

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

---

In the Matter of Applications for Permits pursuant to Articles 17, 24, and 27 of the Environmental Conservation Law (ECL); Parts 373 (Hazardous Waste Management Facilities), 663 (Freshwater Wetlands Permit Requirements), 750 (State Pollutant Discharge Elimination System [SPDES] Permits) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR); Section 401 of the federal Clean Water Act (CWA); and 6 NYCRR 608.9 (Water Quality Certifications),

by

CWM Chemical Services, LLC,

Applicant (RE: Residuals Management Unit - Two [RMU-2]).

DEC Permit Application Nos.:       9-2934-00022/00225  
  9-2934-00022/00231  
  9-2934-00022/00232  
  9-2934-00022/00249

---

NEW YORK STATE FACILITY SITING BOARD

---

In the Matter of an Application for a Certificate of Environmental Safety and Public Necessity pursuant to 6 NYCRR Part 361 (Siting of Industrial Hazardous Waste Facilities)

by

CWM Chemical Services, LLC,

Applicant (RE: Residuals Management Unit - Two [RMU-2]).

---

Re:     Redactions of Personal Information from Ms. Witryol's Petition for Party Status

During the December 11, 2014 telephone conference call, I said that OHMS has redacted the telephone numbers, email addresses, and street addresses of the members of the public, who filed comments about the captioned matter, from the electronic copies of these documents before posting them on the Department's web site. I asked the issues conference participants whether they wanted their respective telephone numbers, email addresses, and street addresses redacted from the electronic copies of their respective petitions for party status before posting them on the Department's web site. Ms. Witryol requested that her email address be redacted from her petition. I understand that Ms. Witryol's email address appears on page 2 of 10 of her petition

(*see* 1-Party Status.pdf and 2-Party Status.pdf).<sup>1</sup> I grant Ms. Witryol's request with respect to her email address. The other issues conference participants did not request any redactions.

With an email dated December 11, 2014, Ms. Witryol provided the issues conference participants and me with a chart (1-REDACTIONS.pdf) of additional information presented in her petition for party status that she would like to have redacted. Among other things, this request appears to include the redaction of the resumes of some of her potential witnesses, as well as the entire redaction of Appendices D, J, K, and L to her petition.

In an email dated December 12, 2014 Mr. Darragh stated that CWM does not object to the proposed redactions provided the issues conference participants continue to receive information about potential witnesses. Subsequently, with an email of the same date, Ms. Witryol responded to Mr. Darragh's December 12, 2014 email.

Posting Ms. Witryol's petition for party status on the Department's web site will be held in abeyance pending a response to my requests for clarification and justification, as outlined below.

I. Request for Clarification

Before making a determination about the information presented in the chart, I request clarification from Ms. Witryol about Appendices D, J, and L. With respect to Appendices D, J, and L, the column marked REDACTION states ALL PAGES (*see* 1-REDACTIONS.pdf). Please clarify whether the request is to redact Appendices D, J, and K, in their entirety from the electronic copy of the petition before posting it on the Department's web site. For example, Appendix J consists of two items. The first is a letter on the proffered witness's letterhead in which the witness comments about a proposed issue related to noise. The second item in Appendix J is the professional resume of the proffered witness.

II. Request for Justification

Without further justification, Ms. Witryol's request to redact the electronic version of her petition for party status as outlined in her December 11, 2014 memorandum (*see* 1-REDACTION.dpf ) before posting on the Department's web site appears to be excessive given the practice associated with posting public comments. Therefore, prior to ruling on this request, Ms. Witryol will have the opportunity to provide further justification to support the request.

The purpose behind redacting a limited amount of information from the public comments and the petitions for party status is to minimize the potential for cyber abuse. Nevertheless, the identity of the petitioner and potential witnesses must be disclosed (*see* 6 NYCRR 624.5[b][1][i])

<sup>1</sup> With an email dated December 11, 2014, Ms. Witryol requested that her petition (*compare* 1-Party Status.pdf with 2-Party Status.pdf) be amended to correct a typographical error on page 2 of 10. I grant this request.

and 624.5[b][2][i]). The record of this matter, which includes the petitions for party status (*see* 6 NYCRR 624.12[b]), among other things, must be available for public review and inspection. Therefore, to facilitate compliance with these legal requirements, posting all documents associated with this matter on the Department's web site, in their original form, with very limited exceptions, was found to be in the public interest.

Accordingly, I need to understand why Ms. Witryol seeks to redact more information than what has been previously redacted, such as entire resumes of potential witnesses, and depending on the clarification, as requested above, entire appendices to the petition for party status.

Ms. Witryol's response to these requests for clarification and justification will be due by Friday, January 9, 2015, and must be sent to the participants listed on the December 1, 2014 service list at the same time and manner as the response is served upon me. Any issues conference participant who wants to reply to the forthcoming response must request leave by Wednesday, January 14, 2015.

A. Appendix K

Appendix K consists of a set of survey responses. Generally, when such information is included with a petition for party status, the petitioner intends to call the survey responders as witnesses if the proposed issue is adjudicated. Ms. Witryol shall clarify whether this is the case with respect to the information presented in Appendix K. In addition, Ms. Witryol shall state whether the survey responders: (1) consented to having their survey responses incorporated into the petition for party status, and (2) agreed to testify at the adjudicatory hearing in the event that the proposed issue is adjudicated.

The issues conference participants should understand that any evidence (*e.g.*, documents and testimony) offered at the hearing will be subject to cross-examination by the other parties (*see* State Administrative Procedure Act [SAPA] §306.3 and 6 NYCRR 624.5[e][1][ii]). Furthermore, in the event that an offer of proof made at the issues conference subsequently becomes part of the evidentiary record, that evidence will be posted on the Department's web site, as originally offered at hearing. Any exceptions will be limited and must be supported by legal authority. I recommend, therefore, that the issues conference participants review their respective offers of proof, which includes testimony from potential witnesses. As appropriate, the issues conference participants should obtain all necessary consents or authorizations to offer this proof and related testimony at hearing, if the proposed issues are subsequently found to be substantive and significant.

With respect to the information in Appendix K, I am inclined to grant Ms. Witryol's request only to with respect to the **addresses** of those who provided the information presented in Appendix K from the electronic form of the document before posting it on the Department's web

site. Ms. Witryol may provide additional justification for why information other than telephone numbers, email addresses, and street addresses should be redacted from Appendix K.

B. Appendix W

With respect to Appendix W, I deny Ms. Witryol's request to redact the names of the Department's monitors. As noted in Appendix W, Ms. Witryol obtained the information pursuant to the Freedom of Information Law. If Department staff found it appropriate to disclose the information, I see no justification for redacting this document.

---

Daniel P. O'Connell  
Administrative Law Judge

Date: Albany, New York  
December 17, 2014

To: December 1, 2014 Service List – Issues Conference