

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

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]).

July 12, 2022

Thirteenth Order after Pre-hearing Conference

A pre-hearing conference convened today on July 12, 2022, to develop a schedule for the continuation of Dr. Andrew Michalski's examination. Every party was represented at the conference.

I. Geology and Hydrogeology

As scheduled, the hearing concerning the captioned matters reconvened on July 6, 2022, and continued on July 7 and 8, 2022. During this hearing session, the parties completed the examination of Department staff's witnesses, Steven M. Moeller and Peter Grasso, P.E., as well as CWM's witness panel, Patrick Martin, P.E., and Alistair Macdonald.

On July 8, 2022, the parties began the examination of Dr. Michalski and the exhibits associated with his pre-filed direct testimony. RRG and Ms. Witryol completed their respective cross-examination. CWM began its cross-examination, but did not complete it.

Today, the parties agreed to reserve August 31, 2022, and continue as necessary on September 1 and 2, 2022, to reconvene the hearing.¹ The proceedings will be conducted virtually as a Webex Event, similar to previous hearing sessions. When the hearing reconvenes at 10:00 a.m. on Wednesday, August 31, 2022, counsel for CWM will continue the cross-examination of Dr. Michalski. Subsequently, Department staff will have the opportunity to cross-examine Dr. Michalski. Mr. Abraham will have the opportunity on behalf of the municipalities to conduct re-direct examination. If re-direct examination occurs, then all full parties will have the opportunity to conduct re-cross examination. The scope of re-cross examination will be limited to the topics discussed during re-direct examination.

In separate emails, the parties and the witnesses will receive invitations, as panelists, for the August 31, 2022, and September 1 and 2, 2022, session. There will be a separate invitation for each day. Please accept all three invitations.

I request that Mr. Kuhn reserve a stenographer for the hearings scheduled for August 31, 2022, and September 1 and 2, 2022.

With respect to rebuttal testimony concerning the issues related to geology and hydrogeology, I said that the parties who presented pre-filed direct testimony would have the opportunity to present a rebuttal case. Ms. Mucha advised that Department staff would not present a rebuttal case. Mr. Kuhn advised that CWM wanted to present two new exhibits to rebut an exhibit proffered with Dr. Michalski's pre-filed direct testimony. Mr. Abraham advised that he is in the process of refining the municipalities' rebuttal presentation.

The oral rebuttal presentations will commence after the municipalities complete the re-direct presentation of Dr. Michalski, if any, and the parties have had the opportunity to conduct re-cross examination of Dr. Michalski. This will occur sometime during the August 31 to September 2, 2022 session.

Counsel for CWM and the municipalities agreed to circulate the rebuttal exhibits via email to the parties and me by **July 25, 2022**.

II. Municipalities' Motion and the Admission of Additional Documents

As previously noted, with an email from Mr. Abraham dated May 27, 2022, the municipalities served a motion to include documents related to the geology and hydrogeology issues into the evidentiary record. According to the municipalities, CWM and Department staff circulated some of these documents with their respective papers in support of the pre-filed direct testimony of their witnesses, and as part of discovery.

¹ The schedule for September 1, 2022 will be from 10:00 a.m. to 1:00 p.m.

In separate emails dated June 13, 2022, I received timely responses from Mr. Kuhn, on behalf of CWM, from Ms. Mucha, on behalf of Department staff, and from Ms. Witryol.

At the July 8, 2022, hearing session, I said that would issue a written ruling addressing the municipalities' May 27, 2022 motion. I stated further that if I needed additional information from the parties, then I would advise.

III. Record of Compliance

A discussion about the record of compliance issue is outlined in the Eleventh Order dated May 13, 2022, at 4-5. During the June 15, 2022, pre-hearing conference,² Mr. Kuhn explained that CWM was reviewing the tables circulated with the April 10, 2022, email, and comparing them to the tables attached to Mr. Darragh's May 13, 2016, email. Today, Mr Kuhn said that the tables circulated with his April 10, 2022, email update the tables circulated with Mr. Darragh's May 13, 2016, email.

Under separate cover, I will propose the procedures for reviewing this information, and developing the necessary record for the decision makers.

IV. September 14, 15, and 16, 2022

The members of the Facility Siting Board advised are available on September 14, 15 and 16, 2022. On these dates, the hearing will reconvene to introduce the pre-filed direct testimony of Messrs. Berlow, N'dolo, and Rizzo, as well as their associated exhibits into the hearing record, and to provide the opportunity for the other parties to cross-examine these witnesses. During the July 8, 2022, hearing, Mr. Kuhn confirmed the availability of these witnesses on September 14 to 16, 2022.

With an email dated July 12, 2022, Mr. Kuhn inquired whether RGG's witness, Jim Bittner, would be available for cross-examination during the September 14 to 16 period. Mr. Kuhn estimates that cross-examination would be about an hour. Ms. Witryol responded with an email also dated July 12, 2022, and requested the opportunity to confer with Professor Connolly after she returns from vacation. Ms. Witryol noted that Mr. Bittner may not be available during this period because it will be harvest time at the Bittner-Singer Orchards.

By **August 1, 2022**, please provide an update about Mr. Bittner's availability on September 14, 15, and 16, 2022.

² See Twelfth Order dated June 24, 2022, at 5.

