

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

PETITION FOR FULL PARTY STATUS AND AN ADJUDICATORY HEARING

This PETITION is submitted on behalf of three separate and distinct parties:

(1) Residents for Responsible Government, Inc; (2) the Lewiston-Porter Central School District; and (3) the Niagara County Farm Bureau, pursuant to 6 N.Y.C.R.R. section 624.5, **seeking full party status and an adjudicatory hearing** concerning the above-referenced applications by CWM Chemical Services, Inc.

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IDENTITY OF THE PARTIES

A. Residents for Responsible Government, Inc.

Residents for Responsible Government, Inc. [RRG] is a Type B not-for-profit corporation, organized pursuant to the provisions of Section 216 of the Education Law, Section 201(b) of the Not-For-Profit Corporation Law of New York State, and Section 501(c)(3) of the United States Internal Revenue Code. Its Certificate of Incorporation was filed on the ninth of September, 2002. [Exhibit 1] The formal corporate purpose of RRG is “to support and perform charitable, scientific, and educational programs that promote governmental representation which is open and responsive to the environmental concerns of community residents.” *Id.*

B. The Lewiston-Porter Central School District.

The Lewiston-Porter Central School District [Lew-Port] is a school district, located at 4061 Creek Road in the Town of Youngstown, New York, with a campus of four instructional and two administrative/community activity/maintenance buildings located linearly on Creek Road in the Towns of Lewiston and Porter, New York. [See generally, [wwwLew-Port.com](http://www.Lew-Port.com), last accessed November 14, 2014] Lew-Port is a unified district, primarily servicing the Towns of Lewiston and Porter, covering Pre-K through grade 12, with a Great Schools District Ratings of 8 and 9 (out of a possible 10). [http://www.greatschools.org/search/search.page?lat=43.2408778&lon=-78.9966888&zipCode=14174&state=NY&locationType=postal_code&normalizedAddress=Youngstown,%20NY%2014174&city=Youngstown&sortBy=GS_RATING_DESCENDING&locationSearchString=14174&distance=5,last accessed November 14, 2014].

C. The Niagara County Farm Bureau.

The Niagara County Farm Bureau [Farm Bureau] “gives farmers and non-farmers alike the opportunity to be part of an organization **dedicated to supporting and enriching the rural way of life.** [Emphasis in original] It provides an opportunity for individuals involved in agriculture to join together and make their voices heard. [It] is active within the political system on a broad range of issues that **concern every rural New York landowner** [emphasis in original], from taxation to conservation. [It] works hard to promote public policy that protects an owner’s right to use land. [It] believe[s] that a strong, viable agricultural industry is beneficial not only to our economy, but also to our local communities and our consumers. Beyond Niagara County, Farm Bureau represents its members at the state and national levels.” [FB niagarafb.org, last accessed November 14, 2014]

NAME(S) OF THE PERSON(S) WHO WILL ACT AS REPRESENTATIVE OF THE PARTIES.

RRG, Lew-Port and the Farm Bureau will each be represented by the University at Buffalo Law School Clinical Education Program, the State University of New York, 507 John Lord O’Brian Hall, North Campus, Buffalo, NY 14260, R. Nils Olsen, Jr. counsel. Telephone and e-mail contacts for counsel are as follows: 716-745-7381 or 716-645-2167 and nolsen@buffalo.edu.

THE ENVIRONMENTAL INTEREST OF THE PARTIES.

A. Residents for Responsible Government, Inc.

As stated above, RRG is a community-based not-for-profit corporation dedicated to achieving meaningful access to governmental decisions concerning the environment. In particular, the organization has been very active in the towns of Lewiston and Porter resisting expansion of the CWM Chemical Services LLC [CWM] hazardous waste landfill. A representative selection of newspaper articles detailing some of this involvement and comments filed with the DEC on its behalf is attached. [Exhibit 2.]. Moreover, its legal counsel filed an Article 78 application challenging a permit modification that increased the amount of hazardous waste disposal capacity and the effective life of the RMU-1 landfill.¹

An organization may demonstrate environmental interest through a purpose that includes protection of the environment, specifically the environment potentially impacted by the proposed new or expanded facility. Thus, an interest in protecting the water quality of the Niagara River and Lake Ontario was found adequate to grant party status to the Province of Ontario, which was “clearly within the zone of interest protected by ECL” *CWM Chemical Services, Inc., N.Y. Dept. Env'tl. Conservation at *1 (Oct. 11, 1989), WL 163657*. Further, there was no question Orange Environment demonstrated an adequate environmental interest, “where Orange Environment is an organization committed to environmental activism, research, education, and advocacy whose objectives include prevention of siting

¹ *Residents for Responsible Government v. Alexander B. Grannis, Commissioner NYSDEC and CWM Chemical Services, L.L.C. Supreme Court of NY, County of Albany and Appellate Division, Third Judicial Dept. Index No. 594-09. (2010)*

new waste facilities based on importation of waste from outside of Orange County.”

Revere Smelting & Refining Corp., N.Y.S. Dept. of Env'tl. Conservation (June 20, 1995) at

**8, 1995 WL 1780806.*

RRG's stated purpose is as follows:

“RRG seeks to minimize the potential for disastrous results from the wastes buried in these towns [Lewiston and Porter, NY] near the Great Lakes, Niagara River, and Lewiston-Porter schools, and to prevent more hazardous waste imports. RRG programs focus on public information and empowerment to promote residents' health and well being (*sic*). To that end, our goals are to:

- Mobilize residents to help stop the flow of toxic and hazardous wastes into our community. RRG encourages everyone who cares about our beautiful area and the health of its residents to take action.
- Provide information and guidance for the public to have a real voice in state, local, and federal decisions about hazardous waste landfills.
- Prevent toxic waste and PCB landfill expansions, especially in the Niagara River and Lake Ontario watersheds.
- Promote proper and continual monitoring and maintenance of closed landfills.
- Seek protections for Lewiston-Porter School District students and staff from possible dangers at the nearby toxic landfill (**Chemical Waste Management**) and federal radioactive storage area (**LOOW**).
- Promote quality of life and environment that enhance rather than detract from tourism and real estate values.
- Encourage those health studies that would help determine the cause of high rates of **cancer** and other illnesses among area residents.
- Encourage hazardous waste recycling and alternative waste disposal technologies other than landfills, and waste minimization at point of generation. See the EPA page on **innovative technologies** and this **Citizen's Guide** to Thermal Desorption for more information.

All programs of RRG focus on public information and empowerment to promote residents' health and well being (*sic*):

1. Prevent CWM expansion and soil disturbance in areas not currently permitted as a toxic waste landfill.
2. Assure proper and continual monitoring and maintenance of properly closed landfills.
3. Provide information and guidance for the public to have a real voice in state, local, and federal decisions.
4. Encourage health studies to determine cause of high rates of illness around the CWM site.
5. Assure health and safety of nearby Lewiston-Porter School students and staff from possible dangers due to proximity to Niagara Falls Storage Site and CWM site.

6. Promote quality of life and environment to improve tourism and real estate values.
7. Build coalitions with organizations in New York State and across the continent, including Canada.
8. Encourage alternative waste disposal technologies other than landfills, and at point of generation.”

[http://rrgwny.com/?page_id=4, last accessed November 14, 2014]

This is closely analogous to the above-discussed standard, and its continual engagement in the public, administrative, and judicial arenas on matters addressing the expansion of the CWM hazardous waste landfill more than satisfies the standard for environmental interest necessary to obtain full party status.

B. The Lewiston-Porter Central School District.

Lew-Port is responsible for the education, health, and safety for virtually all of the children between the ages of 4 and 18 years residing in the Towns of Lewiston and Porter from approximately 7:45 to 3:00, depending upon the particular school grades, for approximately nine months of the year. [www.lewport.com

[/site/Default.aspx?PageID=443](#); [/site/Default.aspx?PageID=2718](#);

[/site/Default.aspx?PageID=3749](#); [/Domain/340](#);

[/cms/lib/NY19000328/Centricity/Domain/1/2014-15%20Calendar%20-](#)

[%20Approved%204-22-14%20w-add%20info.pdf](#), last accessed November 14, 2014].

The School's campus is situated on Creek Road, and every truck laden with hazardous waste passes directly in front of the School. CWM's proposed RMU-2 hazardous waste landfill is approximately 2 miles away from the Lew-Port campus. For the 2014-2015 school year, Lew-Port has a total enrollment (including Pre-K) of 2,157 children, 201 FTE teachers/administrators, and 130 non-teaching employees rendering it the second largest concentration of population in the Towns of Lewiston and Porter after the Village of Lewiston., with about 3,000 residents.

<http://www.villageoflewiston.net/Pages/aboutus.aspx>, last accessed November 15, 2014.

As will be set forth in more detail below, Lew-Port will show that there are legitimate concerns about the health effects of the proposed RMU-2 landfill, related to the District's responsibility to ensure the safety of the approximately 2,500 individuals present on the Lew-Port campus during the school year. These concerns will also be shown to effect property values within the District, directly impacting the financing of the District through its Real Property Tax levy and future tax burdens on those home and business owners within the District. Lew-Port's 2014-2015 budget is \$41,220,963, \$24,159,615 or 57.77% of which is raised through real property tax. [<http://www.lew-port.com/cms/lib/NY19000328/Centricity/Domain/485/Corrected%20Final%20Budget%20NL%205-15-14.pdf>, last accessed November 14, 2014].

An additional effect of the CWM landfill will be shown to be a precipitous drop in the number of K – 12 students, occurring both from the beginning of the hazardous waste landfilling business within the Towns of Lewiston and Porter and during the past decade to the present. Lew-Port's proximity to the transportation and dump sites of the proposed RMU-2, its extraordinarily sensitive and critical function within the community, its legitimate health and safety concerns, and its reliance upon the real property tax, which in turn depends upon the value of residences within the Towns, for a significant portion of its financing, provide a clear, undeniable, and legally cognizable environmental interest in the pending proceedings.

C. The Niagara County Farm Bureau.

The Niagara County Farm Bureau is a part of the New York State Farm Bureau. One of the important tenants of the State organization is environmental protection. “ENVIRONMENTAL STEWARDSHIP. Farmers make their living from the land and are connected to it. They were the first stewards of land and water resources and continue to work hard to protect these for the next generation.” [http://www.nyfb.org/resources/Environmental_Stewardship_6_topic.htm, last accessed November 14, 2014.]

As discussed in more detail below, the scientific literature and expert opinion is unanimous in its acknowledgement that PCBs and heavy metals in particular, materials formerly and currently landfilled at CWM, and expected to be landfilled in the proposed RMU-2 in massive amounts, may pollute agriculture soil and be absorbed by crops. Such exposure can occur from soil, wind, or water transmission. Moreover, experience has demonstrated that consumers purchasing produce are significantly risk averse, and even the possibility of pollution of food products have had serious and negative effects on farm markets.

The Farm Bureau has 102 members residing in the Towns of Lewiston and Porter. [Jim Bittner, President of the Farm Bureau will be available to offer testimony on the number of members from the Towns of Lewiston and Porter]. Property nearby the CWM facility is agricultural, and many farms are proximate to 4 and 12 Mile Creeks, subject to runoff and pollution from the facility. Farm Bureau commitment to environmental stewardship, its significant membership presence in the Towns of Lewiston and Porter, and its promotion of effective markets for its

members provide clear, appropriate, and cognizable environmental interest for the organization.

INTEREST RELATING TO STATUTES ADMINISTERED BY THE DEPARTMENT RELATIVE TO THE PROJECT.

RRG, Lew-Port, and the Farm Bureau have in common with the affected Municipalities and their fellow citizens an interest that the statutes and associated regulations administered by DEC in hazardous waste disposal are properly implemented and enforced. See especially: New York Environmental Conservation Law [ECL] Article 1 (General Provisions) inclusive; Article 3 (DEC, General Functions); Article 8 (Environmental Quality Review); Article 15 (Water Resources); Article 19 (Air Pollution Control); Article 27 (Collection, Treatment, and Disposal of Refuse and Other Solid Waste), Title 1 (Solid and Hazardous Waste Management Policy and Planning), Title 9 (Industrial Hazardous Waste Management), and Title 11 (Industrial Siting Hazardous Waste Facilities); and Article 70 (Uniform Procedures). See also, associated New York Codes, Rules and Regulations [NYCRR] Parts 200, 201, 202, 208,212,231, 360,361, 373, 608, 617, 621, and 624; and the New York State Hazardous Waste Facility Siting Plan (Adopted October 2010).

Each organization has, however, specialized interest related to the claims they are presenting.

A. The Lewiston-Porter Central School District

Thus, Lew-Port, as the entity responsible for the health and safety of virtually every child within the Towns of Lewiston and Porter and its large number of employees, as well as the appropriate funding of the public school system, has a

special interest in those provisions of SEQRA and hazardous waste management and facility siting law, including regulations, that address adverse effects on public health, welfare, social, economic, and community character, in defending the DEC's conclusion that the RMU2 expansion is unnecessary and [http://www.dec.ny.gov/docs/materials_minerals_pdf/hwspfinal.pdf, pp. 6-3, 6-9], and in establishing that the proposed RMU2 is contrary to the public interest. *Id.* Chapter 9, NYCRR Part 361, section 361.7(c)(4).

B. The Niagara County Farm Bureau

The Farm Bureau, as representative of the dominant agricultural industry within Niagara County and the Towns of Lewiston and Porter, has special interest in those provisions of the identified New York statutory and regulatory law that address air, soil, and water pathways of pollution to neighboring agricultural property, pollution of agricultural land and crops, effects of the proposed facility on marketing of crops and economic sufficiency of the agricultural business in Niagara County. The Farm Bureau also shares a significant interest with Lew-Port to defend DEC's unassailable conclusion that further expansion of hazardous waste capacity in New York State is unnecessary and to demonstrate that proposed RMU-2 is contrary to the public's interest.

C. Residents for Responsible Government, Inc.

Finally, RRG, the largest citizen not-for-profit corporation opposing the expansion of CWM's landfill, has a broad and comprehensive interest in those laws and regulations governing the siting of hazardous waste facilities, including, but not limited to, those addressing the total amount of hazardous waste permanently

disposed at the proposed site as an important element of otherwise necessary and public interest and the proposed facility, diminution of property value and tax revenue in the host communities, potential negative public health effects, consistency with the preferred hierarchy of hazardous waste disposal facilities, and the facilities' compliance history. See, e.g., http://www.dec.ny.gov/docs/materials_minerals_pdf/hwspfinal.pdf, Chapter 9, *NYCRR Part 361, section 361.7(c)(4), ECL Article 27section 27-0105*. RRG will also join Lew-Port and the Farm Bureau in defending the DEC's conclusion that RMU-2 is not necessary and that its construction and operation would not otherwise be in the public's interest.

BRIEF FACTUAL STATEMENT

The Model City hazardous waste landfill owned and operated by CWM is a 710-acre industrial and hazardous waste management facility which includes, but is not limited to, RMU-1, an active landfill of approximately 47 acres, currently permitted to receive approximately 5,271,100 tons² of hazardous waste, and twelve closed hazardous waste landfills of differing dimensions, but containing approximately 3,612,064 tons of waste, including many organic chemicals and other substances currently banned from landfilling in New York State. [Exhibit 3] The proposed expansion at issue, RMU-2, if realized, would ultimately receive nearly 6,000,000 tons of additional waste, and would result in a staggering total of hazardous waste, buried in the Porter landfill of nearly 14,900,000 tons. This waste

² Based upon a calculation, provided by the Agency, of 1.5 tons per cubic yard of hazardous waste.

will remain buried forever and the site will require perpetual oversight and treatment as a result of the totality of hazardous waste treatment and disposal activities over nearly fifty years of DEC oversight.

The agency's own Hazardous Waste Facility Siting Plan, while remarkably concluding that there is an equitable distribution of hazardous waste facilities throughout the state,

http://www.dec.ny.gov/docs/materials_minerals_pdf/hwspfinal.pdf, pp. 6-12 – 6-15,

demonstrates that no other site in New York State contains commercial hazardous waste landfills or treatment, *Final HWFSP p. 5-4*, creating a seriously inequitable situation in which the costs of industrial activity throughout the state and nation are concentrated in one small rural community with very little political power.³

The facility is located 1.9 miles east of New York State Route 18 and approximately two miles from the Lewiston-Porter Consolidated School District campus, which, during the school year, has approximately 2,500 individuals present, mostly consisting of highly susceptible children. It occupies property situated in the Towns of Lewiston and Porter, New York. The CWM Model City site is the only permitted commercial hazardous waste landfill facility in New York State.

³ See Thomas H. Fletcher, *From Love Canal to Environmental Justice: The Politics of Hazardous Waste on the Canada-U.S. Border*, Broadview Press (2003), pp. 88-90. "Environmental equity research has found that hazardous waste is often generated in one community and transported to facilities in other communities....This phenomenon has implications for geographical equity, the physical or spatial location of benefits and burdens....[G]eographical equity is central to disputes over hazardous waste facilities when industrial waste generators in locations other than the host community are expected to benefit most from the additional capacity." See also, R. Nils Olsen, Jr., *The Concentration of Commercial Hazardous Waste Facilities in the Western New York Community*, 39 Buffalo Law Review 473, 482 – 485, 494 (1991).

The shipping and disposal of large amounts of hazardous waste at the Model City Landfill has resulted in numerous violations of state and federal safety regulations by CWM. [Exhibit 4] These violations have been both continuous and serious strongly suggesting that, if RMU-2 is approved, they will continue unabated.

At least three scientific public health studies have been conducted that included the Towns of Lewiston and Porter and the School District. Using the New York State Cancer Registry, the New York State Department of Health reported significantly elevated rates of a number of cancers in the community, many of which could be caused from exposure to hazardous waste of the sort landfilled in the CWM Facility [Exhibit 5].

The CWM hazardous waste facility is situated in a rural area with proximate agricultural land use nearby in the Towns of Lewiston, Porter and Wilson and the hamlet of Ransomville. [Exhibit 6] A number of these farms are located on 4 Mile and 12 Mile Creeks that are affected by the CWM site.⁴ The literature is extensive and consistent that heavy metals, including lead, zinc, nickel and cadmium, and barium and PCBs, all contained in extensive amounts in the CWM landfill, and expected to be contained in RMU-2 if approved, migrate through evaporation from soil or water can contaminate food crops. While there is a very real danger of such uptake and contamination, it is not necessary in order to adversely impact marketing of local crops. The public is extremely risk averse when making food crop purchases. The experience of the apple industry with the public fear of Alar

⁴ The contamination in creeks and groundwater affecting local agriculture has not been quantified because DEC has declined to require CWM to sample off-site despite having issued orders of consent with CWM because of off-site discharges.

[daminozide] is instructive. The chemical was widely used as a plant growth regulator, sprayed on fruit to regulate their growth, make their harvest easier, and keep apples from falling off trees before they were ripe. It is well documented that, once the disputed but possible danger of the product was publicized, the consumer reaction was extreme and sustained, depressing the market for apples whether or not they had been treated. [Exhibit 7] Certainly, agricultural crops proximate to a massive commercial hazardous waste dump, with the possibility of nearly 15,000,000 tons of buried waste with the potential for contamination can be expected to trigger the same risk-averse reaction.

APPROPRIATE ADMINISTRATIVE ADJUDICATORY PROCESS

The process involved with respect to the RMU-2 is very complex. Thus, in this single, consolidated action, CWM seeks the following relief: 1) an ECL part 361 hazardous waste facility siting application for a Certificate of Environmental Safety and Public Necessity; 2) an ECL Part 373 Hazardous Waste Management Permit modification (treated as a “new application [6 N.Y.C.R.R. 373-1.7(b)]; 3) an ECL Article 24 Freshwater Wetlands Permit Application; 4) an ECL Section 401 Water Quality Certification Application; 5) an ECL Part 750 State Pollution Discharge Elimination System (SPDES) permit; 6) an ECL Part 750 Permit Application for Stormwater Discharges from Construction Activities; 7) an ECL Part 201 Air Permit Application [CWM has requested a delay in submission of this application subsequent to receiving an Air Permit for its existing operations]; 8) an ECL Article 8, State Environmental Quality Review process including public review and comment on the DEIS and completion of a Final Environmental Impact Statement.

See 6 N.Y.C.R.R. sections 617.12, 617.9(b). In addition, the federally administered permits, including the Resource Conservation and Recovery Act [RCRA] and the Hazardous and Solid Waste Amendments [HSWA], for which permitting authority in New York has been delegated to the DEC, and the Toxic Substances Control Act [TSCA], which is administered by the Environmental Protection Agency, also applies to the project.

The process is complicated by the differing burdens of proof imposed upon the various applications – compare *e.g.* 6 N.Y.C.R.R. sections 373-1.1(e)(1)(iii), 6 N.Y.C.R.R. 617.11(d)(5), and 6 N.Y.C.R.R. section 361.4(f)(4). Additionally, the arbiters for the various applications are complex with the presence of an Administrative Law Judge and the eight person Facility Siting Board.

Under the circumstances, it is necessary to impose an appropriate administrative adjudicatory process. RRG, Lew-Port and the Farm Bureau respectfully suggest the following: first, the propriety of issuing the various necessary state permits should be considered. If this is denied, that will be the end of the process, if they are all granted, then the proceeding should consider whether it is appropriate to issue a Certificate of Environmental Safety and Public Necessity, considering whether “residential areas and contiguous populations will be endangered...or...the facility is not necessary or is otherwise not in the public interest.” 6 N.Y.C.R.R. section 361.7(c)(4). If this issue is answered in the negative, then the various scoring factors set forth at 6 N.Y.C.R.R. section 361.7 should be determined.

GROUNDS FOR OPPOSITION

RRG, Low-Port, and the Farm Bureau each seek to raise substantive and significant issues in the proceedings. The issues raise “sufficient doubt about the applicant’s ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry.” *Revere Smelting & Refining Corp. N.Y.S. Dep’t. of Env’tl. Conservation (June 20, 1995) 1995 WL 1780806 at *3*. The parties raise several issues jointly, as well as those each raises on their own behalf.

A. Common Issue Raised by Residents for Responsible Government, Inc., the Lewiston-Porter Central School District, and the Niagara County Farm Bureau.

The DEC Finding that the Proposed Facility is Not Necessary May Not Be Reconsidered in the Present Proceeding.

Under controlling law, the application for a Certificate of Environmental Safety and Public Necessity must be denied, notwithstanding the score as computed pursuant to N.Y.C.R.R. section 361.7(b), if “the board finds that the facility is not necessary or is not otherwise in the public interest.” *Id.* at section 361.7(4).

Additionally, the application must be consistent with the New York State Hazardous Waste Facility Siting Plan [HWFSP], E.C.L. section 27-1103(2)(a), 27-1105(f).

Creation of the HWFSP was originally for the primary purpose of “assur[ing] the availability of industrial hazardous waste treatment, storage, and disposal facilities which: (a) have adequate capacity for the destruction, treatment or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state in the next twenty years: (b) are within the state....” E.C.L. section 27-11021.(a), (b). The Plan was further required to make “a determination of the

number, size, type and location by area of the state of new or expanded industrial hazardous waste treatment, storage, or disposal facilities which will be needed for proper long-term management of hazardous waste [reasonably expected to be generated within the state in the next twenty years].”

The DEC finally adopted by the DEC in October, 2010, many decades after the deadline imposed by the State Legislature, after at least two public comment periods. Its most significant finding was set forth in Chapter 6 of the Plan, under “Facility Need,” and stated in pertinent part:

The Siting Plan must assure the availability of industrial hazardous waste TSD facilities that have adequate capacity for the destruction, treatment or secure disposition of all hazardous wastes generated in New York. The available facilities can be located within or outside of the State. No one state has all the various types of facilities necessary to treat or dispose of every type of waste generated within its borders. Every state is dependent upon other states for certain types of hazardous waste treatment and disposal.

Conclusion regarding Facility Need [Emphasis in original]

Based on the national availability of facilities, there are sufficient available TSD facilities for management of RCRA hazardous waste generated in New York, and will be for the foreseeable future... For PCB wastes that can be landfilled, landfill capacity is estimated to exist through 2021, with landfill capacity for “Mega Rule” PCB remediation waste estimated to exist beyond 2100 for the northeast quarter of the country. *Final Hazardous Waste Facility Siting Plan (2010) at pp. 6-4, 6-9.*

The applicant, as perhaps the most interested party, with the exception of the Municipal Stakeholder Interveners, RRG, Lew-Port and the Farm Bureau, played a significant role in the public process that led ultimately to the approval of the Final HWFSP. They had a clear and unquestioned procedure

available to them in the event they wished to challenge a finding in Rule Making Process – an application brought in the New York State Supreme Court pursuant to Article 78 of the New York Civil Practice Law and Rules⁵. Such actions must generally be filed within four months of the date that the Plan was adopted. If such an action were brought, challenges available would have included 1) whether the decision was "arbitrary and capricious" or 2) not supported by "substantial evidence".

For whatever reason, applicant chose not to challenge the Final HWFSP. With the passage of four months, the possibility of challenge to the Plan and its findings was no longer available and it represented the law of the State, playing a critically important role in the siting of commercial hazardous waste landfills.. Instead, CWM deferred its objections to the Plan, apparently waiting for a more favorable forum. In its application for the 6 N.Y.C.R.R. Permit, http://www.dec.ny.gov/docs/legal_protection_pdf/cwm000051of3.pdf, last accessed November 18, 2014, an argument was made that the DEC had made an error of law when it reached its critically important finding that there was no need for additional hazardous waste landfill capacity to manage hazardous waste generated in the State. See, *e.g.*

http://www.dec.ny.gov/docs/legal_protection_pdf/cwm000051of3.pdf, at pp. 16,18, 19, 21 last visited November 18, 2014.

The argument is inappropriate. Other avenues exist for obtaining changes in the legal findings of the HWFSP, even after the period provided for an Article 78

⁵ As the owner and operator of New York State's only commercial hazardous waste landfill, there can be no question that CWM possessed more than adequate standing to bring such an action.

proceeding has passed,. Thus, the relevant statute and the Plan itself provide for an annual reassessment by the DEC of its conclusions. See, *E.C.L. 27-1102(1)(I); Final Hazardous Waste Facility Siting Plan (2010) at pp.8-2 – 8-3; 9-3*. The Applicant could provide its arguments to the Agency in that setting. Moreover, the New York regulatory procedural system provides for a Petition for declaratory ruling, 6 N.Y.C.R.R. section 619.1. While this procedure is most often directed to addressing the applicability of a DEC regulation to a particular party and practice, it might be available to consider the applicability of the finding of no need to CWM's application. In any event, the current proceeding is inappropriate for the consideration or resolution of CWM's arguments.

B. Common Issues For Adjudication Raised by the Lewiston-Porter Central School District and Residents for Responsible Government, Inc. and Offer of Proof

1. The Proposed Hazardous Waste Landfill is Not in the Public Interest as it Presents Unacceptable Risks to Contiguous Populations.

The Facility Siting regulations make clear that, notwithstanding the score ultimately awarded to an Applicant pursuant to 6 N.Y.C.R.R. 361.7(b), “[n]othing herein shall limit the authority of the board to deny an application if residential areas and contiguous population will be endangered ... or the board finds that the facility is not necessary or is otherwise not in the public interest. 6 N.Y.C.R.R. section 361.7(c)(4). RRG and Lew-Port are prepared to offer evidence that, under the circumstances, the proposed RMU-2 presents unacceptable risks to local population and, thus, is neither necessary nor in the public interest.

The issue for adjudication advanced by RRG and Lew-Port begins with the factual finding that the proposed RMU-2 hazardous waste landfill is not needed to

dispose of hazardous waste generated in New York for the relevant future. *Final Hazardous Waste Facility Siting Plan (2010)* at pp. 6-4, 6-9. Essentially, it is the position of the interveners that, because of this fact, doubts concerning the insoluble issue of causation of most cancers must be resolved in favor of the community as there is simply no acceptable competing policy to justify the risk that would otherwise result.

In September, 2008, the Cancer Surveillance Program of the Bureau of Chronic Disease Epidemiology and Surveillance Center for Community Health, with the assistance of the Center for Environmental Health, New York Department of Health [NYSDOH], issued a report entitled *Investigation of Cancer Incidence in the Area Surrounding the Niagara Falls Storage Site and the Former Lake Ontario Ordinance Works, Towns of Lewiston and Porter, Niagara County, New York, 1991-2000*. [Exhibit 5] Lew-Port and RRG will offer expert testimony from two witnesses concerning this report and its relevance to the decision of whether or not to grant a Certificate of Environmental Safety and Public Necessity.

First, David O. Carpenter, M.D., Director of the Institute for Health and the Environment of the University at Albany, the State University of New York [Exhibit 8] makes the following offer of proof. "Using the NYS Cancer Registry, the NYSDOH reported significantly elevated rates of a number of cancers. In study area #1 (which approximates the Lewiston-Porter school district), they found significantly elevated rates of all cancers in men. This was primarily a result of very much elevated rates of prostate and testicular cancers. There was also a significantly elevated rates of breast and urinary bladder cancer in women. There was a

significantly elevated incidence of cancer in children, particularly of germ cell, trophoblastic and other gonadal neoplasms. Several other cancers were found at rates above expected, although because of small numbers did not reach statistical significance. These include esophagus, colorectal, urinary bladder in men and leukemia.

Study area #2 consisted of census tracts containing the towns of Youngstown and Ransomville. Elevation in rates of prostate cancer was the only significant finding, but non-significant elevations were observed by colorectal and urinary bladder in both males and females.. Study area #3 was the zip code 14131. There were no cancers that showed a significant elevation in this zip code, but in men there was a non-significant elevated incidence of all cancers, colorectal, lung, prostate and bladder cancer.

The NYSDEC response to these findings is inaccurate and misleading. It is always difficult to identify causes of cancer within a relatively small geographic area, even when statistically significant results are found. However when overall rates are increased in a rather small area with environmental contamination, especially contamination with ionizing radiation, there is reason for special concern. It is totally not true that “these types of cancers are not known to be associated with exposures to radiation or to any chemicals”, as stated by NYSDEC. Ionizing radiation is known to increase the risk of all kinds of cancer, as is clearly shown from studies of Hiroshima and Nagasaki. Many chemicals do the same, although some pose a greater risk for one kind of cancer than of others. When elevations above expected

numbers are seen, even if the results don't meet statistical significance, it is not appropriate to dismiss them as demonstrating no association.

The data presented by the NYSDOH shows elevations in rates of cancer in the area of study in both children and adults, and these elevations are likely due to exposure to radiation and chemicals coming from the Niagara Falls Storage Site and the former Lake Ontario Ordnance Works, which includes CWM Chemical Services property.”

Second, Dr. Thomas Hughes, M.D., a member of the Niagara County Board of Health and an experienced practitioner in Niagara County, makes the following offer of proof with respect to the same data. With few exceptions, *e.g.* mesothelioma, it is simply not possible for medical science to ascribe a causative factor for most human cancers, which can range from lifestyle, to genetics, to environmental causes. The hazardous chemicals that have been landfilled at the CWM facility over the course of its existence, and the toxins likely to be transported to the facility and buried in proposed RMU-2 could in fact be the cause of the cancers identified in the NYSDOH study and that this possibility cannot be disproved. In light of the DEC conclusion that the proposed RMU-2 is not necessary to dispose of hazardous waste to be generated in New York State for the next 20 years, it would be irresponsible and entirely inappropriate to permit the additional importation and burial in the community of 6,000,000 additional tons of hazardous materials. When informed of the finding of the Municipal Stakeholder interveners' hydrogeologist of potential contamination of subsurface water in a direction towards the school campus, through a highly transmissive east-west buried sand and gravel valley gouged from

bedrock by the glacial process with a flow to the west, [*Discussed in the Expert Hydrogeology Proffer Set Forth in the Petition of Municipal Stakeholders Interveners*], Dr. Hughes considers the denial of the requested certificate mandatory because the proposed RMU-2 landfill would pose an unacceptable risk to contiguous populations.

2. The Proposed RMU-2 Landfill is Not Otherwise Necessary or in the Public Interest Because It Will Have Negative Effects on Property Values in the Community and Upon Municipal and School Property Tax Receipts.

The question of the effects of hazardous waste landfills on property values of a host community is addressed in a rich and remarkably consistent literature. See, e.g. *Stephen Farber, Undesirable Facilities and Property Values: A Summary of Empirical Studies, Ecological Economics, Volume 24, Issue 1, January 1998, pp. 1-14.* *Gerrard, Michael, Whose Backyard, Whose Risk: Fear and Fairness in Toxic and Nuclear Waste Siting, MIT Press (1994), pp. 72-73.*). Research on communities near hazardous waste landfills, has found serious concerns for health as well as property values and community image. *Wandersman and Hallman, Are People Acting Irrationally? Understanding Public Concerns About Environmental Threats, American Psychologist, June 1993, p. 681, pp. 683 – 685.* Distance from an active facility has been found to be central to the diminution of value)., *Jessica Erickson, Information Flows and the Impact of PCB Contamination on Property Values, Williams College, p. 6 (2001).*

A study of Boston residents found that only 33% of the surveyed population would willingly live within five miles of a hazardous waste landfill. *V. K. Smith and W. H. Desvousges, The Value of Avoiding a LULU: Hazardous Waste Disposal Sites, The*

Review of Economic Statistics, Volume 68, pp. 293-299 (1986). Another study found evidence that adverse property value effects of locally undesirable facilities could be more extreme in the “thin markets” of more rural areas. *M. Greenberg and J. Hughes, The Impact of Hazardous Waste Superfund Sites on the Values of Houses Sold in New Jersey, The Annals of Regional Science, Volume 26, pp. 147- 153 (1992).* The severity of these effects has been found to correlate with homeowner wealth. *James T.*

Hamilton, Testing for Environmental Racism: Prejudice, Profits, Political Power? Journal of Policy Analysis and Management, Volume 14, No. 1, 107, 117 (1995).

A substantial literature has noted the impacts of ongoing newspaper and other media publication concerning the proposed land use plays a significant role in devaluation of property. When the information dispersal process is long-term, there may be continual reductions in the value of a home. “[I]nformation is not transmitted instantaneously, but rather there is a flow of information that continually updates risk perceptions. Furthermore, a highly publicized event... can act as a ‘magnifying glass that focuses attention on the key issues, and heightens sensitivity to further information about risk.” *Erickson, supra, at p. 85; Gayer, Ted, James T. Hamilton, and W. Kip Viscusi, “Private Values at Risk: Tradeoffs at Superfund Sites: Housing Market Evidence on Learning About Risks, The Review of Economics and Statistics, August 2000, 82(3), pp. 439-451.*

When the full cost of siting and operation of a locally unwanted land use such as RMU-2⁶ is estimated in economic models, there are both short-run and long-run

⁶ More than a thousand people turned out at legislative hearings conducted for RMU-2 and virtually every speaker expressed hostility to the proposal. <file:///Users/slinneslo2/Desktop/clinichearing/Hundreds%20turn%20out%20to>

impacts. Thus, a time span ranging from first rumors of the proposed project through at least seven years of operation with continued drops in value have been observed. *Katherine A. Kiel and Katherine T. McClain, The Effect of an Incinerator Siting on Housing Appreciation Rates, Journal of Urban Economics, Volume 37, pp. 311-323 (1995)*. “It is thus to be expected that [hazardous waste] causes a reduction in house values for those purchased after risk information is dispersed and capitalized into the real estate market. Yet, for homes not on the market, it is reasonable to assume that the value of these homes is *also* reduced when current and future risks associated with the industrial facility are included in value capitalization.” *See Erickson, supra, at p. 6*.

When this scholarship is applied to the matter at hand, the conclusion is clear, as well as consistent with common experience and expectations. The problematic factors related to environmental disamenities, including the comparative wealth of the community,⁷ a literal tsunami of news coverage of the CWM hazardous waste landfill [*Exhibit 9*], and the primarily rural demographics of the two Towns, have predictably created a negative effect on community residential property values.⁸ This negative effect has occurred in spite of the many positives of

[%20oppose%20landfill%20expansion%20%7C%20wivb.com.webarchive](#), last accessed November 16, 2014.

⁷ The estimated median income for a household in the Town of Lewiston was \$59,613 in 2012, <http://www.berkshirehathawayhs.com/NY/Lewiston/14092>, last accessed November 18, 2014. Estimated median income for the Town of Porter in 2012 was \$64,081. <http://www.city-data.com/city/Porter-New-York.html#b>, last accessed November 18, 2014.

⁸ Indeed, Professor Vincent Agnello of Niagara University Business Law [*Exhibit 10*]. is proffered to testify concerning the decision of the developer of a proposed commercial project in the Town of Porter to walk away from the project “because the negative publicity of CWM being granted a permit for a new toxic landfill

the community, including the historic homes situated in the Towns and Villages, the access to water (both the Niagara River and Lake Ontario), significant and varied public parkland, and the positive effect on property values of excellent public school systems (such as Lewiston-Porter with an 8 and 9 Great Schools ranking), *see, e.g. David M. Brasington and Diane Hite, Demand for Environmental Quality: A Spatial Hedonic Analysis, Regional Science and Urban Economics, Volume 35, No. 1, 57 (2005).*

A wealth of studies has focused on distance from the landfill or other environmental disamenity as controlling the diminution of property value. The experience of the Lewiston-Porter community is different. Because of the public's sensitivity to the safety of the region's public education system, the fact that every semi-truck laden with toxic waste drives directly in front of Lew-Port School Campus, and the location of the proposed landfill is less than two miles from the District, has resulted in property value declines for the entire community serviced by the School District.

In support of this issue for adjudication, Lew-Port and RRG will tender the testimony of The Cost-Benefit Group, LLC, by Kenneth M. Acks, MBA. [Exhibit 11].

Mr. Acks will testify that the Cost-Benefit Group conducted a detailed, scientific-based estimation of the potential changes in property values arising from the

[Proposed RMU-2] would negatively affect the values of his project and the values of his project and the values of the proposed condominiums". Such decisions obviously are deleterious to maintenance of the area's real property tax base. *See, Final HWFSP at p. 9-6: "The following criteria may be employed in determining the question of whether a facility is 'in the public interest.' ... whether approving the facility will result in significant economic costs or benefits...to the community where the facility will be located...Examples to consider include: potential reduction in property values, new housing, construction, attracting new clean and sustainable business, tourism, and tax dollars."*

proposed expansion of the CWM facility. As part of this investigation, the Group: Reviewed documents describing the site, including reports by the USEPA, the New York DEC, newspaper articles and other publications; interviewed knowledgeable sources; reviewed academic, economic and appraisal literature pertaining to the valuation of contamination; examined sales of comparable properties near the source of contamination and in control areas; estimated property value changes, based upon previous studies, comparable sales, and its experience with similar situations, and in the facts of this particular site.

Mr. Acks will testify that, based upon available methods and data, The Cost-Benefit Group considered three methods to estimate diminution in value arising from RMU-2 including: Sales Comparisons; Contingent Valuation studies; and Hedonic Regressions. Based upon the analyses and investigations, Mr. Ack will testify that “ The Cost-Benefit Group’s estimate of diminution in property value arising from the expansion of the CWM site, as of November 1, 2014 , throughout the entire area of the Towns of Lewiston and Porter would likely range from 1% to 15% with a most likely value averaging approximately 3% for properties in the Towns of Porter and Lewiston. The total diminution would likely amount to \$47,570,000 (Rounded). Diminution would be greater for homes closer to the site and for higher valued homes and conversely less for homes further from the site. Should additional severe contamination outside the site be detected, or dangerous incidents arise (see *Exhibit 6* for a comprehensive record of health and safety violations at the landfill and *Exhibit 14* for a listing of major permit violations by CWM nationally prepared by the applicant.) , the diminution would likely range from 3% to 20%, with a most

likely value averaging approximately 5%..⁹

In additional support of this issue for adjudication, RRG and Lew-Port will tender the testimony of Beverley Vandusen, Treasurer of RRG, and Timothy Henderson, Board member of RRG, who together surveyed all of the arms-length (\$1 or other transfers without value were excluded) purchasers of homes in the Village of Youngstown in 2011 and 2012 as provided by the Niagara County Clerk's Office. Ms. Vandusen and Mr. Henderson will testify that, of the purchasers with school-aged children, 80% resided in the Towns of Lewiston or Porter prior to their home purchase. This remarkable lack of families from outside the area moving into the Village is further evidence of the risk-averse decisions parents from outside the community make concerning the proximity of Lew-Port and the approved transportation route of hazardous waste trucks making deliveries to the landfill and the location of the facility less than 2 miles from the school.

C. Issue For Adjudication Raised by the Lewiston-Porter Central School District and Offer of Proof

⁹ In order to evaluate the effects of the CWM site, the Cost-Benefit Group also compared property sale price changes to a control area unaffected by the site - the Town of Clarence in neighboring Erie County. Clarence is similar in population to the combined populations of the Towns of Porter and Lewiston, and offers other demographic and economic similarities. The number of homes is also similar. Clarence has 9,757 single family homes and a population of 30,673 while Porter has 2,525 and 6,771 and Lewiston 5,616 and 16,262 for a total of 8,141 and 23,033.

Between the first quarter of 2012 and the second quarter of 2014 home values rose 44.8% in Clarence, far greater than the 27.2% increase in Porter and Lewiston. The average percent change was 5.29% per quarter in Clarence and 3.12% in Porter and Lewiston. In addition, the sales volume is 67% greater in Clarence than the combined volumes of Porter plus Lewiston but Clarence has only 19.9% more single families homes but far greater sales volume, which is significant.

The Significant Decrease in Students Enrolled in the District and the Associated Decrease in Teaching and Non-academic Employees

Lew-Port will offer the testimony of Ms. Jodee Riordan, President of the Lewiston-Porter Central School District Board of Education. Ms. Riordan will testify, based upon information provided by the Administration of Lew-Port: 1) that the Board passed a resolution in 2009 in opposition to the proposed RMU-2 expansion; 2) that the Board agreed to legal representation from the University at Buffalo Law School clinical education program to seek full party status and an adjudicatory hearing in the request by CWM for expansion of his hazardous waste landfill; 3) that Lew-Port students and employees are threatened by the approved truck route to the facility that runs directly in front of the school campus and by the proximate location of the proposed RMU-2; 4) that families with school age children are not choosing to live within and enroll their students in Lew-Port; 5) that the graduation class at Lew-Port in 1977, the year hazardous waste landfiling began in what is now CWM, Chemical Services, LLC, was 428. 6) that today, almost 40 years later, the incoming kindergarten class at Lew-Port, the Class of 2027, is 116; 7) that there has been a nearly 9% decrease in the total number of K-12 students enrolled at Lew-Port between 2000 and 2014; 8) that, in the past six years, Lew-Port has eliminated 79 positions.

In considering the causation question for this dramatic decrease in the number of students enrolled in Lew-Port, as with the issue of health effects of the proposal, analysis must begin with the fact that DEC has concluded that RMU-2 is completely unnecessary to accommodate hazardous waste generated within New

York State. Under these circumstances, there is simply no countervailing policy justification for continuing the systematic decrease in the number of school-aged children in the community which has proceeded in tandem with the statistically significant incidence of cancer and the wholesale loss of property value and associated real property tax receipts and the continued operations and expansions of the CWM hazardous waste dump.

D. Issues for Adjudication Raised By Residents for Responsible Government, Inc.

1. The Chronic and Multiple Violations of Its Permits Demonstrate that Siting of RMU-2 is Not Otherwise Necessary or In the Public Interest.

Chapter 9, of the Final HWFSP provides “a framework to guide state agencies and authorities and the facility siting board established pursuant to section 27-1105 of the ECL in the discharge of their responsibilities and to assure the availability of industrial hazardous waste treatment, storage, and disposal facilities which meet certain criteria.” As discussed in Chapter 9, this Siting Board “must evaluate an application in terms of (a) constancy with the Plan; (b) need for the facility based on capacity; (c) need based on other factors (whether the facility is “otherwise necessary”); and (d) public interest. *Final HWFSP p. 9-4*. When examined from this perspective, as informed by the Final HWFSP, the application for RMU-2 must be denied.

Included in its discussion of whether a facility is consistent with the HWFSP, is the admonition that the Board consider “the history of facility operations in an area and the presence of non-operating facilities, such as closed hazardous waste landfills.” *Final HWFSP p. 9-5*. Considering the age and size of the Model City

Authority, the Siting Board should consider these factors identified in the Final HWFSP.

Hazardous waste landfilling at what is now CWM's Model City site, located at 1550 Balmer Road, began in 1971, when ChemTrol Pollution Services, Inc. operated a facility reclaiming waste oils and land disposal. This was a period of primitive regulation, with the Resource Conservation and Recovery Act (RCRA), Part C being adopted in 1965 and Hazardous Waste and Consolidated Permit Regulations published in 1980, and the Hazardous and Solid Waste Amendments (HSWA), and initial landfill ban were promulgated in 1984.. Many toxins, strictly forbidden to be disposed of in landfills found their way to the Lewiston-Porter community.

Service Corporation of America, best known as SCA, acquired the site in 1973, and changed its name to SCA Chemical Waste Services, Inc, and dumping of a broad spectrum of hazardous waste continued. SCA is best known for its close ties to organized crime, and many of its officers faced subsequent federal and state felony indictments. Chemical Waste Management, a subsidiary of Waste Management, Inc. acquired SCA Chemical Waste Services, Inc in 1984. The name of the company was changed to CWM Chemical Services, Inc. in 1986 and, in 1988, CWM converted to a Limited Liability Corporation.

The change from the crime-ridden SCA operator to Waste Management and CWM did not end skirmishes with environmental law enforcement. As documented in *Final Report, Waste Management, Inc.* by Edwin L. Miller, Jr. in March of 1992¹⁰, both corporations had significant encounters with the environmental enforcement

¹⁰ <http://infohouse.p2ric.org/ref/26/25041.pdf>, last visited November 16, 2014.

system. Thus, CWM's hazardous waste landfill in Emille, Alabama was charged with thirty-eight counts of improper disposal of PCB and dioxin waste that had migrated into local water supplies, and paid a \$600,000.00 fine. *Final Report at 9-10.* CWM faced similar problems in its Kettleman City dump and ultimately agreed to a fine of \$4,000,000 stemming from mismanagement of waste. *Final Report at 11-12.*

In 1984, an additional \$2,500,000 was assessed. Under a settlement announced by the EPA, Chemical Waste Management paid a record \$3.75 million fine for pollution violations at its hazardous waste incinerator located on the south side of Chicago. The EPA called it the largest administrative penalty ever imposed on a single facility in EPA history. The fine stemmed from agency investigations of a whistle-blower's charges that, during 1987, employees disconnected air pollution monitors while overloading the incinerator with highly toxic PCB. Similar shocking and dangerous malfeasance was detected at another Waste Management incinerator in Sauget, Illinois, resulting in cumulative fines of \$248,000 and the temporary closure of an incinerator. *Final Report at 12-15.*¹¹

The Applicant's record is hardly better than that of its Alabama, Illinois, and California cousins. The Company was charged with failing to test every truckload of PCB sludge as required by EPA and incurred \$25,000 a day fines for 48 days of violation in 1988. The following year, CWM was fined \$1,320,000 for failure to disclose "major modifications" to a PCB Detoxification Unit that they had acquired in 1985. *Final Report at 16-17*

¹¹ While these violations are old, they do demonstrate the nature of the hazardous waste disposal business that the community has been saddled with for decades as a result of DEC decision making. As will be apparent, similar misconduct has occurred in Model City as well.

In the past twenty years, while the fines have decreased, the violations have occurred on an almost annual basis. [*Exhibit 4, supra*]. For example, on October 17, 2008, an administrative Order of Consent between the DEC and CWM was entered. This Order imposed civil fines of \$175,000 as a result of at least 76 separate violations, admitted by CWM, of DEC environmental regulations for the seven-year period from 2001 – 2007. These violations ranged from multiple instances of landfilling hazardous substances such as mercury in violation of State and Federal land disposal bans; multiple unauthorized releases of untreated and partially treated hazardous waste into the environment; multiple failures to properly identify and treat reactive waste that resulted in uncontrolled reaction, explosions, and fire; receiving tanker truck loads of flammable waste during Lewiston-Porter School hours of instruction and activity in violation of its operating permit; and landfilling hazardous waste without appropriate treatment. In addition, from 1996-2002, five other Enforcement Orders were issued to CWM by DEC and the Environmental Protection Agency with total fines of \$862,875 assessed for numerous violations of federal and state environmental regulations. Moreover, numerous instances of leaking trucks were identified by DEC on-site monitors; one large hazardous waste truck flipped over onto its side at the intersection of Creek and Balmer Roads, no more than one-half mile from the School campus, spilling its contents over the roadway. This record of consistent violations, standing alone or in conjunction with the health and property damage caused by the Applicant’s operations demonstrate that the RMU-2 expansion is not otherwise necessary or in the public interest.

2. The Total Amount of Waste Permanently Landfilled at CWM Is Inequitable and Unfair and Demonstrates

**that Siting of RMU-2 is Not Otherwise Necessary or
In The Public Interest.**

The Final HWFSP adopted a cramped and unjustified definition of the requirement that there be an equitable distribution of facilities across the State, counting all TSD facilities without differentiating between permanent burial at CWM and temporary storage, destruction, or bulking of waste. As a result, a facility receiving, bulking, and shipping 500 tons of waste off-site is viewed as comparable equitably to a hazardous waste landfill accepting and permanently burying more than 100,000 tons annually. *Final HWFSP at p. 6-11 – 6-6-15.*

The Environmental Justice concept likewise receives cursory treatment, considering it a civil rights issue, limited to “fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies” *Final HWFSP at 6-10 – 6-11*, rather than focusing, *sui generis*, on sites that bear a significant disproportionate burden of hazardous waste permanently landfilled. This narrow focus ignores significant scholarship that has found siting of facilities depends more on the comparative ease of siting in areas where massive facilities already exist, *see, Thomas H. Fletcher, From Love Canal to Environmental Justice: The Politics of Hazardous Waste on the Canada-U.S. Border, supra, at p. 89*, and those areas with limited political clout. *See, e.g. Douglas S. Noonan, Douglas J. Krupka, & Brett M. Baden, Neighborhood Dynamics and Price Effects of Superfund Site Clean Up, Journal of Regional Science, vol. 47, No. 4, pp. 665-692 (2007); James T. Hamilton, Testing for Environmental Racism: Prejudice, Profits,*

Political Power? Journal of Policy Analysis and Management, Vol. 14, No. 1, pp. 107-132 (1995).

These broader understandings of regional equity and environmental justice, however, are not absent from the Final Plan. Thus, in Chapter 9, the Plan instructs Facility Siting Boards that, in considering whether to deny a Certificate, when there is no need for additional hazardous waste landfills, and the Board must determine if the proposal is otherwise necessary or in the public interest, relevant factors include: 1) “the history of facility operations in an area and the presence of non-operating facilities, such as closed hazardous waste sites,” *Final HWFSP at p. 9-4*; and 2) “the facility’s size and impact on the surrounding area”; *Final HWFSP at 9-5*. Consideration of these factors as they pertain to the proposed RMU-2, mandate the request for a Certificate of Environmental Safety and Public Necessity should be denied.

Between 1972 and 1987, hazardous waste landfills owned and operated by three different corporations, ChemTrol Pollution Services, Inc, Service Corporation of America (best known as SCA), and CWM Chemical Services, Inc. (CWM), permanently buried in excess of 700,000 tons of a broad range of some of the most dangerous chemicals known to man. In subsequent years to the present, approximately 8,000,000 additional tons have been dumped at CWM. If RMU-2 is approved, the Community will experience the permanent burden of approximately 15,000,000 tons of permanently buried toxins. No other community in New York State can even come close to this unsustainable environmental burden that requires

constant and perpetual monitoring and care.¹² When these unquestionable facts are considered with the health, property values, consistent record of serious environmental violations, the negative effects on the community's excellent public school system, and the fact that DEC has found the RMU-2 unnecessary for disposal of the State's hazardous waste, this Facility Siting Board should deny the requested Certificate.

3. The Proposed RMU-2 Hazardous Waste Landfill is Inconsistent With New York State's Preferred Statewide Hazardous Waste Management Practices Hierarchy.

As stated in ECL section 27-1105: "It is hereby declared that the following preferred hazardous waste management practices hierarchy is to be used to guide all hazardous waste policies and decisions: (a) The generation of hazardous waste is to be reduced or eliminated to the maximum extent possible; (b) Hazardous wastes that continue to be generated are to be recovered, reused, or recycled to the extent practical; (c) Detoxification, treatment or destruction technologies are to be utilized for hazardous wastes which cannot be reduced, recovered, reused or recycled; and (d) Land disposal of industrial hazardous wastes, treated residuals posing no significant threat to the public health or to the environment should be phased out as it is the least preferable method of industrial hazardous waste management." The Final HWFSP makes clear the relevance of this hierarchy to the deliberations of a Facility Siting Board: "whether the facility will promote moving up the hierarchy for

¹² Obviously, the term "perpetual" is misleading to the extreme when it suggests never-ending oversight and care. The bond required of Applicant is wholly inadequate to provide such open-ended guarantees and, while the "limited liability" corporation CWM, Chemical Services will certainly not last forever, the hazardous materials they have buried in the community will.

management of hazardous waste and employ sustainable options for the management of hazardous waste.” Final HWFSP p. 9-6. The Applicant’s proposal for RMU-2 continues a line of departures from the Hierarchy and this failure must be considered in assessing the merits of the Certificate and Permits requests.

Hazardous waste landfilling at the Model City facility has grown exponentially. Thus, Chem-Trol, SCA, and CWM were permitted to landfill the following quantity of hazardous waste in the community: **Secure Landfill Facility [SLF] - 1**, November 1971 - February 1973- 11,110 tons; **SLF-2**, February 1973 – September 1973 – 28,302 tons; **SLF-3**, October 1973 – September 1974 – 38,635 tons; **SLF-4**, September 1974 – September 1975 – 36,733 tons; **SLF-5**, September 1975 – May 1977 – 93,591 tons; **SLF-6**, March 1975 – September 1978 – 93,313 tons; **SLF-7**, September 1978 – January 1983 – 371,667 tons; **SLF-10**, August 1982 – June 1990 – 240,825 tons; **SLF-11**, August 1984 – June 1990 – 1,380,000 tons; **SLF-12**, October 1990 – June 1994 – 1,411,200 tons; **RMU-1**, November 1993 – present – 5,250,000. **RMU-2**, if granted, will ultimately receive 6,046,050. Thus, the amount of hazardous waste landfilling has increased from 11 plus tons from 1971 through 1994 with the various Residual Management Units to 5.4 million tons in RMU-1 to a proposed 6 million in RMU-2. Under no stretch of the imagination can this be seen as a phasing out of landfills.

There can be no doubt that the facility and proposed RMU-2 is a full-fledged hazardous waste landfill and not a land disposal receiving only “treated residuals posing no significant threat to the public health or to the environment” Thus, the Final HWFSP declares:

“Landfill: CWM Chemical Services, located in Model City, New York (Region 9) is the only permitted commercial hazardous waste land disposal facility in the State. CWM landfills hazardous waste, which meets the criteria of the land disposal restrictions (LDRs), as well as nonhazardous waste...The quantities of hazardous waste landfilled at CWM have fluctuated over the years, with a general downward trend from 1999 through 2006 and an increase in 2007 and 2008. ... Following federal reporting requirements, the hazardous waste it reports as landfilled...includes hazardous waste that was treated, and as a result, was no longer a hazardous waste when landfilled. From manifest data, it can be calculated that approximately 13% of the hazardous waste shipped to this facility in 2005 was treated and was no longer a hazardous waste prior to landfilling. In 2007, approximately 6% of the hazardous waste shipped to this facility met that criteria. In 2008, it is estimated that 3% of the hazardous waste shipped to CWM met that criteria. From the State’s perspective, particularly for calculating generator taxes (discussed in Chapter 2), the ultimate disposal method for this portion of the waste would be treatment, because at the point it was landfilled, it was no longer a hazardous waste.” *Final HWFSP at pp. 1-18 – 1-19.*

The hazardous nature of the waste that will be received and buried in the proposed RMU-2 will pose a significant threat to public health. Dr. Kristen B. Moysich [*Exhibit 12*] will be called as an expert witness and will testify that many of the chemicals contained in the Toxic Release Inventory of CWM “could pose a significant threat to human health. However, the extent of risk is dependent on the type, amount and duration of exposure and the exposure pathway which are beyond the scope of our review. Some of the cancers which are suspected or associated with inhalation, ingestion, or skin contact with chemicals included in the inventory include but are not limited to leukemia, urinary cancer, bladder cancer, lung cancer, renal cancer, brain cancer, nasal cavity cancer, laryngeal cancer, lymphatic cancers, ovarian cancer, stomach cancer, prostate cancer, mesothelioma, melanoma and other skin cancers.” There can be no question that the proposed RMU-2 will be a disfavored hazardous waste land disposal site and, as such, inconsistent with the mandated hierarchy.

4. The Proposed RMU-2 is Inconsistent With the Master Plans of the Host Communities.

New York hazardous waste facility siting law requires that a Facility Siting Board consider “consistency with the intent of the municipal master land use plan, and with local laws, ordinances, rules and regulations that have not been adopted pursuant to a master land use plan. It is important to insure that the construction and operation of the proposed facility will not adversely impact on planning schemes developed by the municipalities in which they are located.” *NYCRR Part 361, section 361.7(b)(6)(i)*. Close examination of the land use plans and associated materials demonstrates the inconsistency of the proposed RMU-2 with the communities’ vision of appropriate land use applications.

The *Niagara Communities Comprehensive Plan 2030: A Plan to Communicate, Collaborate & Connect Niagara County New York (July 2009)*, http://www.niagaracounty.com/Portals/0/docs/NCCompPlan/Final_NiagCommComPlan.pdf, last accessed November 21, 2014,” is Niagara County’s first-ever comprehensive planning document that is dedicated solely to the entire County and its twenty municipalities.” *Niagara Communities Comprehensive Plan, page 1*. Its purpose is “to provide a framework for achieving five high priority goals: Encouraging desirable and appropriate growth and development; Strengthening the local economy; Improving the delivery of services; Prioritizing and coordinating capital improvements; Improving the quality of life for County Residents.” *Id.* Close examination of the Plan demonstrates clear incompatibility with proposed RMU-2.

The following references set forth incompatibilities between CWM and its future plans and the Niagara Communities Comprehensive Plan:

- Chapter IV, “Community Profiles, Town of Lewiston: Three most pressing ISSUES OR CHALLENGES facing your community relative to public safety: 3. Current traffic to CWM (hazardous waste facility) by chemical trucks poses a potential danger to the Town.” *Niagara Communities Comprehensive Plan, Chapter IV, p. 17.*
- Chapter IV, “Community Profiles, Town of Porter: Three most pressing ISSUES OR CHALLENGES facing your community in relation to the environment: Chemical Waste Management (CWM). Limit future Impacts.” *Id., p. 19.*
- Chapter IV, “Community Profiles, Village of Lewiston: Three most pressing ISSUES OR CHALLENGES facing your community in relation to the environment: Close Chemical Waste Management Hazardous Waste Landfill located in Town of Porter.” *Id. p 21.*
- Chapter IV: “Community Profiles, Village of Lewiston: Three most pressing ISSUES OR CHALLENGES facing your community in relation to public safety: Eliminate Transportation of Hazardous Waste to Chemical Waste Management sites.”, *Id.*
- Chapter IV. “Community Profiles, Village of Youngstown: Three most pressing ISSUES OR CHALLENGES facing your community in relation to public health and safety: Proximity of CWM facility...Expansion of CWM facility and constant transport of hazardous chemicals adjacent to Lewiston-Porter Central School”, *Id. p. 23.*
- Chapter IV. “Community Profiles, Village of Youngstown: Describe your communities GOALS and OBJECTIVES for public health: Major issue here of course is preventing further volume import of hazardous chemicals to CWM and the facility expansion...” *Id.*
- Chapter IV. “Community Profiles, Village of Wilson: Three most pressing ISSUES OR CHALLENGES facing your community in relation to public health and safety: The transportation of hazardous waste through the area.” *Id. p. 30.*
- Chapter V: “Land Use and Environment: Natural Environment Trends and Conditions. Lower River Communities Subregion. Environmental Issues and Challenges. CWM (hazardous waste).” *Id. p. 12.*
- Chapter VI: “Economic Development. Issues and Opportunities. Lower River Communities Subregion: Town of Lewiston, Town of Porter, Village of Lewiston, Village of Youngstown. Primary Issues and

Challenges Identified: Chemical Waste Management...concerns.” *Id. p. 18.*

- Chapter IX: “Public Health & Safety. Issues and Opportunities. Lower River Communities Subregion: Town of Lewiston, Town of Porter, Village of Lewiston, Village of Youngstown. Primary Issues and Challenges Identified: Concerns with LOOW site, CWM, Modern Disposal in the Community.” *Id. p. 7.*

And most importantly:

- Chapter IX: “Public Health & Safety. Goals, Objectives & Recommendations. Goal – Create Safe, Healthy and Walkable Communities. Recommendations: Given past and ongoing environmental problems faced by Niagara County and its communities resulting from the operations of former and existing industrial hazardous waste treatment, storage, and disposal facilities, as defined in New York Environmental Conservation Law Section 27-1101(5), and consistent with an equitable distribution of such facilities throughout New York State, Niagara County should continue to work with local communities as well as State and Federal agencies to establish prohibitions to the future development and/or expansion of any industrial hazardous waste treatment, storage, and disposal facility within the County consistent with the policies established by the Niagara County Legislature via numerous resolutions passed in recent decades. Niagara County should also work with these and other stakeholders to ascertain liability for existing negative environmental impacts resulting from past and ongoing industrial hazardous waste treatment, storage, and disposal facilities, including but not limited to adverse impacts on natural resources, public health, property values, public perception and quality of life, Niagara County should also continue to work with these stakeholders to ensure that sites contaminated with hazardous industrial waste are remediated for future use, or at a minimum, stabilized to prevent further environmental impact.” *Id. at 11-12.*

In addition, the proposed expansion is in conflict with numerous provisions of the *Comprehensive Plan for the Town of Porter: Connecting Our Past With the Future (August 2004)*. [CPP] The Plan establishes the Town’s vision in terms of five principles one of which is “Improve the quality of our Environment,” which provides: “The location of CWM in the Town of Porter has an impact on the

community and how residents and visitors perceive the south central portion of the community. The potential impacts on the environment, as they relate to CWM and beyond, is an important consideration for all policy that is developed by the Town...Points to remember include: Limit future impacts of CWM," *CPP p.4*. Sixty specific actions are designated as implementing specific policies in the Plan. Under one policy, identified as "The Town of Porter elected and appointed officials ensure that future land use conflicts are minimized," Action 18 "The Town should limit future expansion of CWM in the Town of Porter." *Id. p.24*. Under another policy, "The Town of Porter continues to work collaboratively with CWM," the designated action is an "end-use-plan" for CWM's land: The Town should undertake the task of assuring that an End Use Plan is prepared for the lands currently occupied by ...(CWM). The Plan would identify the current operations that take place on the site, potential hazards, remediation requirements for the site in the event that CWM would one day relocate, and potentials for re-development of the site. The End Use Plan could help to clear up unanswered questions and uncertainty felt by residents with respect to CWM, and their role in the Town."

In a section of the Plan addressing "Environmental Resources and Facilities," a description of operations at CWM opens with: "The greatest potential impacts to the Porter environment most likely occur because of the location of the Chemical Waste Management 'Model City.'" *Id. 91*. At an Elected/Appointed Officials Session, at the Recreation/Open Space/Natural Resource Session, the question "what are some challenges facing the Town relating to recreation, open space and natural resources was answered in pertinent part: "Landfill; Chemical Waste Management is

dangerous and not well maintained or monitored well—its [*sic*] near the school and the dumping may be hazardous to the health of residents, CWM is a reason that people do not move here, [and] Town has become dependent on CWM for tax money.” *Id. p. 192*. In a survey of public opinion in the Town completed for the CCP, 88 percent of respondents agreed that “I am concerned with the planned expansion of CWM in the Town of Porter” *Id. p. 203*; and 78.6% agreed that “We should probably prohibit any future expansion of the CWM Landfill” *Id. p. 283*. Finally, at a public meeting in the Town of Porter concerning the Plan, of the 55 attendees, 76.5% strongly agreed that “they would be willing to pay 2 to 3 times more Town taxes if/when CWM closed.” *Id. p. 209*.

B. Issues for Adjudication Raised by the Niagara County Farm Bureau and Offer of Proof.

The Proposed Construction and Operation of RMU-2 Threatens the Crops, Animals and Marketability of Local Community Agriculture

The Farm Bureau of Niagara County represents the agricultural interests of its members in the Towns of Lewiston and Porter. The Bureau will offer the testimony of Professor Murray McBride of the School of Integrative Plant Science, Crop and Soil Section, Cornell University. [*Exhibit 13*] Professor McBride will testify that his scholarly and applied interest has been in the behavior of contaminants at the soil-water interface in the environment. His testimony will focus on two distinct areas of direct relevance to the application for construction and operation of RMU-1: first, the behavior of PCB in soils and agricultural systems; and second, the impacts of toxic metals on soils and agricultural systems.

He will testify, and supply scholarly citation support for his testimony, to the following facts. PCB's consist of a group of synthetic chlorinated organic chemicals that can cause serious harm to ecosystems because of their environmental persistence. The individual chemicals within the PCB group are referred to as "congeners," depending on the number and positions of chlorine atoms in the PCB molecule. The lighter PCB congeners are quite mobile as they can be transported long distances by evaporation from soil and water, whereas the heavier ones tend to adsorb more strongly to organic matter in soils and persist there for decades. Migration of PCBs through soils to groundwater is known to occur despite low water solubility of these chemicals, because of a process called facilitated transport, where the PCB molecules attach to dissolved or particulate organic matter.

Wischkaemper, H.K., A.F. Beliveau and R.W. Henderson, 2013, U.S. EPA Region 4 Technical Services Section Issue Paper for Polychlorinated Biphenyl Characterization at Region 4 Superfund and RCRA Sites, U.S. EPA Region 4 Technical Services Section Issue, pp. 1-78.

He will further testify that risk of animal and human exposure to PCBs escaping from landfills in particulate or gaseous form, in addition to direct inhalation, arises from the accumulation of the PCBs in soils and vegetation, which tend to scavenge and accumulate PCBs from adjacent industrial areas. *Meijer, S.N et al , 2003, Global Distribution and Budget of PCBs and HCB in Background Surface Soils: Implications for Sources and Environmental Processes. Environ. Sci. Technol., 37, pp. 667-672.* The above-ground portions of crop plants generally do not take up PCBs appreciable from soils via their roots, but nonetheless become contaminated

by adsorption onto foliage and other plant surfaces of PCBs present in the air or released in gaseous form from contaminated soil. Root crops accumulate PCBs and other hydrophobic chemicals in their peel by direct transfer from the soil. *Hellstrom, A. 2004, Uptake of Organic Pollutants in Plants. Dept. of Environmental Assessment, Swedish University of Agricultural Sciences, Uppsala, Sweden; Javorska, H.P., Tlustos, and R. Kaliszova, 2011, Distribution of Polychlorinated Biphenyl Congeners in Root Vegetables, Polish J. Env. Studies, 20, 93-99.*

As a consequence, where soil or air is contaminated by PCBs, forages and agricultural crops become contaminated, *Kaclkove, L. and P. Tlustos, 2011. The Uptake of Persistent Organic Pollutants by Plants, Cent. Eur. J. Biol. 6, 223-235. Buckley, E.H. 1982. Accumulation of Airborne Polychlorinated Biphenyls in Foliage, Science 216, 520-522,* and grazing livestock further bioaccumulate the PCBs in their body fat and milk fat. *Gill, J.J. et al, Management of Land and Livestock Contaminated with Polychlorinated Biphenyls, Aus. Vet. J., 69, 155-158.* Since human exposure to PCBs can result from animal foods in the diet, *Malisch, R. and A. Kotz, 2014, Dioxins and PCBs in Food, Review from European Perspective. Science of the Total Environment, 491-492, 2-10,* the contamination of agricultural soils by PCBs poses a health concern.

Professor McMurray will also testify concerning the impacts of toxic metals on soils and agricultural systems. Specifically, DEC has determined Soil Cleanup Objectives (SCOs) for 13 metals and a number of other chemicals because of their potential toxic effects on ecosystems and humans (DEC, N.Y.C.R.R. Subpart 375-6; Remedial Program Soil Objectives). For the heavy metals with particularly high

levels of disposal at the landfill – lead, barium, zinc, nickel and cadmium, these SCOs are, respectively, 63, 350, 109, 30, and 2.5 mg/kg in the soil. Although lead and barium generally have very low solubility in soils and are themselves not very available to plant roots, these metals nevertheless can contaminate crops from dust and splash deposited on plant surfaces from contaminated soils or from aerial deposition. *McBride, M.B. et al, Concentrations of Lead, Cadmium, and Barium in Urban Garden-Grown Vegetables: The Impact of Soil Variables. Environmental Pollution, 194, 254-261.* Therefore, releases of dust or aerosols from the landfill facility could contaminate food crops and forages. Zinc and nickel are potentially toxic to crops and significant soil contamination by these metals could reduce the productivity of farmland. *McBride, M. B. Environmental Chemistry in Soils, Oxford University Press, New York.* Cadmium is particularly a concern for human health, as this highly toxic metal is readily taken up by most crops, and therefore agricultural contamination by this metal represents a serious and permanent hazard to the human food chain. *World Health Organization (WHO). 2012. Exposure to Cadmium: A Major Public Health Concern; McBride, M.B. 2003. Cadmium Concentration Limits in Agricultural Soils: Weaknesses in USEPA's Risk Assessment and the 503 Rule. Human and Ecological Risk Assessment. 9, 661-674.*

Professor McMurry will summarize that the presence of massive amounts of soil and waste contaminated by these heavy metals immediately adjacent to productive farmland represents a potential risk to soil productivity and the food chain. Although metals do not generally exist in gaseous (volatile) form (mercury being one possible exception to this), migration of metals from the landfill to

agricultural fields could occur by leaching into shallow groundwater, by surface runoff, or by aerial transport of dust.

Agriculture is an important part of the Niagara County community. As reported in the Niagara County Agricultural & Farmland Protection Plan, *Niagara-County-Agricultural-and-Farmland-Protection-Plan.pdf*. : “Niagara County generates a wealth of agricultural crops. Dairy, fruit, vegetable, grain, livestock and horticultural crops are represented in the diversity of agricultural production present. A combination of rich soil and beneficial geographic location have helped make Niagara County 22nd out of 61 counties in New York State in market value of agricultural products (1997 Census of Agriculture). Niagara is proud of its farming heritage ... a heritage that is displayed through the many fine family farms that continue to work and produce, generation after generation. Fifty-three percent of farmers responding to [a survey of County farmers] reported that their family had been farming in the County forty or more years.” Niagara County Plan at p. 11.

The CWM hazardous waste facility is situated in a rural area with agricultural land use nearby in the Towns of Lewiston, Porter and Wilson and the hamlet of Ransomville. A number of these farms are located on 4 Mile and 12 Mile Creeks that are affected by the CWM site. There is in fact, a real danger of pollution of farmlands with the wastes likely to be accepted for landburial in proposed RMU-2. Moreover, a risk averse public is likely to assume the worst if the proximity of agricultural use to an active hazardous waste dump becomes known, with potentially devastating effects on the marketability of community grown produce.

The Farm Bureau will offer the testimony of two local farmers: Thomas

Tower, Youngstown, and Thomas Freck, Town of Porter. Freck will testify that he owns several farms, one on Balmer Road near the CWM facility. He has 25 beef cattle, 18 feeder pigs, and 24 chickens on his property, and raises from 50 to 100 acres of hay; 20 acres of field corn; and a large, 5 acre vegetable garden. He has been farming at this location for about forty years. 12 Mile Creek crosses his property. The Creek floods periodically, perhaps every two years or so. When it does flood, it fills his ditches and covers some of his property on which he raises crops and animals, restricting grazing land. Operations at RMU-1, when ongoing, have raised a number of issues, including Jake brakes on truck early in the morning, and dirt and dust on Balmer Road, fronting his property. When a landfill is being constructed, the clay trucks are noisy and have left visible clay on the road. Freck will confirm that being located near the CWM facility has a negative effect on the reputation of his farm and adversely affects marketing. Twenty to thirty more years if RMU-2 is approved will only do more damage as people are concerned about food products raised near an immense hazardous waste landfill.

Tom Tower will testify that he has also been farming in the area for forty years in Youngstown, New York, with a produce market located at 1258 Lockport Road. A member of one of the oldest families in Niagara County, his family has farmed for more than three generations. His crops range from potatoes, to multiple variety of tomatoes, to sweet corn, and a wide range of fruit. Four Mile Creek runs through his property. While he does not irrigate from the Creek, climate change could result in the necessity to do so. Tower will testify about the effects of consumer fears about the purity of the food they put on their tables. He will relate

the experience of apple growers with the public's reaction to concerns over the use of Alar, [daminozide], a growth regulator used to keep the fruit on trees until harvested. Once the disputed but possible, danger of the product was publicized, the consumer reaction was extreme and sustained. Even after the product had been abandoned, the public refrained from the purchase of apples whether or not they had been treated. Certainly, agricultural crops proximate to a massive commercial hazardous waste dump, with the possibility of 15,000,000 tons of buried waste, with buried toxins with a very real potential for contamination can be expected to trigger the same risk-averse reaction.

CONCLUSION

For the foregoing reasons, it is respectfully requested that Residents for Responsible Government, Inc., the Lewiston-Porter Central School District, and the Niagara County Farm Bureau be granted full party status and an adjudicatory hearing on the issues discussed above. It is further requested that a Certificate of Environmental Safety and Public Necessity be denied for the reasons set forth herein. Respectfully submitted,

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