

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
 9-2934-00022/00249

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]).

RULING OF THE FACILITY SITING BOARD

By motion dated February 16, 2021, Amy Witryol moves, pursuant to 6 NYCRR 624.8(d)(2)(v), for permission to file an expedited appeal from Administrative Law Judge (ALJ) Daniel P. O’Connell’s February 3, 2021, Rulings on Motions to Strike Prefiled Direct Testimony (Rulings). Ms Witryol seeks to challenge several of the ALJ’s Rulings. The prefiled direct testimony, ALJ’s Rulings and motion involve issues in the above-captioned matter that have been joined by the ALJ and Facility Siting Board and fall squarely in the Facility Siting Board’s jurisdiction pursuant to ECL article 27 title 11 and 6 NYCRR part 377.

CWM Chemical Services, LLC (CWM or Applicant) objects to the motion, arguing that the motion is untimely and impermissible under 6 NYCRR 624.8(d)(2). CWM argues that the motion is untimely because it can only be brought after the commencement of the adjudicatory hearing. In part 624 permit proceedings, the Department of Environmental Conservation considers motions for leave to appeal from an interlocutory ruling of an ALJ made at any time during the pendency of the matter, and does not limit such motions to those filed after commencement of the adjudicatory hearing. The Facility Siting Board finds no compelling reason to deviate from that practice. The case law cited by CWM applies court rules and the

