FACILITY SITING BOARD
In the Matter of the Application of
CWM Chemical Services, L.L.C. For a Certificate of
Environmental Safety and Public Necessity,
Residuals Management Unit-Two

NYS Department of Environmental Conservation
Commissioner Joseph J. Martens, Chair

NYS Department of Economic Development
Commissioner Kenneth Adams

NYS Department of Health
Acting Commissioner Howard A. Zucker, M.D.

NYS Department of State
Secretary of State Cesar A. Perales

NYS Department of Transportation
Commissioner Joan McDonald

PRESENT:
Paul D'Amato, Chair-Designee
Lynn Marinelli, Designee
Matthew Forcucci, Designee
Dierdre K. Scozzafava, Designee
Darrell Kaminski, P.E., Designee
John F. Benoit, Ad hoc Member
Lee Simonson, Ad hoc Member
A. Scott Weber, Ph.D., Ad hoc Member

Hearing Officer/Administrative Law Judge
Daniel P. O'Connell
Support Staff
Louis A. Alexander, Assistant Commissioner
for Hearings and Mediation Services
Michael Caruso
Facility Siting Board Counsel

JACK W. HUNT & ASSOCIATES, INC.
MR. D'AMATO: Okay. I have 1:30. Let's go on the record, please. Good afternoon everyone. Thank you for being here. Please let me apologize up front for my voice. I've been fighting off a little something for a couple of weeks and we'll see how well it cooperates this afternoon.

The meeting of the facility Siting Board is now in session. This is Wednesday, July 2nd, 2014. The time is 1:30. This meeting will be recorded by a stenographer, so board members please make sure you speak loudly enough. She's asked us to use the microphones as well to assist.

And I'll ask the stenographer, if you miss anything and need it to be repeated, don't be shy, feel free to interrupt us and have us repeat ourselves.

My name is Paul D'Amato. It's my privilege to be the director of the Region 8 office of the DEC. For those of you who may not know this, the Region 8 is your immediate neighbor to the east. We cover 11 counties in the Greater Rochester region and Finger Lakes from Lake Ontario all the way to the Pennsylvania border.
Commissioner Joe Martens, as DEC commissioner, was named the chair of the facility Siting Board. He's asked me to serve in that capacity as his designee. In that role I will be chairing this organizational meeting as well as future meetings of this board.

I'd first like to welcome and thank my fellow members of the board for your willingness to serve in this capacity. I'd also like to thank our hosts here in the Village for allowing us use of their facility today.

The purpose of today's meeting is organizational and procedural. It was scheduled as required by the regulations, specifically 6 NYCRR Part 361.

Board members have been provided a copy of the agenda for today's meeting, and for those members of the public who have joined us today a copy is available at the sign-in table.

We'll be accomplishing what really is fairly routine business today related to SEQRA and some other matters which will allow us to move forward in this process as a constituted board.
The responsibility of the facility Siting Board is to review the application by CWM Chemical Services LLC for a certificate of environmental safety and public necessity, commonly referred to as a siting certificate.

It's the responsibility of the DEC commissioner to consider CWM's SEQRA application for DEC permits, and those were described in the public notice published on June 11, 2014 in the State's Environmental Notice Bulletin.

In a few minutes I will introduce counsel to the Siting Board who will give a brief overview of the application review process, the board's responsibility in that process and how the two sets of application materials are reviewed in one administrative proceeding.

Today's meeting is not a public statement hearing. That is the function and the purpose of the July 16th hearing which will be held at the Lewiston-Porter High School. There will be both afternoon and evening sessions at that hearing.

At today's meeting, there will be no discussion of the specifics of the pending
application or any concerns or issues that anyone
might have with them. As counsel will explain,
that will occur later in the process. Likewise,
today there will be no presentations or statements
by DEC staff, the applicant or members of the
public.

The members of the board will note that
their meeting packets contain both the public
notice and media advisory which were issued for
this meeting.

I would now like to ask each board member to
introduce him or herself for the record. If a
board member is a designee of an agency, please
identify your agency and the agency's commissioner
or agency head.

Why don't we start at this end of the table.
John.

MR. BENOIT: I am John Benoit. I am here as
an individual ad hoc member. I represent no
organization or any other individual except myself,
and I bring, presumably, background and experience
sufficient for me to contribute to these
proceedings.
MR. D'AMATO: Thank you, John.

MR. FORCUCCI: I'm Matt Forcucci. I'm the designee representative for the State Health Department in the Buffalo office and I'm here to represent the interest of the State.

MR. D'AMATO: And your commissioner?

MR. FORCUCCI: Our commissioner is Dr. Howard Zucker.

MR. D'AMATO: Thank you.

MR. KAMINSKI: I'm Darrell Kaminski. I'm the regional director for the New York State Department of Transportation Region 5. I'm here as a designee for the Commissioner Joan McDonald.

MR. D'AMATO: I already introduced myself, Paul D'Amato.

MS. MARINELLI: I'm Lynn Marinelli. I'm the designee of the State Empire Development Corporation. Kenneth Adams is the head of that, and under the law is cited as commerce, so this is the commerce part.

MS. SCOZZAFAVA: Hi. My name is Dierdre Scozzafava. I'm the Deputy Secretary of State and I'm the designee for Secretary of State Cesar...
MR. SIMONSON: My name is Lee Simonson and, like John and Scott, I'm an ad hoc member representing the community and I'm a local small business owner, community volunteer and former elected official. Thank you.

DR. WEBER: Good afternoon. I am Scott Weber, ad hoc member as well. I've been on the UB faculty at the University of Buffalo for 31 years. Thank you.

MR. D'AMATO: Thank you, board members.

Pursuant to the Environmental Conservation Law Section 27-1105, Administrative Law Judge, Daniel P. O'Connell has been appointed to serve as the hearing officer for purposes of this administrative proceeding. Judge O'Connell is here with us today and he's sitting to my immediate right.

JUDGE O'CONNELL: Good afternoon.

MR. D'AMATO: Thank you for being here, Judge.

Pursuant to 6 NYCRR Part 361, the chairman of the Siting Board and the hearing officer shall
enter into a memorandum of agreement, or MOA, regarding their obligations and responsibilities with respect to conduct of this hearing. The memorandum of agreement is in the board members meeting packet and is to be executed by the hearing officer and the chair of the facility Siting Board or its designee.

The MOA references the requirements and regulations by which the proceeding will be governed. It addresses the conduct of the public statement hearing and issues conference, conduct of the hearing on any issues identified for adjudication and posthearing procedures.

At this time, I would ask the board members if they have any questions regarding the MOA today that was in their packet and that they've had a chance to review?

Hearing none, I will proceed to the final execution of the MOA. Copies of the fully executed memorandum of agreement shall be made available to the parties in this proceeding and they also may be requested from Assistant Commissioner Louis Alexander from our central office in Albany.
I would like next to introduce two members of the staff assigned to support the board as this process moves forward. First, as I just mentioned, is Assistant Commissioner Louis A. Alexander. He is our assistant commissioner for hearings and mediation services. As the board members have come to realize, Assistant Commissioner Alexander has facilitated the organization of this board and the scheduling of this meeting. He has and will continue to provide assistance in all the logistical aspects of the board and I want to thank him for his work for us. He will be commenting on a couple of the agenda items as this meeting moves forward.

I also want to take this opportunity to introduce Michael Caruso. Michael is a DEC Administrative Law Judge, but for purposes of this hearing and proceeding he has been assigned as counsel to the Siting Board. I've asked Michael to give a brief presentation on this process which he will do in a few minutes.

Board members, as well as members of the public who have joined us today, should all be
aware that all of the CWM application materials are available in electronic format as well as an entire hard copy being placed at the document repository. The repositories for a hard copy are at the Youngstown Free Library, the Porter Town Hall, the DEC Region 9 office and the DEC central office in Albany.

The DEC has also developed a -- excuse me -- a new CWM application gateway page and which can be found on our Web site at dec.ny.gov. The full address is /chemical/8766.html. Board members have been provided a copy of that gateway page in their packets as well.

Board members also previously received hard copies of CWM's Part 361 application for the siting certificate and a copy of the draft environmental impact statement for the project which includes appendices that are on a disk.

As I've indicated earlier, I've asked counsel to the board to provide an overview of the process that we're in. I would just remind everyone that this is an overview of the procedure and not a discussion of any concerns or issues.
related to the application.

Mr. Caruso, would you please go ahead with the presentation.

MR. CARUSO: Thank you, Paul.

Welcome again everybody, and I echo Paul's thanks for serving as a facility board member.

As you know, the board was formed for service by the Environmental Conservation Law Article 27 Title 11. And the Siting Board is constituted to review CWM's application for a Part 361 certificate.

The siting board's review is going to be conducted jointly with the DEC's review of CWM's application -- the Siting Board review is conducted jointly with CWM's application for DEC permit.

The DEC permit applications include the hazardous waste facility permit modification application; a state freshwater wetlands permit application; a water quality certification application; and a state pollution discharge elimination system permit modification application.

The Office of Hearings and Mediation Services assigned Judge O'Connell to conduct the...
hearings on the DEC permit application. DEC Commissioner Martens appointed Judge O'Connell jointly to conduct the hearings related to the siting certificate. As a result, Judge O'Connell will be establishing an administrative record that will be the basis for both the Siting Board certificate and again the DEC commissioner's decision on the permit applications.

As counsel to the Siting Board, I will be providing the board with legal advice on the applicable statutory and regulatory requirements.

In this proceeding, the Siting Board will be reviewing such things as the siting certificate application, which you already have; the draft environmental impact statement; the hazardous waste facility siting plan; the regulatory siting criteria found in Part 361; written and oral public comments; testimony of witnesses; legal arguments; the ALJ hearing report; and other record documents; to determine whether or not to grant the Siting certificate to CWM.

In reaching your decision, the board will need to determine the siting of the proposed...
facility with respect to things such as residential areas, contiguous populations; the siting criteria score, which will be explained to you much later; and the state hazardous waste facility siting plan.

And the board, as an involved agency under SEQRA, will also be required to issue a SEQRA findings statement as part of its review, but that comes much later in the process.

The siting criteria in Part 361 with all the other applicable statutory or regulatory provisions will be reviewed with the Siting Board during the course of the proceedings, and later times.

Briefly, however, Part 361.7 contains 14 general categories that are reviewed by application and scoring of 32 specific criteria, so these are things that I will help the board familiarize themselves with as time goes on.

The Siting Board members may attend and participate in all the hearings, and Judge O'Connell will guide the course and conduct of the public comment hearing, issues conference, and any adjudicatory hearing.

Now the procedure is largely based on the
procedure that's in place according to the DEC regulations that apply to permit hearings which is Part 624.

As you know, and Paul mentioned, there's a legislative hearing coming up on July 16th. That's also known as a public statement hearing and a public comment hearing. This is an opportunity for the public to express their views on the project and applications and they may do so orally, in writing or both.

And secondly, as the two letters of public notice indicated, the public comment period concludes on September 5th, 2014, and the public can continue to provide written comments by letter and e-mail to the Office of Hearings and Mediation Services.

The parties to the proceeding are DEC staff, and the applicant and anybody that's been granted party status by Judge O'Connell. Persons seeking to participate in the issues conference and any subsequent public hearing, if they are necessary, must file a petition containing the information required by the regulations. The June 11th notice
indicated petitions for party status must be received in the Office of Hearings and Mediation Services by September 30th, 2014.

An issues conference will be scheduled by Judge O'Connell after the petitions for party status have been received, and participation at the issues conference is limited to the Department staff, the applicant, and those persons requesting party status.

And just to give you an idea of what the whole purpose of the issues conference is, it's fivefold, and I'll read it. This is right out of the regulations. It's to hear argument on whether party status should be granted to any petitioner, and to narrow or resolve any disputed issues of fact. Third, to hear argument on whether disputed issues of fact that are not resolved meet the standards for adjudicable issues. Fifth -- or fourth, to determine whether legal issues exist whose resolution is not dependent on facts that are in substantial dispute; and, if so, to hear argument on the merits of those issues; and fifth to decide any pending motions.
Now, after the issues conference, Judge O'Connell will subsequently issue a ruling and that will determine persons -- what persons are being granted party status; which issues satisfy the requirements for adjudicable issues; and he'll also rule on the merits of any legal issues, if practicable; and decide any pending motions.

Now this will be another little background here. Some of these rulings are appealable and so during the course of the proceedings the rulings that are appealable would include, rulings to include or exclude any issue for adjudication, a ruling on the merits of any legal issues made as part of that issues ruling; and/or rulings affecting party status.

So if the board and the judge receive appeals of decisions of his rulings, they're going to be -- they could be decided by -- through an interim decision to be decided by the DEC commissioner, the Siting Board or both, depending on what the issue was that was raised. And we will guide you through all that, when these things come in. We will walk you through this process.
Now, the last of the hearings will be an adjudicatory hearing, if it's necessary. And these are held to -- so the parties can litigate any issues that are determined to warrant adjudication. And that's probably the hearing that you're most familiar with because it's like any courtroom drama that you've seen on TV. You know, there's going to be testimony of witness, evidence, experts, cross-examination of witnesses, et cetera, so that's -- that would be about the last step in the process.

And then after conclusion of all the hearings, the Siting Board will receive a complete record of the hearings from the Office of Hearings and Mediation Services that have been created by and conducted by Judge O'Connell.

The board will review the record and decide whether to grant the application, deny it, or grant it upon terms, conditions, limitations or modifications that the board deems appropriate. The chair of the Siting Board will then mail a final decision to the applicant, the DEC, and all the parties to the proceedings.
So in a nutshell, right now we're going forward. We've got a legislative hearing, followed by an issues conference, and then potentially an adjudicatory hearing down the line. And as I said, we'll be available. I will be available throughout the process and throughout the proceedings to answer your legal questions, provide you with legal advice on any given issue. Okay. Thank you.

MR. D'AMATO: Thank you very much, Mike.

Next on the agenda of the board business is the adoption of SEQRA resolution. The proposal by CWM is subject to State Environmental Quality Review. Act or SEQRA, as we typically refer to it shorthand.

The Department of Environmental Conservation declared themselves to be a lead agency and in that capacity determined that the proposed landfill project to be a Type I action. The DEC issued a positive declaration on October 12th, 2005 requiring the preparation of a draft environmental impact statement to evaluate the potential impacts associated with the proposed landfill project.

The resolution that the facility Siting Board is considering today would concur with DEC's
determination that the proposed landfill project is a Type I action and it also acquiesces to the DEC serving and continuing to serve as lead agency for this project. And the draft resolution was provided to the board members prior to this meeting.

The resolution will confirm the role of the facility Siting Board as an involved agency pursuant to SEQRA.

As you're probably aware, an involved agency is any agency that has a discretionary approval over a project subject to SEQRA. Since this board will decide whether or not to issue the siting certificate, the board is an involved agency under SEQRA.

I think it's important to realize that agreeing to DEC remaining as lead agency under SEQRA does not usurp or diminish this board's authority or responsibility to review the application for the siting certificate and to make its decision relative to that application.

Now it is considered appropriate to read the content of the resolution into the record so that...
it's in the transcript.

This is a resolution related to an application for a certificate of environmental safety and public necessity and the State Environmental Quality Review Act.

At a meeting of the facility Siting Board relating to the application of CWM Chemical Services LLC for a certificate of environmental safety and public necessity pursuant to Title 11 of Article 27 of the New York State Environmental Conservation Law and 6 NYCRR Part 361, to a site -- to site a proposed residuals management unit two, landfill project at 1550 Balmer Road, Model City New York, convened in public session on the 2nd day of July 2014 at 1:30 p.m. There were present all members of the board. No one is absent.

And we have offered the following resolution and move for its adoption:

Whereas, the board is authorized and empowered by Title 11 of Article 27 of the ECL to review an application for a certificate of environmental safety and public necessity or siting certificate, participate in hearings, review the
1 established record and issue a decision either
2 granting the application, denying it, or granting
3 it upon such terms, conditions, limitations or
4 modifications thereof as the board may deem
5 appropriate.
6 And whereas, the board will evaluate CWM's
7 application for a siting certificate while various
8 permit applications are also being considered by
9 the New York State Department of Environmental
10 Conservation.
11 Whereas, the matters will be considered in
12 joint hearings administered by the board and the
13 DEC's Office of Hearings and Mediation Services.
14 Whereas, Article 8 of the ECL and 6 NYCRR
15 Part 617 require the proposed RMU-2 landfill
16 project to undergo a State Environmental Quality
17 Review process in conjunction with the submission
18 of the siting certificate and permit applications.
19 Whereas, DEC declared itself lead agency
20 pursuant to SEQRA and determined the proposed RMU-2
21 landfill project to be a Type I action as described
22 under 6 NYCRR 617.4, and issued a positive
23 declaration in accordance with 6 NYCRR 617.7 on
October 12th, 2005. Accordingly, CWM submitted a draft environmental impact statement which evaluates potential environmental impacts associated with the proposed RMU-2 landfill project. By notice dated May 7th, 2014, DEC staff determined the applications for a siting certificate, the various DEC permits and the DEIS to be complete and ready for public review.

Whereas, the board review of and decision on CWM's application for a siting certificate for the proposed RMU-2 landfill project is an action as defined in SEQRA.

Whereas, pursuant to ECL Article 8 and 6 NYCRR Part 617, the board is an involved agency for this project.

Whereas, pursuant to 6 NYCRR 361.3(d)(2), the DEC shall be designated lead agency for purposes of SEQRA, unless the DEC and the board acting through majority vote, mutually agree otherwise.

Whereas, the board agrees that the DEC should serve as lead agency, due in part to the various applications for DEC permits that the DEC
And now, therefore, be it resolved by the members of the facility Siting Board as follows:

The facility Siting Board concurs with the determination of the New York State Department of Environmental Conservation that the proposed RMU-2 landfill project is a Type I action, concurs with the DEC serving as lead agency for this project, and shall serve as an involved agency for purposes of compliance with the requirements of the State Environmental Quality Review Act in this proceeding.

I would now move for adoption of the resolution and ask if there's a second.

MR. BENOIT: Seconded.

MR. D'AMATO: John Benoit has seconded.

Is there any discussion board members need to have prior to a vote on resolution?

Hearing none, let's call for a vote. All in support of adopting the resolution by this board please raise your hand.

(Board members raised hands.)

MR. D'AMATO: I'll note for the record the

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vote is unanimous and there were -- because it was unanimous, there obviously was no opposition or abstention so the record can reflect that. Thank you.

I will formally execute the resolution after Assistant Commissioner Alexander fills in some of the information that could not be filled in until the vote.

The next item on today's agenda is a discussion of the community advisory committee.

MR. ALEXANDER: Thank you.

I'd like to speak just briefly regarding the community advisory committee or the CAC which is referenced in the Environmental Conservation Law.

In your packet is a copy of the provision of the Environmental Conservation Law Section 27-1113 which sets forth the framework for the CAC.

The statute provides that a county in which an industrial hazardous waste disposal facility is to be located is to constitute a committee for the
purpose of entering into a dialogue with the applicant to develop mutually acceptable solutions to the problems which may be created by the siting of the facility.

The statute provides that the CAC is to have between nine and 15 members, and is it also establishes a geographical composition for that committee.

Specific to this board, after the board receives notification of the constitution of the CAC, the chair of the facility Siting Board is to convene and preside over a conference between the CAC and the applicant.

The chair's role is to endeavor to foster a dialogue between the applicant and the CAC. To that end, the chair may convene and preside over additional conferences as may be necessary. So basically the chair serves in a facilitative role with respect to the CAC and the applicant.

I would also like to note that in your packet there is a letter dated June 9th, 2014, from the supervisor of Lewiston in which he wrote to department staff with respect to the delegates of
the Town of Lewiston to the CAC.

Any further communications that are received regarding the CAC will also be distributed to members of the board as this process continues.

Thank you.

MR. D'AMATO: Thank you, Mr. Alexander.

The next item on the agenda is a -- is the upcoming public statement hearing on July 16th. It actually has already been mentioned twice during today's board meeting. Mr. Caruso mentioned it and I mentioned it earlier. We just wanted to make sure there was no miscommunication about this meeting somehow substituting for that one.

So as you all know now, that meeting will be on July 16th. There will be an afternoon session beginning at 1 p.m. and an evening session beginning at 6:30 p.m.

And that is the proceeding in which the public will be given the opportunity to make statements on the record regarding the application to the Siting Board as well as the applications pending before DEC.

For those members of the public that are present, you will have the opportunity to make statements on the record at the Siting Board meeting on July 16th.
here, you should also be aware, if you're not, that
that is not your only opportunity to comment upon
these applications. As Mr. Caruso indicated
earlier, the public comment period runs through
September 5th and comments could be submitted to
the DEC in writing regardless of whether you get
the opportunity on July 16th or not.

The Administrative Law Judge will be
responsible for running that hearing and all of the
logistics associated with that. The members of the
Siting Board have indicated that they will be
present at that meeting to hear firsthand the
comments that are made that afternoon and evening.

However, there will be a stenographic record
to that proceeding as well, so in the event that
some unavoidable conflict were to come up for --
one or more of the board members, you will not miss
any part of the record. We will have that
transcript available to us subsequently.

The next item on the agenda is a brief
discussion of the ex parte rules that apply to us
as Siting Board members. And again I will turn the
discussion of some of the details of that over to
Assistant Commissioner Alexander.

**MR. ALEXANDER:** Now, as has been discussed, the facility Siting Board serves as a decision maker in determining whether to grant or deny a siting certificate for this project.

So in light of the board's role as decision maker, the board and its members are subject to strict limitations as to their communications with individuals who are not members of the Siting Board or who are not staff assigned to the Siting Board.

This limitation, which is more formally known as the ex parte rule, is established by the New York State Administrative Procedure Act and is also incorporated into the regulations of the Department of Environmental Conservation. So, at this time, I'd like to make just a few general comments regarding this rule and its implication.

The ex parte rule establishes that, on issues of fact relating to a proceeding, the board's members -- the board's members may not communicate directly or indirectly with any person or party.

So, for example, if a member of the public
wanted to discuss a factual issue relating to this proceeding with a board member, that discussion would not be permissible under the ex parte rule.

If an individual came and wanted to give some materials to one of the board members regarding factual issues in this proceeding, that also would not be permissible under the ex parte rule.

Now all sorts of all communications are subject to this rule, face-to-face conversations, phone calls, written correspondence, e-mails, instant messaging. Simply put, board members by this rule are not allowed to engage in off-the-record communications on factual issues relating to this proceeding.

So if someone should approach you, say a neighbor, say a colleague at work or a local official, a representative of, you know, an environmental group or a citizens group that seeks to discuss the factual issues relating to this proceeding, those would not be permissible under the ex parte rule.

Basically the intent is for factual issues to be developed through the formal hearing process,
that formal hearing process that was explained by Mr. Caruso earlier on in this session. It is meant for the board's decision to be based solely on that formally developed record, and this development of the record will be through the written comment period, the issues conference, the petitions for party status, submissions that are authorized to be presented during this proceeding and any adjudicatory hearing that may be held.

Of course nothing restricts a board member from discussing the proceeding with other board members or staff assigned to the board to assist.

For members of the board who are state agency representatives, this rule applies both to them and their commissioners.

Now in the event that an ex parte communication does happen, then the chair of the board should be immediately notified who will then take the necessary steps to address that communication.

Although certain what you would call, ministerial inquiries, such as inquiries about dates, hearing schedules and the like, do not fall
within the prohibitions of the ex parte rule, it
would be recommended that any such inquiries should
be directed to the chair who can handle them
accordingly.

I should indicate on a related note, press
inquiries for this proceeding are primarily being
handled through the DEC's press office. Peter
Constantakes is the press or the public information
officer and his number is (518) 402-8000.

So, as we just go through this process and
we go through the various stages we'll be, you
know, explaining in more detail the various
applications of the ex parte rules to those
segments of the -- of the process.

The bottom line, the communications that the
board has relative to this matter are to be
addressed through the formal process and that, you
know, if you are approached by anyone who indicates
that they'd like to discuss the matter with you,
the fact is since you're serving as decision maker
basically in quasi judicial capacity, you would
need to decline to have those conversations.

So a nutshell, that is the scope of the ex
There are also restrictions in terms of discussing law and policy. And in those situations, if the law and policy issues are raised, an opportunity must be given, noticed to all the other parties in the proceeding and the opportunity for those parties to participate in that discussion and also be heard.

So that's a summary of, you know, the rule that I wanted to impart today.

MR. D'AMATO: Thank you, Mr. Alexander. I just had one note as, in case there's any confusion on the part of the board or anyone that's with us today, that rule also applies to communications to the department staff that are reviewing the DEC applications.

For example, myself as a DEC employee, we also have very strict rules that I am not to discuss this matter at all with those who are responsible for reviewing the DEC applications, so that applies within DEC as well as to individuals outside the DEC.

The next item on the agenda is really just a
question as to whether the board members have anything further they wish to discuss during this organizational meeting today.

Before getting to that, I do want to recognize that the board has received three pieces of correspondence that are now in your meeting packet. One is a letter that was addressed to both Administrative Law Judge O'Connell and myself dated June 30th, 2014. The second is the letter that Assistant Commissioner Alexander referenced that was received from the Town of Lewiston which was dated I believe June 9th, 2014. And the third is a letter dated June 24th, 2014, which included, as an attachment, the resolution from the Niagara County legislature. Those are now the property of and included in the board's business.

Other than that, is there any business or discussion that board members need to have?

Obviously we're at the beginning stages of this review process and there's a lot more to come, but if there's anything board members wish to raise at this point, please do so.

**MR. KAMINSKI:** Paul, I have one. Is there
any requirement by the board to log our time in this proceeding in any fashion?

MR. D'AMATO: Not that I'm aware of.

MR. CARUSO: I think the only thing would be for the ad hocs who are entitled to be remunerated for their out-of-pocket expenses, reasonable expenses. That would be the only thing that I know of off the top of my head that falls into that category.

MR. D'AMATO: You would have to double check that, but as far as I know there's no obligation.

MR. BENOIT: I'm sorry. I didn't hear that comment and question.

MR. CARUSO: The law provides that the ad hoc members can be reimbursed for their reasonable expenses as well as it's $200 a day that it's spelled out in the law for your appearance at meetings like this or the legislative hearing, et cetera, so reasonable expenses might be mileage. If you have -- obviously you're local so you're probably not going to have hotel expenses, but those types of expenses that you would expect, you know, something that belongs to the board that you
MR. BENOIT: Is there a document that describes the administrative procedure that we need to follow?

MR. CARUSO: I'll give that to you later.

MR. BENOIT: Okay.

MR. ALEXANDER: Yes, there is. It would be part of the appointment packet, but we will double check to see if that was included in the appointment packet that went out to the ad hocs.

MR. BENOIT: So I may have it is what you're saying?

MR. ALEXANDER: We were told that it had gone out with the appointment packet but I'll double check on that.

MR. BENOIT: Oh, okay. I did have a couple other questions, just administrative stuff. The location of the July 16th hearing was originally set to be at Lewiston-Porter school? Was that -- can anybody confirm that?

MR. CARUSO: Still is.
MR. BENOIT: Still is. The references to the citizen advisory committee, does that prove fully constituted.

MR. ALEXANDER: We have not received formal notification from the County that it has been fully constituted. We did receive the one letter from the Town. I did not receive any further correspondence since that time.

MR. BENOIT: Okay. So that would be pending presumably and this board will be apprised of meetings of that group? Is that a safe assumption?

MR. ALEXANDER: Yes.

MR. BENOIT: Clarification on the ex parte rule. I see that one of these letters from the legislature was copied to you. It goes to just a little bit of advice on unilateral communications related to this should be redirected to you, Mr. D'Amato. Is there additional reporting requirement or recommendation? Should unilateral communications of this nature be reported to you whether -- or simply redirected?

MR. D'AMATO: I would want to receive a copy of whatever you receive as well as communication...
from you about what you got and then we'll take it from there.

MR. BENOIT: So you would recommend both? I simply decline to accept it and ask that it be sent to you. Additional reporting of that would be advisable.

MR. D'AMATO: If it was a communication that you had the opportunity to not receive that would be fine, and with an instruction to redirect it to me that would be absolutely fine. I was assuming that it was something you didn't have the opportunity to stop and you already had it. But, no, if you can redirect it prior. If someone calls and says, who do I send this to, anything like that, you know, direct them to me. If you open your mail and something's there, then we'll deal with it.

MR. BENOIT: I can just forward it; otherwise I would just advise through Mr. Alexander, as an action to be taken, is sufficient. I think that covers my questions.

Thank you.

MR. D'AMATO: Thank you.
Any other board members with any business to discuss? No.

I would request a motion to adjourn the meeting.

MR. WEBER: I so move.

MS. SCOZZAFAVA: Second.

MR. D’AMATO: All in favor?

(A chorus of ayes.)

MR. D’AMATO: All opposed?

(None.)

MR. D’AMATO: I do -- before we adjourn, I do want to thank everyone for being here, everyone at this table, certainly our support staff who dealt with the logistics, all the members of the public who took time out of their schedule to come and see what this was all about today, and I want to wish everybody a very happy holiday weekend. Thank you for being here. The meeting is now adjourned. It is 2:17 and I thank you for coming.

(Proceedings adjourned at 2:17 p.m.)
STATE OF NEW YORK )

ss:

COUNTY OF ERIE )

I DO HEREBY CERTIFY as a Notary Public in and for the State of New York, that I did attend and report the foregoing proceedings, which were taken down by me in a verbatim manner by means of machine shorthand. Further, that the proceedings were then reduced to writing in my presence and under my direction. That the proceedings were taken to be used in the foregoing entitled action.

MARY E. BLACK,
Notary Public.