

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]).

August 5, 2021

Third Order regarding Supplemental Discovery

As scheduled a discovery conference convened today at 10:00 a.m. Representatives for CWM, Department staff, and RRG, and Ms. Wityrol participated. Counsel for the Tuscarora Nation participated. The purpose of the conference was to review the status reports that the parties filed on August 2 and 3, 2021 concerning the supplemental discovery demands served in early June 2021. In addition, the discussion included Ms. Wityrol's demands served upon CWM, which CWM disputes (*i.e.*, 9, 14, 15, 16, 17, 18, 19, and 23).

I. Kenneth Acks and Jim Bittner

Ms. Connolly explained that members of the Environmental Advocacy Clinic recently received information from Messrs. Acks and Bittner, and will begin to review the materials for information responsive to CWM's discovery demands.

II. Department Staff's Motion for Protective Order

During the conference, I noted that I received Ms. Witryol's, and Department staff's papers related to staff's motion for protective order. I advised that a written ruling would be forthcoming.

III. CWM's responses to Ms. Witryol

In an email dated August 2, 2021, Mr. Kuhn reported that CWM provided documents responsive to Ms. Witryol's discovery demands Nos., 1, 3, 4, 5, 6, 7, and 20. Attached to her email dated August 2, 2021, Ms. Wityrol commented about the materials provided in response to her discovery demands. During the conference, Ms. Wityrol requested additional time to review the responses. Ms. Wityrol explained that she will need to match up information provided by CWM with the manifest information available from the Department's and EPA's websites.

IV. Ms. Witryol's discovery demands served upon CWM

For the remainder of the conference, the discussion focused on the discovery demands that Ms. Witryol served upon CWM. Since the second conference held on July 22, 2021, Ms. Witryol revised No. 9. Based on today's discussion, Ms. Wityrol agreed to a further revision, which she provided as an attachment to an email dated August 5, 2021 (1:09 p.m.).

V. Discovery Update

By 3:00 p.m. on Wednesday, September 8, 2021, the parties who received discovery demands will advise me, via email and on notice to all parties, whether they have provided any responses.

VI. Next Conference

The next discovery conference is scheduled for 1:00 p.m. on Tuesday, September 14, 2021. In a separate email, the parties will receive the Webex invitation for the conference. The purpose of the conference will be to discuss any updates provided on September 8, 2021, as well as Ms. Witryol's discovery demands served upon CWM Nos. 9, 14, 15, 16, 17, 18, 19, and 23. We will also discuss timetables for providing any outstanding responses, as well as Ms. Witryol's interrogatories upon CWM.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
August 5, 2021

To: Service List revised July 2, 2021