09                     | Letter                      |
| 81            | Witryol, Amy                                    | 1/29/09 (A)                 | Letter &<br>Attachment      |
| 82            | Witryol, Amy                                    | 1/29/09 (B)                 | Letter                      |
| 83            | Witryol, Amy                                    | 1/29/09 (C)                 | Letter                      |
| 84            | Wong, Meiki                                     | 1/28/09 (received)          | Letter                      |
|               |   |                             |                             |

**LEGISLATIVE PUBLIC HEARING  
TRANSCRIPT**

**JANUARY 21, 2009  
2:00 P.M. SESSION**

**LEGISLATIVE PUBLIC HEARING  
TRANSCRIPT**

**JANUARY 21, 2009  
7:00 P.M. SESSION**