

# **RESPONSIVENESS SUMMARY**

## **Eastman Business Park – Hazardous Waste Management Facility Kodak/RED-Rochester LLC - RCRA Permit Renewal NYSDEC No. 8-2614-00205/00104 USEPA ID No. NYD980592497 Rochester, Monroe County**

On June 25, 2014, the New York State Department of Environmental Conservation (the Department) notified the applicants that the referenced permit application was complete and directed them to proceed with public noticing. The Department announced the action through a notice published in the Environmental Notices Bulletin on July 2, 2014. The applicants announced the availability of the draft renewal permit via newspaper notice and via radio on July 9. The applicants also placed the draft permit and related records at two local public libraries, the Maplewood Community Library and Greece Public Library. The public comment period began July 2, 2014 and ended September 2, 2014. Four parties submitted comments during the public comment period. The comments and Department responses are included in Exhibit A.

During the comment period the Department also held an availability session and Part 621 legislative public hearing for the action on August 19, 2014, at Eastman Business Park. The Department also issued a press release at the start of the comment period, a press advisory in advance of the availability session/public hearing and created a website specific to Eastman Business Park where related electronic records were made available to the public (<http://www.dec.ny.gov/permits/97804.html>). A copy of the transcript from the legislative hearing is included in Exhibit B of the responsiveness summary. The only parties that chose to speak at the hearing were representatives of the Department and the applicants. No issues were raised at the hearing that warranted a Department response.

The Department has also revised the permit to be consistent with Department policy concerning the regulation of RCRA Combustion Units exclusively under the Hazardous Waste Combustors Maximum Achievable Control Technology Rule requirements in 40 CFR 63 Subpart EEE and incorporated by reference into the state regulations in accordance with 6 NYCRR Part 200.10. As a consequence, the combustion unit operational requirements for the Multiple Hearth Incinerator (HWMU-32) have been removed from the RCRA permit. Module VII has been revised accordingly, and the associated Exhibit E in Module I Schedule 1 has been eliminated in its entirety. Those requirements will be implemented exclusively through the Title V air permit that is in effect for the facility.

**Exhibit A**  
**Response to Comments**

**Eastman Business Park – Hazardous Waste Management Facility**  
**Kodak/RED-Rochester LLC - RCRA Permit Renewal**  
**NYSDEC No. 8-2614-00205/00104**  
**USEPA ID No. NYD980592497**  
**Rochester, Monroe County**

In this section of the responsiveness summary, each comment from RED-Rochester received during the public comment period is followed by a DEC response in bold text. Note that RED-Rochester also provided a mark-up of the draft permit showing the suggested edits related to their comments. The RED-Rochester mark-up is not included in this responsiveness summary.

1. Permit Authorizations

- a. Per 6 NYCRR 373-1.8(a)(1), hazardous waste facility permits for land disposal facilities and incinerators shall be effective for a fixed term not to exceed five years. Hazardous waste facility permits for all other units shall be effective for a permit term not to exceed ten years. As RED is permitted as the operator of the waste multiple hearth incinerator, RED's proposed expiration date is five years from the permit effective date.

Response: **DEC left the date intentionally blank since it was a draft.**

2. Permit Components - Resource Conservation and Recovery Act Permit Condition - Special Condition 3

- a. On the basis of law, we are unable to identify any statutory or regulatory support for this paragraph. Further, this paragraph is inconsistent with the financial assurance regulations found in 6 NYCRR 373-2.8(a)(4), which expressly state that NYSDEC may replace all or part of the requirements of that section with an alternative requirement set out in the permit. If RED and NYSDEC developed an alternative requirement, this would be in direct conflict with this draft permit provision. As such, it has been removed.

Response: **DEC deleted the referenced condition from the permit.**

3. Permit Components - Resource Conservation and Recovery Act Permit Condition - General Condition 4

- a. Note: This provision will be ineffective without a permit expiration date. See comment 1 (a) above.

Response: **See response to RED comment 1. The permit will be issued for a five year permit term that will be reflected in the expiration date.**

4. Module I - General Conditions

- a. On the basis of law, we are unable to identify any statutory or regulatory support for this paragraph. Further, this paragraph is inconsistent with the financial assurance regulations found in 6 NYCRR 373-2.8(a)(4), which expressly state that NYSDEC may replace all or part of the requirements of that section with an alternative requirement set out in the permit. If RED and

NYSDEC developed an alternative requirement, this would be in direct conflict with this draft permit provision.

Response: **DEC deleted the referenced sentence from the introductory header of this Module.**

5. Module I(A)(6)

- a. 6 NYCRR only covers modifications initiated by the NYSDEC. This addition includes modifications initiated by the Permittee.

Response: **DEC made the requested change.**

6. Module I(A)(7)

- a. On the basis of law, we are unable to identify any statutory or regulatory support for this paragraph. As such, these changes make the paragraph consistent with the terms of the prior permit and 6 NYCRR 621.11.

Response: **DEC did not make the requested changes. DEC plans to use a 60-day timeframe for processing major permit modification requests. Also note that a 5-day notice letter is not applicable since hazardous waste management permits are specifically exempted from this provision of Part 621.**

7. Module I(A)(9)

- a. On the basis of law, we are unable to identify any statutory or regulatory support for this paragraph. As such, the proposed language provides that the most recent, lawfully adopted requirements shall apply. Without this language, the requirements the Permittee must follow would be vague and unclear. The language currently drafted by NYSDEC can affect the scope of the Permittee's obligations under the permit, which constitutes a deprivation of property and due process within the meaning of the applicable provisions of the United States Constitution.

Response: **DEC revised this section of the permit to clarify the effect of the permit in relation to subsequent regulatory and statutory modifications.**

8. Module I (C)(3)(d)

- a. This language is consistent with the current permit, and allows RED to obtain sample splits. There is nothing under law which would prohibit RED from receiving splits and duplicates of NYSDEC samples.

Response: **DEC agrees and has revised the permit language accordingly.**

9. Module I(R)(7)(a) and (b)

a. On the basis of law, we are unable to identify any statutory or regulatory support for this paragraph. This proposed language provides that any requirements that may be placed on the Permittee proceed through the NYSDEC-initiated modification processes outlined in the regulations. Without this process, the Permittee would not be notified of potential standards that are more stringent than its current requirements, and the NYSDEC could deem the Permittee in violation of the permit without any notice. The language currently drafted by NYSDEC can affect the scope of the Permittee's obligations under the permit, which constitutes a deprivation of property and due process within the meaning of the applicable provisions of the United States Constitution. Therefore, the Permittee must be provided with notice and an opportunity for a hearing before any changes can be deemed enforceable.

Response: **DEC revised this section of the permit in response to this comment. Condition Module I (R )(7) has been deleted.**

10. Schedule 1 of Module I(B) Documents Incorporated by Reference, Item 15

a. See Item 18 below.

Response: **The reference to this document has been eliminated since the incinerator operating requirements will be implemented through the associated Title V Air Permit.**

11. Exhibit A-Supplement to Module I(C)-Paragraph 1

a. This change is simply an edit identifying a previously defined term.

Response: **DEC modified this paragraph to clarify the various bankruptcy related documents that are involved.**

12. Exhibit A -Supplement to Module I (C) - Paragraph 3

a. Based on our understanding of the allocation of responsibility between RED and Kodak, and the agreement between RED and NYSDEC, this revision references the definition "Pre-existing Environmental Liabilities", found in the Memorandum of Agreement between RED and the NYSDEC dated August 28, 2013, (which should be included with Attachment L) which includes (i) contamination of sediments and surface waters in the Genesee River adjoining the Eastman Business Park or downstream of the Eastman Business Park which originated at the Eastman Business Park, including Genesee River or Lake Ontario dredge spoil disposal sites and (ii) any contamination on parcels no longer part of the Eastman Business Park that were under the control of Kodak at one time. It is important to address that RED has its own definition of pre-existing liability which should be referenced here

and in the footnotes to the applicable exhibits. See Item 16 below. Without the Permit language being changed to address RED's comments, the Permit will be inconsistent with the Memorandum of Agreement between RED and the NYSDEC and will create confusion as to the Permittees' responsibilities and may be a modification, or if triggered, a future modification, of the Memorandum of Agreement without RED's approval.

**Response: DEC modified this paragraph but has not used RED's proposed insertion. DEC has continued to use the term "Pre-existing Contamination" in relation to obligations of the EBP-ET, not with respect to any particular party. Note that DEC has added the RED MOA and related documents to Attachment L, and DEC has made revisions in Module II that provide a mechanism for the permittees to employ their respective agreement in the event of a dispute concerning whether conditions are pre-existing or otherwise. DEC has also revised the definitions in Module I to acknowledge that RED MOA defines pre-existing liabilities with respect to RED.**

13. Exhibit B-1 - Supplement to Module II (5)
  - a. This revision specifically references Kodak, as this Section outlines Kodak's obligations.

**Response: DEC made the requested revision – these obligations are specific to Kodak.**

14. Exhibit B-2- Supplement to Module II - Exhibit B-2 Table1 Footnotes
  - a. These revisions are meant to reflect our understanding of the allocation of liability between RED, Kodak and the EBP-ET. Any future releases related to pre-existing contamination are the responsibility of the EBP-ET or Kodak, as the case may be. Further, any future releases relating to Pre-existing Environmental Liabilities, as defined in the Memorandum of Agreement between RED and the NYSDEC, are not the responsibility of RED.

**Response: DEC did not make the insertions that RED proposed. However, the footnotes for the table have been revised to clarify that releases stemming entirely from "pre-existing contamination" and related environmental response actions are EBP-ET obligations.**

15. Exhibit B-3 -Supplement to Module II -Table 1
  - a. The integrity assessment was completed in August 2014.

**Response: DEC made the requested revision.**

16. Exhibit E- Supplement to Module VII (D)(I)(b)
  - a. This revision is simply a reference to the relevant regulatory provision.

Response: **This permit condition has been eliminated since the incinerator operating requirements will be administered through the associated Title V Air Permit.**

17. Exhibit E - Supplement to Module VII (D)(2)(d)

- a. The physical layout of the automatic waste feed operation is such that it is not physically amenable to manual waste feeding.

Response: **This permit condition has been eliminated since the incinerator operating requirements will be administered through the associated Title V Air Permit.**

- b. Table E-4 - It is our understanding that an alternate monitoring parameter letter will be submitted by RED to the NYSDEC to request the venturi pH permit limit of 5.69. This revision reflects that change.

Response: **This permit condition has been eliminated since the incinerator operating requirements will be administered through the associated Title V Air Permit.**

The following 3 items were not numbered comments in RED's letter, but appear in their red line of the draft permit submitted on September 2, 2014:

Page E-11 (E)(2)(e)(2)

Page E-12 (E)(2)(Table E-5)

Page E-15 (E)(4)(c):

Response: **These permit conditions have been eliminated since the incinerator operating requirements will be administered through the associated Title V Air Permit.**

18. Module II(A)(2)(c)

- a. For consistency with the Memorandum of Agreement between RED and DEC (See Items 12 and 14 above), this proposed language includes the definition of "pre-existing environmental liability", which addresses those liabilities for which RED is not responsible.

Response: **DEC did not use RED's proposed insertion. The term "pre-existing contamination" is the term used in relation to obligations of the EBP-ET, not with respect to any particular party. DEC believes language that has been added to the permit for disputes, provides reasonable assurance that each party can use their respective covenant in the event of a dispute on this issue [see response to RED comment #21 below]. Also note the definition in Module I was revised to incorporate the RED MOA.**

19. Module II(B)(5) Footnote

- a. This proposed language provides that RED will indicate on the requisite

notices if any discovered releases are related to pre-existing environmental liabilities for which it is not responsible pursuant to the Memorandum of Understanding between RED and the NYSDEC. Such corrective action will be the responsibility of the EBP-ET pursuant to Module II (A)(2)(c).

**Response: DEC did not use RED’s insertion as proposed. However, DEC inserted a modified version of the footnote that clarifies circumstances under which subsequent actions would be EBP-ET obligations.**

20. Module II(C) Footnote

- a. This proposed language addresses the allocation of responsibility as reflected in the Memorandum of Agreement between RED and NYSDEC, and is consistent with Module II(A)(2)(c) regarding responsibility for corrective action.

**Response: DEC did not use RED’s insertion as proposed. However, DEC inserted a modified version of the footnote that clarifies circumstances under which subsequent actions would be EBP-ET obligations.**

21. Module II(E)4 Footnote

- a. The dispute resolution provisions as drafted conflict with those contained in the Memorandum of Agreement between RED and the NYSDEC. The proposed language provides that if the dispute involves Pre-Existing Environmental Liabilities, the only applicable dispute resolution process is as detailed in the Memorandum of Agreement.

**Response: DEC did not use RED’s insertion as proposed. However, DEC inserted a modified version of the footnote that clarifies that Kodak and RED disputes concerning “pre-existing contamination” will be handled under the terms of each party’s respective agreement with NYS (RED per RED-DEC MOA - 9/3/13; Kodak per Kodak-DEC Trust Agreement and Covenant - 5/16/14).**

22. Module VII (A)(4)

- a. This language references the regulations governing NYSDEC-initiated permit modifications. Without this reference, the Permittee would not be notified of potential changes to its permit, and the NYSDEC could deem the Permittee in violation of the permit without notice. The language currently drafted by NYSDEC can affect the scope of the Permittee's obligations under the permit, which constitutes a deprivation of property and due process within the meaning of the applicable provisions of the United States Constitution. Therefore, the Permittee must be provided with notice and an opportunity for a hearing before any changes can be deemed enforceable.



Response: **DEC made the requested revision since it expands the definition of “modification” to comport with the legal definition.**

23. Module VII (A)(5)

- a. This revision incorporates the regulatory reference for Permittee-requested modifications.

Response: **This permit condition has been eliminated since the incinerator operating requirements will be administered through the associated Title V Air Permit.**

RED-Rochester included the following note at the end of the first section of their comments:

As identified above, there are several provisions in the draft permit which need to address the separate responsibilities of RED and Kodak, and there are also the separate responsibilities of EBP-ET. Please note that RED is continuing to assess the need for a permit modification to "split" the permit in order to further clarify its responsibilities.

Response: **DEC acknowledges RED’s comment; no change has been made to the permit.**

RED-ROCHESTER COMMENTS ON PERMIT ATTACHMENTS

1. Attachment A

- a. Table A-1, Row 7 – change TV permit ID to "8-2699-00126/00001 and add a line for Permit # 8-000245, 6NYCRR Part 596 Hazardous Substance Bulk Storage Registration (RED-Lake Station Facility)

Response: **DEC corrected the first permit reference number (Title V). The Lake Station bulk storage registration referenced has not been added since Lake Station is not part of the RCRA permitted facility.**

2. Attachment C

- a. Page C6 - under "Test Method" column- add "or equivalent" to rows 2-6

Response: **DEC inserted “or DEC approved equivalent.” DEC also corrected an error in Analytical Methods. The VOCs method was corrected from 8270C to 8260C.**

- b. Page C9 - section 4.3- add "or electronic equivalent" in sentence 1 after "in ink"

Response: **DEC made the requested change.**

- c. Page C15 -section 3 – add "or electronic equivalent" after "in ink".

Response: **DEC made the requested change.**

3. Attachment D

- a. Page D6- paragraph 2 sentence 2 -replace "ID fan inlet damper" with "venturi"

Response: **DEC made the requested change.**

- b. Page D8, Table D-6 - row 5 column 5- replace (8"x12') with (8' x 8.2')

Response: **DEC made the requested change.**

- c. Page D9, Table D-7 – add "or equivalent" to the description of refractory

Response: **DEC revised to read “or DEC-approved equivalent.”**

- d. Page D9 - replace E-stack lid deep dimension of 4' with approximately 12 inches

Response: **DEC made the requested change.**

- e. Page D20- We note that this figure, which depicts a belt press, is now outdated based on current equipment and configuration. We will supply a new figure shortly for incorporation into the Permit.

Response: **DEC inserted an updated figure.**

4. Attachment F

- a. Page F12-F15 - Please delete references to Eastman Kodak Company on inspection forms.

Response: **DEC made the requested change.**

5. Attachment G

- a. Page G4- home phone # is 585-690-0909
- b. Page G12- Appendix G-1, column 2 line 2-replace "near lime pump" with "vacuum system"
- c. Page G12- Appendix G-1, column 2 line 15- replace "lime slaker room"

Exhibit A Section 1 – Comments from RED-Rochester, LLC

with "storage room"

- d. Page G13- Appendix G-1, column 2 line 4- replace "East of I.D. fan" with "on North wall"
- e. Page G13- Appendix G-1, column 2 line 7- replace "lime feeder" with "old lime bin room"
- f. Page G13-Appendix G-1, columns 1 and 2 line 8-delete
- g. Page G13- Appendix G-1, column 2 line 13- replace "rotary unloader" with "near conveyor"
- h. Page G13- Appendix G-1, columns 1 and 2 line 18- delete

Response: **DEC made the requested changes.**

6. Attachment L

- a. Include the Memorandum of Agreement between RED and NYSDEC dated August 28, 2013.

Response: **DEC made the requested change.**

## Exhibit A Section 2 – Comments from Eastman Kodak Company

In this section of the responsiveness summary, each comment from Eastman Kodak Company received during the public comment period is followed by a DEC response in bold text.

### MODULE I - GENERAL CONDITIONS

#### Comment 1:

Kodak's primary concern with this section, as well as many other provisions in the Permit, is that the draft does not clarify the manner in which the Permittees will comply with the relevant regulatory requirements by referencing the application submittals/attachments that describe Kodak's DEC-approved plans for waste analysis/characterization, personnel training, security, contingency plans, etc. Instead, the Permit references the Permittees' obligations to comply with all potentially applicable regulations as well as the plans and procedures that Kodak submitted and the Department approved, without clarifying whether the Department-approved plans and procedures fulfill the applicable requirements.

A fundamental concept required to be included in all permits issued pursuant to 6 NYCRR Part 373-1.6 is that the "permit is a shield". The regulations in 6 NYCRR 373-1.6 (e), entitled "Effect of a permit", provide: "Compliance with a permit issued pursuant to this Part during its term constitutes compliance, for purposes of enforcement, with Parts 370 through 374 and 376 of this Title except ...". In addition, the regulations in 6 NYCRR Part 373-1.6(c), entitled "Establishing permit conditions", provide: "All permit conditions will be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. The applicable regulations or requirements would be those which are in effect prior to the final issuance of the permit."

Kodak believes the Department has not incorporated the "Permit as a Shield" requirement in preparing this Permit, and requests that the Department consider modifying the Permit to address this issue.

**Response: DEC revised several parts of Module I to address Kodak's concerns about "permit as a shield" as well as the "incorporation by reference provisions."**

#### Comment 2:

WRLF and property transfer Orders on Consent are brought into this draft permit by the reference in Section A.8. These Orders were negotiated under other programs and NYSDEC authorities. The Orders are enforceable by their own terms and should not be incorporated into and thus rendered enforceable under this Part 373 permit. References to these Orders should be removed from this draft, including documents incorporated by reference #11, #12, and #13 in Section B, Schedule 1 of Module I.

**Response – DEC removed the WRLF order from the permit. The property transfer order has been retained in the permit as it is directly related to the RCRA corrective action**

**requirements and provides an alternative mechanism for implementing corrective action that could facilitate redevelopment of the Park. A prospective buyer concerned about the RCRA permit could be shown this provision “built in” to the permit, rather than in a separate side agreement that is not directly linked to the permit. The RED order has been retained in the permit since it defines the financial assurance required of RED that was not fully described in the permit application materials.**

Comment 3:

Kodak wishes to add a definition for "Facility" in Section B -DEFINITIONS of Module I as follows:

Facility: All contiguous land under the ownership and/or control of the Permittees at Eastman Business Park; including the Kings Landing Wastewater treatment plant.

**Response – DEC rejected this request. The term “Facility” is already defined in pertinent regulations.**

Comment 4:

Kodak wishes to clarify the applicability of Section G.2 to only the regulated units/activities as follows:

"2. The Permittee must at all times construct, operate and maintain all facilities and systems of hazardous waste treatment and control and related appurtenances which are installed or used by the permittee as designed in accordance with this Permit including Schedule 1 of Module I."

**Response – DEC rejected Kodak’s revision as proposed since it would exclude some necessary systems (safety systems, among other things), which would not be considered systems of “hazardous waste” treatment and control. However, DEC re-worded the condition to address Kodak’s concern about the provision being overly broad.**

Comment 5:

With respect to agreements referred to collectively as the "EBP Trust Agreements" approved by the United States Bankruptcy Court, the Department should consider the following:

1. Include and reference all five of the agreements involving Kodak, the Department, and the U.S. that are included in the suggested definition of the "EBP Trust Agreements", including the Eastman Business Park Settlement Agreement between Kodak and the U.S., the Funding Agreement between the Department and the U.S., and the Agreement with Covenant Not to Sue between Kodak and the Department.

Response – **DEC revised the reference document and also added further descriptors to the names of the documents, so that they can be more easily differentiated. These changes are reflected in Module I and in the compilation of settlement documents now included in Attachment L.**

2. Use of defined terms (e.g. "pre-existing contamination") from the EBP Trust Agreements is confusing when these terms are used in the draft Permit without reference to the specific EBP Trust Agreement where the term is actually defined.

Response – **DEC added the term to the list of terms defined in Module I, but the definition points to the specific reference document now included in Attachment L. Appearances of the defined term are now capitalized in the permit.**

3. Per the terms of the EBP Trust Agreements, contamination at EBP and in or near the Genesee River that occurred before September 3, 2013 (the effective date of Kodak's First Amended Joint Chapter 11 Plan of Reorganization in the Bankruptcy Case) is the Department's/Trust's responsibility and contamination that occurred or occurs after that date is the Permittee's responsibility. Section 0 of Module I and Exhibits B-1, B-2 and B-3 to Module I of the draft Permit should be modified to clarify that division of responsibility, and to be clear that the Department has obligations pursuant to the EBP Trust Agreements.

Response – **DEC agrees that the trust has obligations pursuant to bankruptcy settlement agreements, and these obligations and responsibilities are delineated in the Exhibits B-1, B-2, B-3 of the permit. DEC also acknowledges that it, as primary beneficiary, is administering the trust, ensuring that the trust satisfies its obligations in relation to Pre-Existing contamination. However, DEC is not an applicant in this permitting action, so Kodak's suggested clarification has not been incorporated into the permit.**

#### SCHEDULE 1 of MODULE I

##### Comment 1:

In Section C (Compliance Schedule), Kodak has already satisfied its financial assurance requirements with respect to the closure of HWMU-33. Therefore, HWMU-33 should be removed from Item 1 in the table under financial assurance requirements.

Response – **Agreed. Kodak subsequently provided documentation demonstrating that financial assurance is in place that meets the requirements of the permit, so this provision has been removed from the permit.**

Comment 2:

In Section D (Schedule of Deliverables) Item #1 Site Management Plan (SMP), the Department is requesting development of a SMP addressing institutional control obligations. The Department has previously approved Kodak's institutional control obligations in the exercise of its authority under RCRA Corrective Action. Numerous Corrective Action Implementation reports have been approved by the Department detailing the institutional and engineering control obligations for the multiple investigation areas at the site. In addition, the Department has approved site wide management plans, an example of which is the Vapor Intrusion Change Management Plan. The scope of the SMP requirements should be limited to the controls previously approved by the Department. Kodak suggests the following wording be incorporated into Item #1:

"Plan shall address institutional control obligations of the Permittee (and site occupants), incorporating previously approved controls including site use restrictions..."

**Response – DEC agrees that the SMP can be based primarily on existing controls. However, the SMP will be implemented through environmental easement(s). Existing soil management controls will also need to be updated to incorporate Part 375 Soil Cleanup Objectives. In addition, for excavation work there should be tiered procedures/controls based on known conditions. Kodak needs to develop procedures that can be used for divested parcels (for such properties, controls need to be independent of Kodak's excavation permit process, and related management procedures).**

Comment 3:

In section D (Schedule of Deliverables) Item #2 b and c Institutional Controls/Environmental Easements, the Department is requesting Survey Plats and Environmental Easements for the Weiland Road Landfill and previously closed Hazardous Waste Management Unit (HWMU) tank system locations. Portions of the Weiland Road Landfill were previously closed pursuant to Order on Consent, DEC Case No. R8- 1046-95-02 addressing the requirements of 6NYCRR Part 360. In addition, institutional control requirements, including future use restrictions, were implemented for remaining portions of the landfill in accordance with the Department approved Corrective Measures Implementation plan for this area under RCRA Corrective Action.

The HWMU tank systems were also previously closed pursuant to a Department Order on Consent, the previous USEPA RCRA permit for the facility, NYS Part 373 Interim Status regulations and in accordance with USEPA/NYSDEC approved closure plans. The Department has previously approved the certifications of closure and did not impose further obligations to submit survey plats and/or environmental easements at the time of Closure. Kodak does not believe that additional requirements are warranted at this juncture and requests that these requirements be removed from the draft permit.

**Response – DEC rejected Kodak’s proposed revision, but has revised the permit condition to better clarify the intent of the provision, which is to ensure that enforceable controls that are not dependent on the continued existence of the permit are placed on areas with remaining contamination. Institutional controls in such instances are required by the cited ECL provision. The revised permit language also addresses Kodak’s concern that it appeared that the permit would have required multiple easements being placed on the same parcel.**



EXHIBIT A of MODULE I

Comment 1:

In Section A(1), General Conditions, of Module I, Schedule 1, Exhibit A ("The Permittee must make arrangements for semi-annual inspections of the Facility by local fire companies or departments"). Kodak is not aware of any regulatory requirements mandating semi-annual inspection of RCRA-permitted facilities by local fire companies or departments. Instead, owners and operators need only attempt to make "arrangements to familiarize police, fire departments and emergency response teams" with the facility per Section 373-2.3(g)(1)(i). Requiring a set inspection schedule every six months is an unnecessary obligation for Kodak and the local emergency response departments that will be involved. Kodak requests to delete this provision.

As per Section 373-2.3(g)(1)(ii), Kodak has entered into coordination agreements with local police and fire departments to designate primary/secondary emergency authority when more than one department might respond to an emergency at the Facility. The pertinent arrangements are summarized in Kodak's Contingency Plan in Attachment G.

**Response – DEC revised the permit to address Kodak's concern.**

Comment 2:

Regarding Section A(3), Kodak suggests removing this from the Permit as the Permittee is required to perform closure in accordance with the approved Closure Plan. If the Department deems additional sampling and analysis or more restrictive and/or additional criteria are necessary at the time of unit/facility closure, the Department must invoke its authority to modify this Permit.

**Response – DEC did not remove this section since the issue that Kodak raised was addressed in the draft permit in the text that followed this section. DEC agrees that imposition of more restrictive and/or additional criteria than those presently included in the closure plan would require a DEC initiated permit modification.**

Comment 3:

In Section D(c)(1), Kodak's most recent RMMU variance petition was submitted December 10, 2010. The date (July 2, 2007) that appears in the draft Permit should be updated to reflect the most recent petition.

**Response - DEC updated the petition reference. DEC notes that Kodak has now submitted yet another updated RMMU petition, dated October 8, 2014, and will use that as the reference.**

## Exhibit A Section 2 – Comments from Eastman Kodak Company

### Comment 4:

In Section E, Kodak suggests modifying the last sentence of the first paragraph to more accurately describe the roles/responsibilities of the Permittees as follows:

"RED is a co-permittee as owner and operator of the Multiple Hearth Incinerator (HWMU-32) and the wastewater treatment unit located at King's Landing as well as the tank system and all ancillary components of the wastewater treatment unit located throughout the facility."

**Response – DEC rejected the proposed language. Kodak is owner of land where HWMU-32 is located, and is considered the owner for RCRA purposes. The wording in the draft permit language is that as used in the previously issued modification that added RED to the permit.**

### Comment 5:

In Section G, the Order on Consent may be terminated in accordance with the process set forth therein. If the Department is in agreement that the Order does not need to be referenced by this Permit, then this section becomes moot and should be removed.

**Response – DEC removed this section concerning the Weiland Road Landfill consent order.**

## EXHIBIT B of MODULE I

### Comment 1:

Kodak requests to remove Items 3 and 4 in Exhibit B-1. These issues have been addressed in separate agreements between Kodak and the Department and should not be included as requirements in this Permit.

**Response – DEC revised Item 3 (regarding office space) to reflect the services that Kodak can provide. The item has been retained in the permit. DEC recognizes that Kodak has offered office space, but notes that a separate agreement is not yet in place. DEC agrees that Item 4 has been addressed through a separate agreement between DEC and Kodak, so it has been removed from the permit.**

## MODULE IV -TANK SYSTEMS

### Comment 1:

In Section K(4)(a), Kodak is not aware of any regulatory requirements mandating bi-annual inspection of secondary containment systems. RCRA-permittees must test/assess tank systems that do not have secondary containment meeting the requirements of Subsection 373-2.10(d) until such time as the secondary containment requirements have been satisfied. As described in Attachment D-2d of this draft Permit, HWMU-33 tanks owned and operated by Kodak are double walled with vapor detectors in the interstitial space between the walls of the tanks for leak monitoring.

Given the design features of Kodak's secondary containment systems, bi-annual inspections when not required by regulation are unnecessary and should be deleted from the draft Permit.

**Response – DEC recognizes that the design of Kodak’s tank system precludes visual inspection of the exterior of the tank secondary containment system. DEC has revised this section of the permit accordingly, allowing other methods to be used to assess system integrity. The inspection frequency has been adjusted as deemed appropriate for these methods. Note that DEC also revised the related Tank Exhibit accordingly.**

## Exhibit A Section 3 – Comments from USEPA Region 2

### Comment:

The EPA comment is that the draft permit needs to be revised to incorporate provision(s) that clearly require corrective action, including necessary cleanup, with respect to pre-existing contamination of the lower Genesee River. The draft permit does not include such provision(s).

The draft permit states, "The post-closure and corrective action requirements associated with 'pre-existing contamination' are included in Permit Exhibit B-3, a supplement to Module II-Corrective Action." (see pages 1-11 and A-4). The introductory statement in Exhibit B-3 states that "[the Eastman Business Park Environmental Trust] corrective action obligations associated with the Eastman Business Park RCRA facility are listed below in Table I."

However, with respect to the Lower Genesee River, Table 1 in Exhibit B-3 lists only one deliverable: the Remedial Investigation/Feasibility Study Work Plan. As the permit is currently drafted, the corrective action requirements described in full elsewhere in the draft permit (see Condition II. D. on pages II-6 and II-7) do not appear to apply to the cleanup of the lower Genesee River. Given the importance of the performance of the cleanup of the lower Genesee River, Table 1 in Exhibit B-3 of the permit needs to include all steps in the corrective action process for the River. Table 1 should incorporate specific language setting forth the requirement for a Corrective Measures study and implementation of approved remedial measures for the River.

Incorporation of specific corrective action requirements in the final permit with respect to pre-existing contamination for the lower Genesee River is necessary so that the final permit for the facility will appropriately implement New York State hazardous waste program requirements.

**Response - DEC revised Exhibit B-3 to explicitly indicate that the lower Genesee River is subject to the full corrective process described in Module II of the permit. The intent of Table 1 of B-3 was to identify the next deliverable associated with each management unit/area of concern, not to lay out all possible subsequent steps.**

## Exhibit A Section 4 – Comments from J. Megalo

### Comment from member of public:

I am writing to submit my comment for consideration regarding Hazardous Waste Permit Part 373 for Eastman Kodak. I am a resident of Greece, NY and have lived west of Eastman Kodak's incinerator stacks for the past 12 years. In that time I have had a lot of concerns about their hazardous waste incinerator and waste water treatment facility.

Of utmost concern is the acrid odor present on West Ridge Road and Lake Avenue in and around Kodak Park. It smells similar to acetone or bleach. It makes your eyes burn, causes headache and respiratory symptoms. This odor is even stronger on humid or cloud covered days. It is concerning that there are many homes and a school located in this area breathing this.

This same odor is also present at Lake Ontario/Charlotte Beach State park which is on the Genesee River and Lake Ontario. Eastman's wastewater treatment plant empties into this river. Sometimes you can smell this odor in the Maplewood neighborhood or in Seneca Park Zoo which is directly across from the treatment facility. This is a cause for concern with the water and air quality.

The continued odor and smoke stack releases from this facility are a concern for residents like me and their families from a health and environmental standpoint. We can't help notice that the trees on the meridian in the road do not grow in this area. They usually die in one or two seasons.

I am also going to include some photographs of an event that occurred early in the morning in 2009 of an inadvertent release from the hazardous waste incinerator smoke stack. This was taken from the corner of my street which is 1.5 miles west of the incinerator. Events like this are concerning because the public is not told what was released.

I would like to see this facility closed for handling hazardous waste or in the least cleaned up so that these odors are not present in the air and the water is clean again.

**Response – DEC has not made any specific change to the draft permit but is sensitive to the concerns expressed in the comment and has notified the DEC's Division of Air Resources of the complaint. DEC reviewed the photographs and believes that the stack shown is for the coal-fired electric power generating plant located to the west of Mount Read Boulevard in Eastman Business Park (at Building 321). This type of plant periodically vents steam/water vapor when doing maintenance on the boiler tubes that generate the steam. We believe that is what was captured in your photos. The Building 321 boiler is not the subject of the pending permit action; it is regulated under a DEC Title V air permit.**

**The Title V air permit now held by RED-Rochester includes odor control requirements specific to the Kings Landing Waste Water Treatment Plant. These include: 1) operating an odor control scrubber system on the trickling filter to capture emissions from other sources like sludge storage tanks and belt press room, 2) enclosing the grit chamber (Building 96 located next to Maplewood Drive) and operating an activated**

**carbon system to control odors and emissions from the building, and 3) a requirement to track and follow up on all complaints they receive.**

**Kodak historically operated a hazardous waste incinerator at Building 218 in the area between Mount Read Boulevard and Dewey Avenue. However, that incinerator was closed in January 2007 and the stack was later demolished. The only incinerator currently included in the proposed hazardous waste management permit renewal is located at the Kings Landing Waste Water Treatment Plant and used specifically for sludge generated by the plant's biological treatment of wastewater.**

**Exhibit B**  
**Legislative Public Hearing Record**

**Eastman Business Park – Hazardous Waste Management Facility**  
**Kodak/RED-Rochester LLC - RCRA Permit Renewal**  
**NYSDEC No. 8-2614-00205/00104**  
**USEPA ID No. NYD980592497**  
**Rochester, Monroe County**

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State of New York  
Department of Environmental Conservation

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LEGISLATIVE PUBLIC HEARING:

In the Matter of the Renewal Application of  
Eastman Kodak Company and RED-Rochester, LLC for  
renewal of a Part 373 Hazardous Waste Management  
Permit for the Eastman Business Park (DEC Permit No.  
8-2614-00205/00104), Town of Greece and City of  
Rochester, Monroe County pursuant to Article 27,  
Title 9 of the Environmental Conservation Law, and  
Part 373 of the New York Compilation of Codes, Rules  
and Regulations.

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August 19, 2014  
Eastman Business Park  
Theater on the Ridge  
Building 28  
210 West Ridge Road  
Rochester, New York  
6:00 p.m.

Reported by:  
COMPUTER REPORTING SERVICE  
Margaret R. Crane  
16 East Main Street, Suite 7  
Rochester, New York 14614 (585) 325-3170



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**SPEAKERS:**

**Molly McBride, Administrative Law Judge**

**Scott Sheeley, Regional Permit Administrator**

**Sean Casten, RED, CEO**

**Charles Ruffing, Kodak, Director of Health, Safety,  
Environment and Sustainability**

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ALJ MCBRIDE: Good evening, everyone. My name is Molly McBride and I'm the administrative law judge with the New York State Department of Environmental Conservation and I'll be presiding over this evening's legislative public comments session.

The purpose of this public comment session is to receive comments from the public on the joint application of Kodak and Recycled Energy Development, also known as RED. It's a renewal of the Part 373 Hazardous Waste Management permit from the Hazardous Waste Management facility located in the City of Rochester and the Town of Greece.

The DEC has made a tentative determination to issue to Kodak and RED jointly a 373 permit for hazardous waste storage incineration and corrective action requirements.

Before we begin taking any comments from the public regarding this pending application we will hear a brief presentation from Scott Sheeley from the Department's Region 8 Office, then a representative from Kodak and a representative from RED will also give a brief presentation.

When it is time for the public to give their comments I will call your name from the speaker

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cards. When I call your name please come forward to the podium and speak into the microphone. We have a court reporter who will be recording all comments made here today.

Our first speaker this evening will be Scott Sheeley from the Department's Region 8 Office.

MR. SHEELEY: Thank you.

On September 10th, 2012 the Department received an application from the Eastman Kodak Company for the renewal of their existing 6 NYCRR Part 373 Hazardous Waste Management permit for the Eastman Business Park facility.

The permit was initially issued on March 10th, 2008 with an expiration date of March 9th, 2013. Modifications of the permit were issued by the Department effective on December 1st, 2009, January 31st, 2010 and February 27th, 2013 to reflect various administrative updates, the addition of a new Hazardous Waste Management Unit, HWMU-33, and a remedy selection for investigation area SIA-502/605.

Effective August 31st, 2013 RED-Rochester, LLC was added to the permit as a co-permittee with the Eastman Kodak Company and as a co-applicant for purposes of the pending renewal application. The

1 Proceedings

2 permit remains in effect under the provisions of the  
3 State Administrative Procedures Act until the  
4 Department renders a decision on the renewal  
5 application and any administrative processes associated  
6 with the decision are concluded.

7 As indicated in the public notice  
8 materials it is the Department's tentative  
9 determination that the permit can be renewed and a  
10 draft permit has been prepared.

11 In advance of this hearing the draft  
12 permit has been made available to the public in  
13 electronic form on the Department's website and upon  
14 request of the Department and made available in hard  
15 copy format at local repositories including the DEC  
16 Region 8 Office in Avon, the Maplewood Community  
17 Library in Rochester and the Town of Greece Public  
18 Library.

19 The draft permit prepared by the  
20 Department would not allow changes in operations or  
21 waste management that involve any increases in the  
22 quantities or types of wastes managed at the site.  
23 However, the draft permit does incorporate several key  
24 changes which are summarized in detail in the sheet  
25 available at tonight's hearing entitled "Permit Changes

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2 for Kodak/RED." Those sheets are available on the  
3 table near the back of the room.

4           Among these changes are the following: An  
5 increase in the financial assurance for the site from  
6 \$23 million to a total of \$51 million; a reduction in  
7 the sludge feed rate at the multiple hearth incinerator  
8 due to the decreased production of sludge at the  
9 Eastman Business Park; a restatement of the plan  
10 approved by the U.S. Bankruptcy Court pertaining to  
11 corrective action for historic contamination at the  
12 Eastman Business Park identified in the court order to  
13 be overseen by the Department and to be funded out of  
14 the Eastman Business Park Environmental Trust;  
15 designation of responsibility for other corrective  
16 action, closure and post-closure responsibilities  
17 between Kodak and RED; identifying the next step to  
18 advance the investigation of historical contamination  
19 in the Genesee River - this will be a remedial  
20 investigation and feasibility study to be overseen by  
21 the Department; and finally a reduction in the types of  
22 waste allowable -- pardon me -- a reduction in the  
23 types of allowable wastes that can be handled within  
24 Hazardous Waste Management Unit 33.

25           Based on the updates and changes that are

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proposed to be incorporated into the renewed permit the Department classified the application as an unlisted action under SEQR. That's S-E-Q-R.

After review of the application and the SEQR environmental assessment form the Department developed a SEQR negative declaration on June 30th, 2014 determining that the preparation of a draft environmental impact statement would not be required.

After our receipt of all written comments and the hearing transcript from tonight's hearing the Department will review the comments in light of our permit jurisdiction pursuant to 6 NYCRR Part 373 Hazardous Waste Management.

As indicated in the notice public comments will be accepted by the Department through September 2nd, 2014. Written comments will be given equal weight with any oral comments that are received tonight.

The Department staff will be required to make a determination about whether the matter must be referred to an adjudicatory or trial type hearing before the DEC Office Hearings and Mediation Services.

If no adjudicatory hearing is conducted a final decision on the permit application will be issued

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2 by staff without further public hearings. Thank you.

3 ALJ MCBRIDE: Thank you, Mr. Sheeley.

4 Next we'll hear from Scott Casten from  
5 Recycled Energy Development.

6 MR. CASTEN: Thank you. For the record my  
7 name is Sean Casten.

8 ALJ MCBRIDE: I apologize.

9 MR. CASTEN: That's fine.

10 Thank you. RED Rochester is pleased to be  
11 here tonight as part of the public comment process  
12 relative to the Part 373 RCRA permit.

13 On September 1st of last year  
14 RED-Rochester took over operations of the utility  
15 infrastructure at Eastman Business Park, one of the  
16 nation's largest industrial complexes. RED-Rochester  
17 today provides electricity, steam, chilled water,  
18 compressed air, industrial water, sewer services,  
19 nitrogen, natural gas and potable water to the park's  
20 more than 30 owners and tenants.

21 RED-Rochester is in the process of making  
22 significant investments of the site in a variety of  
23 energy efficiency projects and a large capital project  
24 to convert the steam and electric plant from coal to  
25 natural gas.

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As a part of taking over operations of the utilities infrastructure RED-Rochester has taken on the Part 373 RCRA permit obligations associated with the multiple hearth incinerator, or MHI, at the Kings Landing Wastewater Treatment Plant. RED-Rochester is a co-permittee with Kodak on that permit.

RED-Rochester has invested several million dollars in this acquisition to increase the park's energy efficiency and utilities productivity in order to help attract new businesses and jobs to the region. We intend to invest over \$80 million in the next several years to bring the market of compliance with Boiler MACT and other pending environmental regulations.

RED-Rochester's new combined heat and power plant will, we hope, serve as a model for how industrial facilities across the country can meet new environmental standards, particularly the USEPA's Boiler MACT rule.

RED-Rochester is a wholly owned subsidiary of Recycled Energy Development, or RED, which develops, owns and operates power projects that harness waste energy and reduce greenhouse gas emissions and energy costs.



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With more than 30 years of experience on such projects our team works closely with industrial companies to optimize energy efficiency and maximize profits. Our leadership team has designed, owned and operated more than 200 energy recycling projects like the ones at Eastman Business Park.

RED is supported by Tulum Trust, a private equity firm that invests in low carbon energy businesses. Thank you.

ALJ MCBRIDE: Thank you.

Now we'll hear from Charles Ruffing from Kodak.

MR. RUFFING: Good evening. I'm Chuck Ruffing, Kodak's Director of Health, Safety, Environment and Sustainability, and I'm pleased to provide this statement on behalf of Kodak.

It's an exciting time for Kodak, especially Eastman Business Park, as we continue to build the new Kodak following our emergence from Chapter 11 re-organization.

Our primary scope in this draft Part 373 permit relates to two storage tanks in our Building 322. These tanks are used in our solvent recovery operation located just west of Mt. Read Boulevard and

## 1 Proceedings

2 north of Ridgeway Avenue.

3 In this operation high purity solvents are  
4 reclaimed from material waste and byproducts for re-use  
5 in industrial applications. Many of these materials  
6 would have otherwise been destined for incineration.

7 A key part of the permit that you've heard  
8 referred to already is the corrective action module.  
9 This module includes reference to the remedies in place  
10 to address historic releases at EBP. These remedies  
11 such as the active groundwater extraction systems were  
12 implemented following extensive investigations going  
13 back to the 1990s.

14 In May Kodak and New York State completed  
15 arrangements for the establishment of an environmental  
16 trust for EBP. With 49 million in funding from Kodak  
17 the trust which will be managed by New York State DEC  
18 will ensure continued implementation of the established  
19 remedies as well as some further investigations  
20 including the lower Genesee River.

21 Kodak will continue to have obligations in  
22 the new permit related to institutional controls such  
23 as site access and soil excavation controls.

24 Together Kodak's activities under this  
25 permit along with DEC's management of the trust will

## 1 Proceedings

2 provide oversight for a growing EBP while addressing  
3 environmental obligations into the future.

4 A new aspect of Part 373 permit is our  
5 co-permittee status with RED-Rochester. About this  
6 time last year, as Sean just described, Kodak completed  
7 the sale of EBP utilities business to RED. At that  
8 time Kodak recognized the benefit to the future of EBP  
9 and the community of partnering with a utility company  
10 with a strong reputation for driving energy efficiency  
11 and productivity.

12 Today both companies share a commitment to  
13 leveraging EBP's world class infrastructure to attract  
14 groundbreaking innovative companies to EBP across a  
15 variety of technologies.

16 Together and by working with agencies such  
17 as the New York State DEC and Empire State Development  
18 EBP is evolving into a premier campus for the  
19 development and manufacture of products in the  
20 biomaterials, battery and energy storage and functional  
21 films industries.

22 Although the scope and scale of Kodak's  
23 operations covered in the new permit have been reduced  
24 compared to previous years our obligation under this  
25 permit remain important to our business.

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As a result of our ongoing commitment to meet regulatory requirements along with the environmental trust, the partnership with RED-Rochester and the collaboration among numerous community, industry and government leaders, I believe that Eastman Business Park is well positioned to achieve sustainable growth. Thank you.

ALJ MCBRIDE: Thank you, Mr. Ruffing.

Now is the time in our hearing where we would accept public comments regarding this joint application. In order to speak at the hearing we have speaker cards as you entered the room and anyone that wanted to make a comment should fill out one of those speaker cards.

So far we have not selected any cards.

Is there anyone that would like to make an oral comment on the record here this evening?

(No response.)

ALJ MCBRIDE: Just for the record written and oral comments are given equal weight. The comment period runs through September 2nd, 2014.

If you would like to submit written comments they should be sent to Scott Sheeley at the New York State DEC Region 8 Office, Division of

## 1 Proceedings

2 Environmental Permits, and the address is 6274 East  
3 Avon-Lima Road, Avon, New York 14414-9519 and that  
4 address, of course, is also available over at the table  
5 the DEC has set up.

6 Again this public comment period runs  
7 through September 2nd, 2014.

8 Before I close the record is there anyone  
9 that would like to make a comment on the record here  
10 this evening?

11 (No response.)

12 ALJ MCBRIDE: Knowing that no one has come  
13 forward I will thank you all for coming here this  
14 evening and we will close our record. Thank you.

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REPORTER CERTIFICATE

I, Margaret R. Crane, do hereby certify that I did  
report in stenotype machine shorthand the  
proceedings held in the above-entitled matter;  
Further, that the foregoing transcript is a true and  
accurate transcription of my said stenographic notes  
taken at the time and place hereinbefore set forth.

Dated August 25, 2014  
At Rochester, New York

S/ Margaret R. Crane

\_\_\_\_\_  
Margaret R. Crane