

NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Applications for Permits pursuant to Articles 17, 19, 24, and 27 of the Environmental Conservation Law (ECL); Parts 201-5 (State Facility Permits), 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  
  9-2934-00022/00233  
  9-2934-00022/00249

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NEW YORK STATE FACILITY SITING BOARD

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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]).

August 11, 2021

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**Ruling on Request for Clarification – Motion for Reconsideration**

With an email dated July 26, 2021, Ms. Wityrol seeks clarification of the February 3, 2021, ruling with respect to Mr. Whalen’s pre-filed direct testimony.<sup>1</sup> Ms. Wityrol notes that Question No. 10, and Mr. Whalen’s response is part of several pages of the pre-filed direct testimony stricken by the February 3, 2021, ruling (at 11-13). According to Ms. Wityrol, Question No. 10 relates solely to the purchase of second homes. Ms. Wityrol inquires whether striking Question No. 10 and Mr. Whalen’s response was in error given the discussion in the supplemental rulings dated February 14, 2019 (at 25-27).

As of the date of this ruling, no party responded to Ms. Wityrol’s July 26, 2021, request for clarification.

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<sup>1</sup> See Rulings on Motion to Strike Prefiled Direct Testimony, dated February 3, 2021.

## Discussion and Ruling

After pre-filing direct testimony consistent with the Facility Siting Board's Third Interim Decision (September 10, 2019), counsel for CWM and Ms. Wityrol filed separate motions to strike dated May 29, 2020. In its motion, CWM sought to strike Question No. 10 and Mr. Whalen's response, among other things (*see* CWM's motion at 10-12).<sup>2</sup> With a cover letter dated June 19, 2020, Ms. Wityrol replied (*see* Ms. Wityrol's reply at 2-5). I authorized CWM and Ms. Wityrol to file sur-replies (*see* Rulings on Motions to Strike at 2).

I issued a ruling dated February 3, 2021 (at 11-13), which granted CWM's request to strike Question No. 10 and Mr. Whalen's response, as well as other portions of this witness's pre-filed direct testimony. After considering appeals duly taken, the Facility Siting Board issued the Fourth Interim Decision dated April 26, 2021. Subsequently, Ms. Wityrol moved for reconsideration. With a cover letter dated June 4, 2021, the Facility Siting Board issued a ruling, which denied Ms. Wityrol's request for reconsideration.

Ms. Wityrol's July 26, 2021, request is not one for clarification. Rather, it is a request for reconsideration. Given the procedural history associated with Ms. Wityrol's May 29, 2020, motion to strike, the time to seek reconsideration from me has passed. The Facility Siting Board has already considered appeals duly taken from the February 3, 2021, ruling, as well as a request for reconsideration. I, therefore, deny the request as untimely.

/s/

Daniel P. O'Connell  
Administrative Law Judge

Dated: Albany, New York  
August 11, 2021

To: Service List revised July 2, 2021

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<sup>2</sup> For the reasons outlined in its motion papers (at 10-11), CWM expressly objected to Mr. Whelan's response to Question No. 10.