

EXHIBIT 3

NORTHEAST BUSINESS UNIT

MODEL CITY

HISTORICAL LANDFILL VOLUMES

LANDFILL	YEARS OF OPERATIONS	NUMBER OF CELLS	#OF ACRES	WASTE CAPACITY CUBIC YARDS (CY)	WASTE PLACED (CY)
SLF 1	11/71 - 2/73	1	1	7,407	7,407
SLF 2	2/73- 9/73	1	1.5	18,868	18,868
SLF 3	10/73- 9/74	1	1.5	25,757	25,757
SLF 4	9/74- 9/75	1	3	24,489	24,489
SLF 5	9/75- 5/77	5	3	62,394	62,394
SLF 6	3/75- 9/78	5	4	62,209	62,209
SLF 7	9/78- 1/83	6	7	247,778	247,778
SLF 10	8/82- 12/84	5	5	160,550	160,550
SLF 11	8/84-6/90	14	25	920,000	920,000
SLF 12	10/90- 6/94	4	22	940,800	940,800

EnSol, Inc.
Environmental Solutions

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Professional Engineering • Business Consulting

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Transmitted Via Electronic Mail

October 30, 2013

Mr. Michael Mahar
District Manager
CWM Chemical Services, LLC
1550 Balmer Road, P.O. Box 200
Model City, New York 14107

Re: RMU-1 Quarterly Stormwater Management Evaluation
3rd Quarter 2013
Model City, New York
EnSol Project # 13-7001

Dear Mr. Mahar:

EnSol, Inc. (EnSol) has prepared this letter to present grading and stormwater management conditions found within the uncapped areas of Residuals Management Unit 1 (RMU-1) as of September 30, 2013 (the last day of operations for the 3rd quarter 2013), and to discuss the status of the grading and stormwater management issues previously identified as part of the 2nd Quarter 2013 evaluation. The 3rd quarter 2013 survey was performed by EnSol on September 26-30, 2013. For presentation purposes, this letter is formatted into three sections. Section I discusses the consumed and available in-place waste volumes within RMU-1 as of September 30, 2013. Section II presents a status update of the grading and stormwater management issues identified as part of the 2nd Quarter 2013 evaluation (as presented in EnSol's August 9, 2013 letter to CWM Chemical Services, LLC (CWM)). Section III presents the results of EnSol's evaluation of the 3rd quarter 2013 survey and identifies grading and stormwater management issues in uncapped areas of RMU-1 (i.e., Cells 6, 7/8, 9/10, 11/13, and 12/14), including any unresolved issues from the 2nd Quarter 2013 evaluation. Section III also presents recommended improvements to resolve any stormwater management and fill progression issues identified in the 3rd quarter 2013 survey evaluation.

It should be noted that the Phase VIII Final Cover project was substantially completed during the 3rd Quarter 2013. This project included completion of the final cover system from the RMU-1 perimeter berm up to the second surface water diversion berm along the southern and eastern slopes of RMU-1. As a result of this project, Basins H and J, and all perimeter infiltration channels have been closed, and have therefore been eliminated from this, and all subsequent, quarterly survey evaluations.

Section I – Consumed and Available In-Place Volumes within RMU-1 (as of September 30, 2013)

Previously, the quarterly fill volume was calculated by determining the difference between the remaining fill volume for the current period and the remaining fill volume for the previous period. However, the construction of the Phase VIII Final Cover project resulted in an unrecoverable volume loss of approximately 3,272 cy. Therefore, the 3rd quarter fill volume was not calculated in the historic manner. For the 3rd quarter 2013, the amount of fill placed during the 3rd quarter 2013 was calculated by a direct surface-to-surface comparison between a combined existing conditions surface (created by merging Phase VIII Final Cover project record top of waste survey data with the 3rd quarter survey data (active waste areas

Mr. Michael Mahar
 October 30, 2013
 Page 2 of 4

beyond the limits of Phase VIII construction)), and comparing it against the Permitted top of waste surface, resulting in the 3rd quarter 2013 fill volume of 11,275 cy. Adding the 3rd quarter 2013 fill volume (11,275 cy) to the 2nd quarter 2013 Total Fill Volume (3,408.943 cy), results in a net consumed in-place fill volume of 3,420,218 cy as of September 30, 2013.

The 3rd quarter 2013 Remaining Fill Volume was calculated by subtracting the 3rd quarter 2013 fill volume (11,275 cy) and Phase VIII unrecoverable volume loss (3,272 cy) from the 2nd quarter 2013 Remaining Fill Volume (108,370 cy), resulting in a 3rd quarter 2013 Remaining Fill Volume of 93,823 cy.

Section II – Status of Issues Identified in the 2nd Quarter 2013 Survey (June 28, 2013 Survey Date)

Presented below is a status update of stormwater and grading issues presented in the 2nd quarter 2013 evaluation letter, based on the results of the 3rd quarter 2013 survey performed by EnSol. For clarity, a brief description of each issue, as presented in the 2nd quarter 2013 evaluation letter, is presented below in italics, followed by the current status as determined by EnSol. The item numbers below correspond to those presented in the 2nd quarter 2013 evaluation letter.

1. *There are multiple areas of oversteepened slopes located on the eastern sideslope and basin areas of RMU-1. These oversteepened areas result from waste filling required to transition from the October 2009 (revised December 2009) FPP to the August 2011 (revised November 2011) FPP. As of August 9, 2013, the oversteepened slopes around the periphery of Basin H have been addressed through the construction of intermediate cover on the sides slopes located below the lower SWDB in Cell 11/13, thus filling in Basin H. Removal of the slopes was verified by EnSol as part of Intermediate Cover CQA Record survey on July 26, 2013. The oversteepened slopes in the vicinity of the drum disposal bench above Basin I, along with the other newly identified oversteepened slopes, shall be corrected through summer and prior to the 3rd Quarter 2013 survey.*

CWM personnel have addressed a number of oversteepened areas identified during the 2nd Quarter 2013 survey, however, two oversteepened areas remain on the eastern and western side slopes of Transitional Basin I/K. These oversteepened areas are resultant from transitional grading towards Permitted waste grades while maintaining adequate stormwater runoff containment capacity. Note that as of the date of this letter, all oversteepened areas have been corrected by CWM. See Recommendation item 1 below for further explanation of these areas.

Section III – Current Grading and Stormwater Management Conditions

EnSol has evaluated the current grading and stormwater management conditions within Cells 6 through 14 based on the 3rd quarter 2013 survey results. The permitted drainage area sizes and waste grades used for comparison with the quarterly survey are those depicted on the August 2011 (revised November 2011) FPP, and final permitted waste grades. Results of the 3rd quarter 2013 evaluation are presented below.

RMU-1 Current Grading Conditions

As shown on the 3rd quarter 2013 site plan (included as an attachment to this letter), waste is being placed in Cells 6 through 14 in general accordance with the August 2011 (revised November 2011) FPP, and the permitted final waste grading plan. Also, approximately 4.8 acres of uncapped areas have reached final Permit waste grades as of September 30, 2013. These areas have been capped as part of the Phase VIII Final Cover construction project, eliminating them from this, and all subsequent, quarterly survey evaluations.

During the 3rd quarter 2013 survey, two oversteepened areas were discovered on the eastern and western sideslopes of Transitional Basin I/K. Additionally, two minor overfilled areas were found on the top plateau of RMU-1. See the recommendations section below for an explanation of these areas.

RMU-1 Stormwater Management Evaluation

EnSol understands that the NYSDEC has requested that CWM evaluate the size of the RMU-1 drainage areas on a quarterly basis to verify compliance with the permitted drainage area sizes. For the purposes of this letter, the quarterly drainage areas under consideration are based on the 3rd quarter 2013 survey and are depicted on the attached site plan. The permitted drainage area sizes used for comparison with the quarterly survey drainage areas are those depicted on the August 2011 (revised November 2011) FPP.

Construction of the Phase VIII Final Cover project was substantially completed during the 3rd Quarter 2013, leaving only a single watershed drainage area within the active area of RMU-1. CWM operations is currently filling and grading Basin I towards final Basin K grades, therefore, for the purpose of this evaluation, the sole contact surface water runoff control basin will be referred to as Transitional Basin I/K. Currently, all contact surface water runoff is routed to Transitional Basin I/K. Table 1 below summarizes the operational characteristics of Transitional Basin I/K as of the 3rd Quarter 2013, based upon a hydraulic analysis performed by EnSol, and compares it with the currently permitted Basin 'K' drainage area and available storage capacity from the August 2011 (revised November 2011) FPP.

TABLE 1

	Basin 'K' Design Capacity Analysis ⁽¹⁾	Transitional Basin I/K Watershed Storage Capacity Analysis
	Aug.2011 (revised Nov. 2011) FPP	3 rd Qtr. 2013 (Sept. 30, 2013)
Watershed Area	7.68 acres	7.58 acres
Total Runoff Volume	3,015 CY	2,974 CY
Available Basin Storage Capacity ⁽²⁾	2,552 CY	6,005 CY
Peak allowable liquid Elevation ⁽²⁾	373.4 feet	371.81 feet
Operational Pumping Scenario	1,032 GPM (Discharge to Tank T-165)	N/A
Hydraulic Model Peak Liquid Elevation Achieved ⁽³⁾	371.01 feet	368.09 feet

Notes:

1. Basin 'K' Design Capacities are based upon the August 2011 (revised November 2011) FPP.
2. The peak allowable liquid elevation used to calculate the Basin Storage Capacities are based on a 12" freeboard below the lowest basin crest elevation at the top of slope on the eastern SWDB adjacent to Basin I/K.
3. Hydraulic Model Peak Liquid Elevation Achieved is based upon a hydraulic evaluation of the current drainage conditions using HydroCAD[®] v.10.00 hydraulic modeling software.

Mr. Michael Mahar
October 30, 2013
Page 4 of 4

As shown in Table 1, the current available capacity of Transitional Basin I/K provides adequate storage capacity for the stormwater runoff from the current watershed drainage area. At this time, real-time operational pumping is not required to manage the runoff from a 25-year 24-hour storm event (based on the 3rd Quarter 2013 survey).

Recommendations

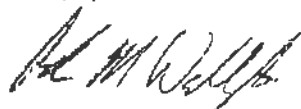
Based on EnSol's review of the 3rd quarter 2013 survey, the following grading and stormwater management items should be addressed by CWM as part of ongoing waste filling activities. The item numbers for the following recommendations appear on the attached site plan at the approximate locations associated with the items.

1. There are two areas of oversteepened slopes located on the eastern and western sideslope of Transitional Basin I/K. These oversteepened areas result from waste filling required to transition from the October 2009 (revised December 2009) FPP to the August 2011 (revised November 2011) FPP. CWM personnel were notified of the oversteepened areas and these areas were regraded to remove the oversteepened slopes, and EnSol verified the removal of the oversteepened areas on October 7, 2013.
2. Two small areas on the top plateau of RMU-1 have become overfilled as compared to the August 2011 (revised November 2011) Fill Progression Plan, and RMU-1 Permit Grades (maximum overfill is approximately 0.5). CWM personnel have addressed all of the overfilled areas, and EnSol verified their removal on October 7, 2013.

EnSol appreciates the opportunity to provide CWM with continued surveying and engineering services. Should you have any questions, please feel free to contact either Brian Shiah or myself at (716) 285-3920.

Sincerely,

ENSOL, INC.



Adam Wellington, LSIT
Project Surveyor

Attachments

cc: Mr. Steve Rydzyk - CWM Chemical Services, LLC.
Mr. Jonathan Rizzo - CWM Chemical Services, LLC.
Ms. Lori Sullivan - CWM Chemical Services, LLC.
Mr. Brian D. Shiah, P.E. - EnSol, Inc.
Mr. Keith Pellerin - EnSol, Inc.

EXHIBIT 4

CWM Chemical Services - Executed Orders

	Case Number	File No.	Date Addressed	Payable Penalty
1	R9-3149-90-06	90-55	6/8/1990	\$0
2	R9-2999-89-11	89-151	3/16/1992	\$50,000
3	R9-3502-91-07	91-51	9/6/1993	\$225,000
4	R9-4119-94-03	94-07	12/15/1994	\$12,000
5	R9-4280-95-07	95-19, 96-11, 96-12	12/5/1996	\$100,000
6	R9-20010921-67	01-66	10/22/2001	\$0
7	R9-4682-98-09	98-80	11/20/2002	\$100,000
8	900-03148A	-	12/5/2002	\$100,000
9	R9-20071030-75	07-72	11/12/2008	\$175,000
10	R9-20101004-40	10-48	2/25/2011	\$45,000
11	R9-20120312-16	12-16	4/18/2012	\$21,000

updated:

12/5/2013

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

IN THE MATTER OF A CERTAIN
VIOLATION OF 6 NYCRR Part 373

By:

ORDER ON CONSENT

CWM CHEMICAL SERVICES, INC.
1550 Balmer Road

File No. 90-55

Model City (Niagara County), New York 14107 R9-3149-90-06

Respondent

WHEREAS:

1. Pursuant to New York Environmental Conservation Law §§ 27-0703 and 27-0911 and Part 373 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (hereinafter referred to only by Part number), standards and permit requirements were established for the owners and operators of hazardous waste treatment, storage and disposal facilities.

2. Respondent owns and operates a hazardous waste treatment, storage and disposal facility, subject to Part 373, located at 1550 Balmer Road, Model City (Town of Porter), Niagara County, New York (hereinafter referred to as the Model City facility).

3. Respondent's Model City facility has a site-wide Part 373 permit, DEC No. 90-87-0476, for facility No. NYD049836679, effective July 31, 1989 and expiring on July 31, 1994, which authorizes, among other things, Respondent's continued operation of the aqueous waste treatment system (hereinafter AWTS) at said facility.

4. Respondent's Model City facility also has a State Pollution Discharge Elimination System (SPDES) permit which authorizes the discharge of treated aqueous wastewaters meeting the permit limits to the Niagara River via a 5.2 mile pipeline owned by Respondent.

5. The AWTs at the Model City facility provides treatment in tanks and surface impoundments, and it is used to treat aqueous gate receipts, leachate generated in the on-site active and closed hazardous waste landfills, and leachate (site-waters) from process area precipitation runoff. Modules V and VI of the site-wide Part 373 permit relate, in part, to the AWTs. Once treated through the AWTs, the effluent is stored in one of the fac ponds (surface impoundments) for prequalification and batch discharge pursuant to the SPDES permit.

6. Pursuant to § 3005(j)(3) of the Resource Conservation & Recovery Act (RCRA), the surface impoundments in the AWTs received a waiver from EPA for required retrofitting to meet the minimum technology standards in § 3004(o) of RCRA. As interpreted by EPA, surface impoundments with a § 3005(j)(3) waiver (but without a § 3004(o)(2) equivalency determination), are not eligible after May 8, 1990 to receive for treatment or storage any land disposal restricted wastes or national capacity variance waste unless such waste meets the applicable BDAT standard established for such waste.

7. The third-third land disposal restriction rules were promulgated by EPA on May 8, 1990 with a three (3) month national

capacity variance expiring on August 8, 1990. The third-third land disposal restriction rules include treatment standards for multi-source leachate, known as F-039, that will be applicable to the on-site leachate generated and treated at the Model City AWTS.

8. As presently designed and permitted, the AWTS accomplishes aggressive biological treatment and tertiary treatment in the surface impoundments (fac ponds and Tank 58). Once such treatment is completed, the effluent in the impoundments would meet the F-039 standards. As of May 8, 1990, however, the effluent must meet the F-039 standards before entering the impoundments.

9. Respondent has determined that the existing AWTS may not always achieve the level of treatment required by F-039 before the effluent enters Tank 58 and the fac ponds and that the AWTS should be modified by the addition of a metals polishing step and a bio-tower to provide aggressive biological treatment before the carbon filter rather than after as it is presently designed with aggressive biological treatment in Tank 58. These modifications are intended to accomplish the treatment now provided in the surface impoundments prior to the time that the effluent enters the carbon filters and then the surface impoundments. Respondent so notified the Department and EPA by letters dated April 23 and May 1, 1990.

10. On May 15, 1990, Respondent submitted an application to modify the site-wide Part 373 permit as it relates to the existing AWTs. That application was deemed complete on May 18, 1990, and notice thereof with a forty-five (45) day comment period was published on May 23, 1990.

11. In order to avoid possible non-compliance with the F-039 land disposal restriction rules and the minimum technology requirements for the AWTs surface impoundments, as modified by the § 3005(j)(3) waiver granted by EPA, Respondent stopped processing any gate receipts or landfill leachate on May 7, 1990. Landfill leachate pumping continued, with the leachate pumped into the three (3) (one million gallon total) leachate storage tanks in the AWTs. As of May 25, 1990, the leachate storage tanks were full to capacity due to unusually heavy rainfall during late April and May, and Respondent began processing leachate through the existing AWTs to the point of carbon filtration and then the treated effluent was and is being stored in a holding tank pending analytical testing to determine compliance with the F-039 BDAT requirements and, if necessary, off-site shipment for further treatment and disposal. Since May 25, 1990, Respondent has shipped treated leachate off-site for further treatment and disposal.

12. In order to mitigate potential adverse impacts to public health and the environment, to accomplish more reliable and better treatment of aqueous wastewaters, to assure the ability to continue pumping and treating landfill leachate and to

prohibit any potential violation of Respondent's permit requirements concerning the pumping and management of landfill leachate, the Department has determined that Respondent's AWTs needs to be modified so as to achieve all of the levels of treatment required by the land disposal restriction rules and minimum technology requirements before the time that the effluent enters the surface impoundment system.

13. Pursuant to ECL § 71-2727, the Commissioner may order remedial activities as he deems necessary and appropriate.

14. Respondent, has affirmatively waived its right to a hearing on this matter under ECL § 71-2727 and has consented to the issuance and entry of this order pursuant to the provisions of Environmental Conservation Law Article 27 and has agreed to be bound by the provisions, terms and conditions contained herein.

NOW, having considered this matter and being duly advised, it is

ORDERED:

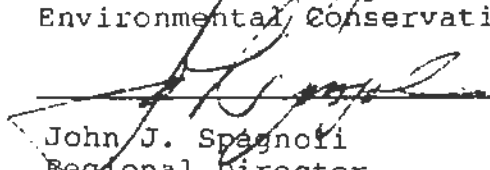
I. That immediately upon service of a conformed copy of this order upon Respondent, Respondent shall be bound by the compliance schedule contained in Schedule A annexed hereto.

II. That all submissions required herein shall be made to the Regional Engineer, Division of Solid & Hazardous Waste, Department of Environmental Conservation, 600 Delaware Avenue, Buffalo, New York 14202-1073.

III. That the provisions, terms and conditions of this order shall be deemed to bind the Respondent and its agents, servants, employees, successors and assigns.

Dated: Buffalo, New York
June 2, 1990

Thomas C. Jorling, Commissioner
New York State Department of
Environmental Conservation



John J. Spagnoli
Regional Director

Consent by Respondent

Respondent hereby consents to the issuance and entry of the foregoing order, waives its right to a hearing as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Dated: June 7, 1990

Respondent, CWM Chemical Services, Inc.

By: John Stanulonis

John Stanulonis
General Manager

STATE OF NEW YORK)
COUNTY OF NIAGARA) ss

On the 7 day of June, 1990 before me personally came John Stanulonis to me known, who being by me duly sworn, did depose and say that he resides at 8422 Hidden Oaks Drive, East Amherst, New York 14051; that he is the General Manager of the CWM Chemical Services, Inc. Model City facility, the corporation described in, and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

Gracie A. DuPont
Notary Public

GRACIE A. DUPONT NO 4802545
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires July 31, 1991

SCHEDULE A

Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Date</u>
1. Begin construction of the modification to the AWTS to add the interim metals polishing process and the bio-tower	within three (3) days of Respondent's execution of this order.
2. Submit bi-weekly written progress reports to the Regional Engineer	within two (2) weeks of the start of construction and every two (2) weeks thereafter to conclusion.
3. Submit as-built drawings and engineer's certification to Regional Engineer	within one (1) week of completion of construction
4. Submit to Regional Engineer written procedures for shakedown and checkout of modified AWTS	within two (2) weeks of start of construction
5. Conduct shakedown and checkout of modified AWTS	Upon submission of as-builts and engineer's certification
6. Upon completion of the construction of the modification to the AWTS and its shakedown and checkout as specified in paragraphs 1 - 5 hereof, Respondent shall not operate the AWTS using the modified treatment processes without first obtaining the permit modification referenced in paragraph 11 of this Order. Until such time, Respondent shall continue to operate the AWTS as permitted.	
7. Respondent acknowledges and agrees that it is proceeding with modification construction at its own risk and that if the permit modification referenced in paragraph 11 of this Order, as issued, is at variance to the modification made pursuant to this Order, Respondent must make any necessary changes thereto to conform the the actual modification to the issued permit modification.	

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this 16th day of March, 1992, between the New York State Department of Environmental Conservation (the "Department"), and CWM Chemical Services, Inc. ("CWM").

Whereas, the Department is charged with the responsibility of administering and enforcing the provisions of New York Environmental Conservation of Law Article 27, Titles 7 and 9, and its implementing regulations, 6 NYCRR Parts 370-373, applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) located in the State of New York; and

Whereas, CWM is the owner and operator of a hazardous waste TSDF located in the town of Porter, Niagara County, New York, known as the Model City facility; and

Whereas, the Model City facility has obtained federal and New York state permits to operate, including permits issued by the Department pursuant to Part 373 for the operation of a landfill known as SLF 12; and

Whereas, the Department and CWM have agreed to resolve a certain enforcement proceeding, File No. 89-151, Case No. R9-2999-89-11, relating to the Model City facility wherein the Department has alleged that CWM violated the provisions of 373-2.3(b) and 373-2.14(c)(9) in that CWM failed to prevent the release or escape of dust containing hazardous wastes or hazardous constituents from certain landfill cells; and

Whereas, CWM, in that proceeding, denied that there were any violations, in part, on the basis that the cited regulations, 373-2.3(b) and 373-2.14(c)(9), fail to contain adequate notice of the substance of the rule due to the inherent uncertainty in meaning resulting from the texts thereof; and

Whereas, the Department and CWM, as part of the settlement of the aforesaid enforcement proceeding, have agreed to enter into this MOU for the purpose of establishing a specific procedure relative to the substantive requirements of 373-2.3(b) and 373-2.14(c)(9) as they apply to new waste streams received for land disposal at the Model City facility from and after the date hereof.

Now, therefore:

1. Applicability. This MOU shall only apply to new waste streams approved for land disposal and received at the Model City facility after the date hereof. New waste stream shall mean a stream which has not been subject to actual disposal, even though said waste stream might have had Department approval, at the Model City facility prior to the date hereof.

2. Fugitive Dust Control Plan. This MOU shall have no effect on the operation or applicability of the Model City Fugitive Dust Control Plan, except to the extent that any future revision to the Fugitive Dust Control Plan incorporates certain provisions of this MOU consistent with the terms hereof.

3. Duty to Comply. This MOU shall not relieve CWM of its duty to comply with any and all regulations and permit conditions applicable to its land disposal operations at the Model City facility, including 373-2.3(b) and 373-2.14(c)(9).

4. Procedure to Determine Appropriate Measures to Minimize Dust Releases and Control Wind Dispersal of Particulates. The Department and CWM shall proceed as follows on a case-by-case basis in attempting to determine appropriate measures to minimize dust releases and to control wind dispersal of particulates:

a. It shall be CWM's responsibility, through application of the waste analysis plan procedures and other waste receipt approval procedures, to identify those new waste streams which present a potential dust control problem.

b. It shall be CWM's responsibility to visually inspect each shipment of a new waste stream to assess whether the load presents a potential dust control problem.

c. It shall be CWM's responsibility to document, in those instances to which this MOU is applicable, its compliance with 4.a. and b. above.

d. When CWM identifies a new waste stream with a potential dust control problem, it shall be CWM's responsibility to develop a waste stream specific proposed dust control action plan, including such laboratory or other bench scale tests as may be appropriate.

e. Prior to the land disposal of the first load of a new waste stream identified by CWM as having a potential dust control problem, CWM may consult with the Department's Region 9 Hazardous Waste Engineer or his designee concerning the new waste stream with a potential dust control problem and CWM's proposed dust control action plan. The Department shall provide

CWM with its advice and comments, if any, including whether the Department believes that different or other measures should be utilized. In addition, the Department shall indicate whether it approves or disapproves of the proposed dust control action plan.

f. Following the aforesaid consultation with the Department, it shall be CWM's responsibility to determine how to manage the disposal of the new waste stream and to conduct a trial disposal of the new waste stream upon notice to the Department.

g. In the event of a dust release during the trial disposal, CWM shall immediately cease land disposal of any additional loads of the new waste stream until it develops a revised dust control action plan and proceeds in accordance with paragraphs 4.e. and f. above.

5. Compliance/Enforcement Considerations. In the event of a dust release during disposal of a new waste stream, the following considerations shall inform the determination whether CWM is in compliance with 373-2.3(b) and 373-2.14(c)(9):

a. Upon the determination that CWM has proceeded to implement the approved dust control action plan for a new waste stream developed through the procedures set forth herein (and after successfully completing a trial disposal in accordance with the procedures herein), the Department agrees that a dust release arising from disposal of such a waste stream while properly implementing the approved dust control action plan and fulfilling all other regulatory and permit-related requirements shall not be the subject of an enforcement action.

b. In the event of a dust release, CWM shall proceed in accordance with paragraph 4.g.

Dated: March 16, 1992

New York State Department of
Environmental Conservation

By: 

CWM Chemical Services,
Inc.

By: 

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X
In the Matter of the Certain Violations of 6 New York
Codes, Rules and Regulations (NYCRR) Part 373 by:

CWM CHEMICAL SERVICES, INC.
1550 Balmer Road
Model City, New York 14107

(Niagara County)

Respondent

ORDER
ON
CONSENT

FILE
NO. 89-151

R9-2999-89-11
-----X

WHEREAS:

1. Pursuant to Part 373 of Title 6 of the Official
Compilation of Codes, Rules and Regulations of the State of New
York (hereinafter referred to only by Part number), and Article
27 of the Environmental Conservation Law, Section 27-0703,
requirements were established for owners and operators of
Hazardous Waste Landfill Facilities.

2. Respondent owns, operates and/or maintains control
of a hazardous waste landfill facility in the State of New York
subject to 6 NYCRR Part 373, to wit its secure landfill facility
located at 1550 Balmer Road, Town of Porter, Niagara County, New
York.

3. The Department of Environmental Conservation
hereby alleges that Staff monitors, stationed on site at
Respondent's facility, have reported Respondent's alleged failure
to prevent the release of hazardous waste from secure landfill
No. 11C on five occasions as set forth on Schedule A attached
hereto and incorporated herein, and have reported Respondent's

alleged failure to prevent the release of hazardous waste from secure landfill No. 12 on two occasions as set forth on Schedule A attached hereto and incorporated herein.

4. Respondent hereby denies the allegations contained in paragraph 3 above and on Schedule A attached hereto. It is expressly agreed and understood that this Order shall not give rise to any finding of fact or presumption of law which inures to the benefit of any third person and shall not be deemed an admission of any kind on the part of Respondent, its officers, directors or employees. Respondent hereby waives its rights to a hearing on these matters as provided by law and consents to the issuance and entry of this Order and agrees to be bound by the terms, conditions and provisions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED:

I. THAT there is hereby imposed upon Respondent a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00). Upon execution of this Order, Respondent shall pay to the Commissioner Fifty Thousand Dollars (\$50,000.00) by certified check or money order made payable to the Commissioner of the Department of Environmental Conservation, 270 Michigan Avenue, Buffalo, New York 14203-2999.

II. THAT, upon payment of the civil penalty set forth in paragraph I, above, Respondent, including its officers, directors and employees, shall be fully discharged from any and all civil or criminal liability for the violations covered by this Order and for any and all alleged or existing violations

arising from the acts or omissions described on Schedule A attached to this Order.

III. THAT, within 60 days of service of a conformed copy of this Order upon Respondent, Respondent shall submit a revised and updated version of its Fugitive Dust Control Plan to incorporate operating changes and other procedures implemented by Respondent to comply with the provisions of 6 NYCRR 373-2.3(b) and 373-2.14(c)(9). Such revised and updated Fugitive Dust Control Plan may also incorporate, as appropriate, provisions of the Memorandum of Understanding between Respondent and the Department executed concurrently herewith regarding implementation of the preventive and preparedness requirements in 373-2.3(b) and 373-2.14(c)(9).

IV. THAT immediately upon service of a conformed copy of this Order upon Respondent, Respondent shall be bound as hereafter provided by this Order and Schedule B. As modified by Schedule B and subject to the applicability of the Memorandum of Understanding to new waste streams, the Fugitive Dust Control Plan shall continue to apply to all waste streams at the Facility. Except as provided by Paragraph III above, the MOU shall apply solely to new waste streams as defined in section 1 of the MOU.

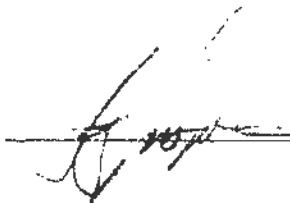
V. THAT all submissions required herein shall be made to the Regional Engineer, Division of Solid and Hazardous Waste, Department of Environmental Conservation, 270 Michigan Avenue, Buffalo, New York 14203-2999.

VI. THAT the provisions, terms and conditions of this Order shall be deemed to bind the Respondent, and its successors and assigns.

DATED: BUFFALO, NEW YORK

April 16, 1992

THOMAS C. JORLING, Commissioner
New York State Department of
Environmental Conservation



S C H E D U L E A

<u>Alleged Violation (date)</u>	<u>Authority</u>
<u>SLF11C</u>	
1. Hazardous waste dust episode in southwesterly direction from Cell I (April 26, 1989)	Parts 373-2.14 (c)(9); 373-2.3(b)
2. See above item (April 28, 1989)	Parts 373-2.14 (c)(9); 373-2.3(b)
3. Hazardous waste dust at Cell IV left landfill and spread over south roadway and trees (July 13, 1989)	Parts 373-2.14 (c)(9); 373-2.3(b)
4. Hazardous waste dust departed landfill from Cell III (July 31, 1989)	Parts 373-2.14 (c)(9); 373-2.3(b)
5. Disposal of PCB contaminated waste at Cell IV generated hazardous waste dust possibly impacting upon employees (August 21, 1989)	Parts 373-2.14 (c)(9); 373-2.3(b)
<u>SLF12</u>	
1. Potliner dust episode in Cell B on July 9, 1991. Truck driver dumped potliner in wrong cell and adequate dust suppression was not used	Parts 373-2.14 (c)(9); 373-2.3(b)
2. Potliner dust episode in Cell A on August 2, 1991	Parts 373-2.14 (c)(9); 373-2.3(b)

-6-

S C H E D U L E B

Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Date</u>
1. Modify the site wide dust control plan and implement modifications as follows:	2 weeks after date of execution of this Order
a. Landfill Superintendent or an individual designated and trained for such purpose shall directly supervise and observe all disposal activities of bulk loads within the landfill.	
b. Upon detection of a dust prone load by the bulk sampler, the load shall be directed to the stabilization area for initial wetting; then the load will proceed to the landfill where the water spray truck will be positioned in the disposal cell to wet the load during unloading if necessary. Upon completion of the unloading of the waste, cover material shall be applied as appropriate.	
c. Any excess or free liquid resulting from the operations contemplated by subparagraphs (a) and (b) above shall be treated as liquid from a precipitation event and shall not be deemed to constitute the disposal of free liquids or bulk waste containing free liquids.	
d. Collect on a daily basis all plastic debris escaping landfill boundaries and attaching to the surrounding fence line.	
e. Inspect the landfill containment fence line on a daily basis for deterioration, and document results in a daily log. Repair any defects detected on the fence line, as needed, on a daily basis.	

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent Cum Chemical Services
 By John J. Stanulonis
 Title General Manager
 Date 3-16-92

(Seal)

Corporate

State of New York)
 County of Niagara)

On this 16 day of March, 1992, before me personally came John J. Stanulonis to me known, who being by me duly sworn did depose and say that he resides at 8422 Hidden Oaks Drive
East Amherst, NY that he is the General Manager of Cum Chemical Services the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

Individual

State of)
 County of)

Gracie A. Scinto
 NOTARY PUBLIC
 GRACIE A. SCINTO NO 4802545
 Notary Public, State of New York
 Qualified in Niagara County
 My Commission Expires July 31, 1992

On this _____ day of _____, 19____, before me came _____, to be known and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

NOTARY PUBLIC

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION
-----X

In the Matter of the Certain Violations of 6 New York Codes,
Rules and Regulations (NYCRR) Part 373 by:

CWM CHEMICAL SERVICES, INC.
1550 Balmer Road
Model City, New York 14107

ORDER
ON
CONSENT

(Niagara County)

FILE
NO. 91-51

Respondent

R9-3502-91-07

-----X
WHEREAS:

1. Pursuant to Article 27 of the Environmental Conservation Law, Section 27-0703 and Part 373 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (hereinafter referred to only by Part number), requirements were established for owners and operators of hazardous waste management facilities.

2. Respondent, CWM Chemical Services, Inc., operates and/or maintains control of a hazardous waste management facility in the State of New York subject to 6 NYCRR Part 373. Among the hazardous waste management units at Respondent's Model City facility are surface impoundments also known as the North Salts Area, the East/West Salts area and Lagoons 1,2, 5 and 7 and a hazardous waste landfill facility known as SLF-12; all of which are located at 1550 Balmer Road, Town of Porter, Niagara County, New York.

3. On July 31, 1989, the Department of Environmental Conservation ("Department") issued Permit No. 90-87-0476 to govern site-wide operations at the Model City Facility. On

-2-

November 9, 1989, the Department issued Permit No. 90-86-1137 to govern construction and operation of SLF-12 and corrective action at the Model City Facility.

4. It is the Department's position that 6 NYCRR 373-3.11(b) (1) and Module II, Condition E of Permit No. 90-87-0476 are applicable to the inactive surface impoundments identified in paragraph 2 supra and that Respondent is required to maintain a minimum of two feet (2') of freeboard at the above referenced surface impoundments (Attachment B, table F-10).

5. The Department alleges that on those dates and at the surface impoundments as set forth in the attached Schedule B, the Respondent has violated the regulatory requirement and permit condition set forth in paragraph 4 supra.

6. The Department, pursuant to 6 NYCRR Part 373-2.14(c)(1)(ii) and Permit No. 90-86-1137, Module IV, Conditions B(2) and B(2)(a), alleges that Respondent allowed leachate levels to exceed the one foot limit specified in the above regulation and permit condition on the dates and in the standpipes set forth in the attached Schedule A.

7. The Department, pursuant to 6 NYCRR Part 373-1.6(a)(1) and Permit No. 90-87-0476, Module III, Condition D(4)(d), alleges that Respondent failed to provide for the dewatering of the East/West Salts areas in accordance with the schedule contained in the Interim Closure Plan as approved by the Department and the U. S. Environmental Protection Agency in a letter dated April 6,

-3-

1992 and, as amended, extending the dewatering deadline to January 2, 1993, by letter dated November 24, 1992.

8. Permit No. 90-86-1137 set forth a Special Condition for Ambient Air Monitoring contained in Appendix H-1 thereto which states, "A NYS DEC - approved ambient monitoring network shall be designed within 180 days after issuance of the construction permit. No construction shall occur beyond that date without an approved network".

9. The Department contends that the 180 day time limitation of the permit condition referenced in the preceding paragraph expired on May 9, 1990, and that Respondent continued construction activities beyond such date in violation of its permit. Department approval of the ambient monitoring network occurred on June 29, 1990.

10. The Department alleges that Respondent's failure to identify cyanide as a key control constituent in the November 1991 biennial recharacterization of the leachate resulted in a series of discharges from Tank 125 to Facultative ponds 1&2 and transfers from Facultative ponds 1&2 to Facultative pond 8 which did not meet the F039 cyanide treatment standard which is specified in 6 NYCRR Part 376.4(d). Compliance with the F039 treatment standards is required if placement in a land disposal unit occurs. The facultative ponds being surface impoundments are defined as land disposal units in 6 NYCRR Part 376.1(b)(1)(iii).

-4-

11. Respondent denies the alleged violations and alleges as follows with regard to the particulars of each of the alleged violations:

- a. The permit for SLF 12 at the Model City consists of the Part 373 permit issued by the Department and the HSWA permit issued by EPA Region II. As expressly stated in the HSWA permit, the two permits together "constitute the RCRA permit" for SLF 12. The HSWA permit was effective on December 31, 1989. Respondent contends that the 180 days for approval of the ambient air monitoring network commenced on January 1, 1990 and expired on July 1, 1990. Thus, the Department's written approval dated July 2, 1990 and effective as of June 29, 1990 was timely.
- b. The Lagoons and Salts areas referenced in paragraph 2 supra are "hazardous waste management units" as that term is defined in 6 NYCRR 370.2(b)(80). The Model City facility is a "hazardous waste management facility" as that term is defined in 370.2(b)(79). Since July 1989, the Model City facility has been operated under a permit issued by the Department pursuant to Part 373-2. Thus, Respondent contends that the provisions of Part 373-3 were no longer applicable

-5-

to the subject units at the times in question and there is no basis to assert that Respondent violated 6 NYCRR 373-3.11(b)(1) and Permit 90-87-0476. If 6 NYCRR 373-3.11(b)(1) is applicable to the units in question, Respondent further contends that said units would also be subject to the closure and post-closure standards in Part 373-3. Respondent also contends that Module II, Condition E of permit No. 90-87-0476 requires regular inspection of essentially all areas of the facility, including the inactive surface impoundments, that Attachment B of the permit requires that certain actions be taken when the inspections find specified conditions, and that Respondent conducted the required inspections and initiated the appropriate response actions.

- c. The SLF 12 leachate standpipe exceedances in May and July 1992 resulted from the cumulative effect of a number of mitigating circumstances including the need to respond to a last minute change in an EPA regulatory interpretation necessitating an expedited interim upgrade to the aqueous waste treatment system resulting in a decrease in throughput capacity, the need to design further system changes to meet the same and other new

-6-

regulatory requirements (F039 Standards), extraordinary rainfall over several months (an all time record of 7.3 inches in July and 13 inches between July and September), a process upset (involving acetone levels in the treated wastewater), increased demand for treatment due to dewatering of lagoons and salts areas, and delay in obtaining the necessary EPA approval to authorize alternate leachate treatment in the ordinary course (i.e., Respondent's July 21 request was not granted until September 11). At the same time, Respondent has undertaken a number of measures to maintain compliance and regain lost throughput capacity, including rapid carbon filter changes, air sparging of the T-125 contents, shipping leachate off-site for disposal, installation of a new sand filtration system, conversion of a tank to a second biotower, upgrading piping and pumps, conduct of a number of treatability and pilot studies, and off-site disposal of filtercake at a collective cost of approximately \$5 million. Respondent derived no economic benefit from the exceedances.

- d. The schedule for dewatering the lagoons and salts areas was based upon a Plan and Schedule prepared

-7-

by Respondent and approval by the Department. That Schedule was conditioned on minimal delays due to inclement weather and timely agency approval of improvements to the aqueous waste treatment system. Respondent began pumping the lagoons before the Plan and Schedule were approved. Between July and September 1992, the facility received 13 inches of rain. That, coupled with the delays in Department approvals and CWM's implementation of needed system upgrades, left Respondent with the inability to meet the Schedule, and extensions were requested. After granting the first extension request, the Department did not respond to the second or third request. Respondent contends that Permit No. 90-86-1137, Module III, Condition C.1 is applicable to its requests for extensions and that the Department's failure to follow the procedures set forth therein to establish a final schedule for the dewatering of the East/West Salts area bars the Department from asserting that any violation has occurred.

- e. Cyanide analysis was performed in 1989 as part of the initial characterization of the raw leachate from SLF 12, and the results were supplied to the

-8-

Department. The initial cyanide result was less than 0.5 of the F-039 standard for cyanide. Cyanide analysis was also performed in the 1991 biennial recharacterization of the SLF 12 raw leachate. The total cyanide level at that time was 0.975 ppm, i.e., more than 0.5 the standard. Based upon the Department approved Model City Waste Analysis Plan (WAP), a value above 0.5 of the standard would trigger another analysis of the raw leachate 6 months later to monitor for the presence of the constituent. Pursuant to the WAP, a constituent present in the raw leachate at less than 0.5 the standard did not become a key control constituent. Thus, at the time in question, there was no basis to contend that cyanide should have been determined to be a key control constituent. There is no data to indicate that there was a release of the treated leachate to Fac pond 2 or a transfer of the treated leachate to Fac pond 8 which did not meet the F-039 standard. In addition, in establishing its leachate monitoring program, Respondent relied upon the detailed F-039 information in the preamble to those regulations which was published in the Federal Register. The constituent tables contained in the preamble to

-9-

the Federal Register are in error in that total cyanide is not listed as a constituent. However, the accurate version of the constituent tables were set forth at the back of the aforementioned Federal Register. Moreover, with regard to the treated leachate that was discharged to Fac pond 1; there was no release to the environment, and it resulted in no harm or threat of harm to public health or the environment. Upon discovery of the cyanide levels in excess of the F-039 standard, Respondent took immediate action to cease further discharges to Fac pond1 and to revise its treatment and monitoring procedures to achieve and maintain compliance with the F-039 standards.

12. The Department has reviewed and considered the foregoing assertions on the Respondent's behalf as set forth in paragraph 11, but the Department again affirms it's allegations as set forth in paragraphs 4 thru 10.

13. It is expressly agreed and understood that this Order shall not give rise to any finding of fact or presumption of law which inures to the benefit of any third person and shall not be deemed an adjudication of any fact or legal conclusion nor an admission of any kind on the part of Respondent, its officers, directors or employees in regard to the alleged violations set forth in paragraphs 4 thru 10. Respondent hereby waives its

-10-

right to a hearing on these matters as provided by law and consents to the issuance and entry of this Order and agrees to be bound by the terms, conditions and provisions hereinafter set forth.

14. The entry of this Order shall be in full and final settlement and compromise of any and all alleged violations related to the matters referred to in paragraphs 4, 5, 6, 7, 8, 9 and 10 above.

NOW, having considered this matter and being duly advised, it is ORDERED:

I. THAT Respondent shall pay the sum of \$ 225,000.00 in full and final settlement of the alleged violations set forth above. Upon execution of this Order, Respondent shall pay to the Commissioner \$ 225,000.00 by certified check or money order made payable to the Commissioner of the Department of Environmental Conservation, 270 Michigan Avenue, Buffalo, New York 14203-2999.

II. THAT, upon payment of the amount set forth in paragraph I, above, Respondent, including its officers, directors and employees, shall be fully discharged from any and all civil or criminal liability for the alleged violations set forth in paragraphs 4 - 10 above.

III. THAT immediately upon service of a conformed copy of this Order upon Respondent, Respondent shall be bound as provided herein by Schedule C attached hereto.

-11-

IV. THAT the provisions, terms and conditions of this Order shall be deemed to bind the Respondent, and its successors and assigns.

DATED: Buffalo, New York

September 6, 1995

A handwritten signature in black ink, appearing to read "John J. Gargano". The signature is fluid and cursive, with a prominent initial "J" and a long, sweeping underline.

New York State Department of
Environmental Conservation

-12-

S C H E D U L E A

The following comprises a list of the dates and standpipes in which there was a failure to maintain the level of leachate below one foot (1'):

Standpipe No. 51:

5/4/92, 5/5/92, 5/6/92, 5/7/92, 5/8/92, 5/9/92, 5/10/92,
5/11/92, 7/15/92, 7/16/92

Standpipe No. 52:

5/4/92, 5/5/92, 5/6/92, 5/7/92, 5/8/92, 5/9/92, 5/10/92,
5/11/92, 7/15/92, 7/16/92

Standpipe No. 53:

5/3/92, 5/4/92, 5/5/92, 5/6/92, 5/7/92, 5/8/92, 5/9/92,
5/10/92, 5/11/92, 7/15/92, 7/16/92

Standpipe No. 54:

5/3/92, 5/4/92, 5/5/92, 5/6/92, 5/7/92, 5/8/92, 5/9/92,
5/10/92, 5/11/92, 7/15/92, 7/16/92

-13-

S C H E D U L E B

The following comprises a list of the dates and surface impoundments at which there was a failure to maintain a minimum of two feet (2') of freeboard:

North Salts Area:

3/8/91, 3/9/91, 3/10/91, 3/11/91, 3/20/91, 3/21/91, 3/22/91

Lagoon 1:

3/11/91, 3/12/91, 3/13/91, 3/14/91, 3/15/91, 3/16/91,
3/17/91, 3/18/91, 3/19/91, 3/22/91, 3/23/91, 3/24/91,
3/25/91

Lagoon 2:

3/11/91, 3/12/91, 3/13/91, 3/14/91, 3/15/91, 3/16/91,
3/17/91, 3/18/91, 3/20/91, 3/21/91, 3/23/91, 3/24/91,
3/25/91

Lagoon 5:

3/8/91, 3/9/91, 3/10/91, 3/11/91, 3/12/91, 3/13/91, 3/14/91

Lagoon 7:

3/8/91, 3/9/91, 3/10/91, 3/11/91, 3/12/91, 3/13/91, 3/14/91,
3/15/91, 3/16/91, 3/17/91, 3/18/91, 3/18/91, 3/19/91,
3/20/91, 3/21/91, 3/22/91, 3/23/91, 3/24/91, 3/25/91

-14-

S C H E D U L E C

Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Date</u>
1. Apply "soil binder" to exposed salts both in North and East/West Salts areas.	Done
2. Remove and process minimum of Between 2,225,000 gallons of liquid from East/West Salts area.	Done
3. Complete dewatering of East/West Salts areas, such that depth of liquid in such area is no greater than one foot.	Done
4. Maintain both North and East/West Salts areas in dewatered condition, such that depth of liquid in these areas is no greater than one foot.	Until both areas are completely closed pursuant to Department-approved closure plan
5. Modify the Waste Analysis Plan to incorporate the following: The effluent from the AWT which is transferred <u>to</u> Tank 58 or Tank T125 shall be monitored for F039 compliance. A 24 hour composite sampler shall be used to collect the effluent samples in line between the AWT process tanks and the batch discharge tanks (Tank 58 or T125). The composite sample shall be of sufficient quantity to allow a split with the Department and respondent must set up a schedule for the removal of the sample which allows the Department on-site monitors to be present. <u>No</u> discharge from Tank 58 or Tank	Immediately

-15-

T125 to the facultative ponds shall occur until the daily composite sampling data covering the period of batch accumulation has been reviewed and approved by CWM and the Department on-site monitors.

- | | | |
|----|--|---------------------------------|
| 6. | Modify the Waste Analysis Plan to add cyanide as a key control parameter to be checked on a daily basis in the effluent which is treated through the AWT and sent to the batch discharge tanks (Tank 58 and Tank T125). | Immediately |
| 7. | Test the sediments in Facultative pond 8 for cyanide and PCB's to determine if Removal as specified in 6 NYCRR Part 376.1(d)(ii)(b) is required. Contact the Department on-site monitors prior to sampling the pond sediments to arrange for split-sampling. | Done |
| 8. | With Department representatives present, obtain split-samples of raw leachate from Tank T101. Obtain an analysis for <u>all</u> the wastewater constituents listed in 6 NYCRR Part 376.4(b). The laboratory must send a copy of the report directly to the Department. | When the November 1993 biennial |

CONSENT BY RESPONDENT

Without any adjudication of fact or law and without admitting any fact or alleged violation, Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent

CWM CHEMICAL SERVICES, INC.

John Stanulonis

By

Title

GENERAL MANAGER

Date

JULY 30, 1993
(Seal)

Corporate

State of _____)
County of _____)

On this ____ day of _____, 19____, before me personally came _____ to me known, who being by me duly sworn did depose and say that he resides at _____ that he is in the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

Notary Public

Individual

State of New York)
County of Niagara)

On this 30 day of July, 1993, before me came John Stanulonis, to me known and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

Gracie A. Scuito

Notary Public

Scuito
GRACIE A. DUPONTINO 4802545
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires July 31, 1994

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Certain Violations of 6 New York Codes, Rules and Regulations (NYCRR) Part 373 by:

CWM CHEMICAL SERVICES, INC.
1550 Balmer Road
Model City, New York 14107

(Niagara County)

ORDER
ON
CONSENT

FILE NO. 94-07
R9-4119-94-03

Respondent

WHEREAS:

1. Pursuant to Article 27 of the Environmental Conservation Law, §27-0703 and Part 373 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (hereinafter referred to only by Part number), requirements were established for owners and operators of hazardous waste management facilities.

2. Respondent, CWM Chemical Services, Inc., operates and/or maintains control of a hazardous waste management facility located at 1550 Balmer Road, Town of Porter, Niagara County, New York. The facility is subject to 6 NYCRR Part 373.

3. Respondent's Model City facility has a site wide Part 373 permit, DEC No. 90-87-0476, for facility No. NYDO49836679 effective July 31, 1989 and expiring on July 31, 1994.

4. The Department conducted a RCRA inspection at the facility between September 13th and 24th, 1993 to determine the Respondent's compliance status with the 6 NYCRR Part 373 regulations.

5. Respondent failed to submit the 1992 calendar year,

Annual Hazardous Waste Exporter Report before the March 1, 1993 deadline specified in §372.5(f)(1). Respondent's report was dated April 15, 1993.

6. Respondent failed to remedy deterioration of the east berm of SLF-10 in violation of §373-2(f)(3). Respondent failed to follow the prescribed plan of action for remediation of such conditions which is contained in the HSWA permit Post Closure Monitoring Plan.

7. Respondent failed to separate twenty drums containing incompatible hazardous wastes that were stored in Respondent's trailer #4710 in the trailer storage area in violation of Part 373-3.9(g)(3). While DOT regulations allow the shipment of these wastes in trailers such as Trailer #4710, the trailer storage area is a permitted hazardous waste storage area and the incompatible wastes were stored side by side in the trailer for a period of nearly six days.

8. Respondent has affirmatively waived its right to a hearing on this matter under ECL §71-2727 and has consented to issuance and entry of this Order pursuant to the provisions of Environmental Conservation Law Article 27 and has agreed to be bound by the provisions, terms and conditions contained herein.

NOW, having considered this matter and being duly advised, it is ORDERED:

I. THAT Respondent is hereby assessed a civil penalty in the amount of Twelve Thousand Dollars (\$12,000.00) in full and final settlement of the violations set forth above.

II. THAT within 30 days of the execution of this Order, Respondent shall pay to the Department Twelve Thousand Dollars (\$12,000.00) by certified check or money order made payable to the Department of Environmental Conservation, 270 Michigan Avenue, Buffalo, New York 14203-2999.


DATED: Buffalo, New York

~~November 15, 1994~~

December 15 1994



New York State Department of
Environmental Conservation


by: John J. Spagnoli
Regional Director

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent CWM - Chemical Services Inc.
Michael P. McInerney

By Michael P. McInerney

Title Acting President - General Manager

Date November 28 1994

(Seal)

Corporate

State of New York)
 County of Niagara)

On this 28 day of November, 199 , before me personally came Michael P. McInerney to me known, who being by me duly sworn did depose and say that he resides at 28 Carol Lane, Grand Island, N.Y. that he is the Act. President / Gen Mgt of Cwm Chemical Services the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

Grace A. Scinto
 NOTARY PUBLIC

Individual

State of New York)
 County of Niagara)

On this 28 day of November, 199 , before me came and Michael P. McInerney , to me known known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

GRACE A. SCINTO NO. 408846
 Notary Public, State of New York
 Qualified in Niagara County
 Commission Expires July 31, 1996

Grace A. Scinto
 NOTARY PUBLIC

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Article 27 of the
Environmental Conservation Law (ECL) by

CWM CHEMICAL SERVICES, INC.
1550 Balmer Road
Model City, New York 14107

ORDER
ON
CONSENT

(Niagara County)

Respondent

FILE NO. 95-19,
96-11, 96-12
R9-4280-95-07

WHEREAS:

1. Article 27 of the Environmental Conservation Law of the State of New York (hereinafter "ECL"), sets forth certain requirements governing the regulation of hazardous waste management facilities and empowers the New York State Department of Environmental Conservation (hereinafter "Department" or "NYSDEC") to adopt and promulgate rules and regulations. Such rules and regulations are found at Part 373 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (hereinafter referred to as "6 NYCRR" and by part number).

2. Respondent owns, operates and/or maintains control of a hazardous waste treatment, storage and disposal facility (hereinafter "Facility") in the State of New York subject to 6 NYCRR Part 373. Among the hazardous waste management units at Respondent's Model City facility are hazardous waste landfill facilities known as landfills SLF #1-6, landfills SLF #11 and #12 and Landfill RMU #1; all of which are located at

1550 Balmer Road, Town of Porter, Niagara County, New York.

3. On June 16, 1989, the Department issued Permit No. 90-87-0476 to govern site-wide operations at the Facility. On November 8, 1989, the Department issued Permit No. 90-86-1137 to govern construction and operation of SLF-12. On November 16, 1993 the Department issued Permit No. 9-2934-00022/00036-0 to govern construction and operation of Landfill RMU-1.

4. Respondent, between late July 1995 and May 28, 1996 failed to provide daily cover on exposed waste for the RMU-1 landfill, despite repeated warnings from Department Staff, in violation of Module I-E(3)(a) of Permit No. 9-2934-00022/00036 and 6 NYCRR 373-1.6(a)(1).

5. Respondent, on November 22, 1995, was responsible for PCB contaminated mud tracked out of RMU-1 down the exit ramp of the landfill and onto the roadway leading to a culvert that goes to the ditch on the west side of SLF-11, contaminating the stormwater basin controlled by SMP 7 gate.

6. Respondent, having failed to remove gross contamination on wheels of vehicles leaving the landfill area of RMU-1, is thus in violation of 6 NYCRR 373-1.6(a)(1) for failure to comply with Module I-E(6) of Permit No. 9-2934-00022/00036, Module II-A(1) of Permit No. 9-2934-00022/00097 and Module II-A(11) of Permit No. 9-2934-00022/00097.

7. Respondent, on approximately 100 occasions between March 4, and May 31, 1994, failed to pump the leachate in landfills SLF #1-6 below the maximum level allowed.

Respondent violated Permit No. 90-87-0476, Module VII-A(1)(I) and (ii), in that leachate levels exceeded the permit depth specified in the above permit condition.

8. Respondent violated Permit No. 90-86-1137, Module IV, Condition B(5)(b) by failing to manage the run-on and run-off control systems to maintain the design capacity as required by 6 NYCRR Part 373-2.14(c)(8): to wit, on August 4, 1994, approximately 3,000 gallons of leachate flowed outside the control berm at landfill SLF #12 into a water retention basin during a heavy rain storm.

9. Respondent, between August 4, 1994 and November 18, 1994, further violated 6 NYCRR Part 373-2.14(c)(1)(ii) and Permit No. 90-86-1137, Module IV, Condition B(5)(a), by failing to maintain and operate the run-on and run-off control system and thereby allowing leachate to overflow the berms of the impoundment.

10. Respondent, in violation of 6 NYCRR Part 373-2.14(c)(1)(ii) and Permit No. 9-2934-00022/00036-0, Module I, Condition E(2)(a), allowed leachate levels at RMU-1 to exceed the one foot limit specified in the above regulation and permit condition on fifteen occasions between April 1996 and October 1996.

11. Without admitting any of the factual allegations, any alleged violation or conclusion of law, Respondent consents to the issuing and entering of the Order; waives its rights to a hearing herein as provided by law, and agrees to be bound by

the provisions, terms and conditions contained herein both in the Order on Consent and Abatement Schedules (Schedules A and B) which are attached hereto and incorporated herein.

NOW, having considered this matter and being duly advised, it is ORDERED:

I. THAT pursuant to ECL §§ 71-2705, the Department has considered the nature of the violations, Respondent's agreement to perform an Environmental Benefit Project and other relevant factors and determined that an appropriate and fair civil penalty to settle this action is in the amount of One Hundred Thousand Dollars (\$100,000), therefore, the Respondent is hereby assessed a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000) which is to be paid immediately by certified check or money order to the New York State Department of Environmental Conservation, Attention: Regional Attorney, 270 Michigan Avenue, Buffalo, New York 14203-2999.

II. THAT, in addition, Respondent shall implement an Environmental Benefit Project which requires Respondent to deepen wells at secure landfills (SLF) # 1-6 in order to provide for expedited pumping and treating of liquid leachate from such landfills. Respondent consents to the issuance of this Order and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph I and to the performance of the Environmental Benefit Project. The cost of the Environmental Benefit Project shall be no less than One

Hundred Thirty Thousand Dollars (\$130,000). Further the parties understand that the obligation to undertake the Environmental Benefit Project need be no more than One Hundred Thirty Thousand Dollars (\$130,000). To satisfy the required allocation of One Hundred Thirty Thousand Dollars (\$130,000), Respondent must document expenditures for the deepening of wells and related enhancement to third parties for the design equipment and installation of said improvements. Respondent shall provide DEC with documentation of the expenditures made in connection with the Environmental Benefit Project within thirty days of completion of the project and shall submit the documentation with Project Completion Report. The Respondent shall submit an Environmental Benefit Project Completion Report to the Department within thirty days after the project is completed. The determination of whether the Environmental Benefit Project has been completed and whether the Respondent has made a good faith effort to implement the Environmental Benefit Project shall be made by the Department. In the event that the Respondent fails to comply with any of the terms or provisions of this Order relating to the performance of the Environmental Benefit Project, the Respondent will be in violation of this Order.

III. THAT Respondent has demonstrated to the satisfaction of the Department that Respondent has achieved compliance with the requirements which form the basis of this action.

IV. THAT Respondent hereby certifies that, as of the date

of this Consent Order, Respondent is not required to perform or develop the Environmental Benefit Project described herein by any Federal, State, or local law or regulation; nor is Respondent required to perform or develop the Environmental Benefit Project as injunctive relief in this or any other case or in compliance with State or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for said Environmental Benefit Project.

V. THAT Respondent agrees that failure to submit the Environmental Benefit Project Completion Report specified by paragraph II(a) shall be deemed a violation of this Consent Order and Respondent shall be liable for stipulated penalties pursuant to paragraph VI below.

VI. Stipulated Penalties

A. That if Respondent fails to comply with any of the terms or provisions of this Order relating to the performance of the Environmental Benefit Project described in paragraph II above and/or to the extent that the actual expenditures or the Environmental Benefit Project do not equal or exceed the cost of the project described in paragraph II above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(1) Except as provided in sub-paragraph (2) immediately below, for an Environmental Benefit Project which has not been completed satisfactorily pursuant to paragraph II, Respondent

shall pay the stipulated penalty to New York State in the amount of One Hundred Thirty Thousand Dollars (\$130,000).

(2) If the Environmental Benefit Project is not completed satisfactorily, but the Respondent expended the funds for the well enhancement project as required by paragraph II and certifies, with supporting documentation the same to the Department, Respondent shall not pay any stipulated penalty.

(3) If the Environmental Benefit Project is satisfactorily completed, but the Respondent spent less than 90% of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to New York State in an amount equal to the difference between the total required expenditure of One Hundred Thirty Thousand Dollars (\$130,000) and the amount actually expended on the project by Respondent.

(4) If the Environmental Benefit Project is satisfactorily completed, and the Respondent spent at least 90% of the amount required to be spent for the project, Respondent shall not pay any stipulated penalty.

(5) For failure to submit the Environmental Benefit Project Completion Report required by paragraph II(a) above, Respondent shall pay a stipulated penalty in the amount of Five Hundred Dollars (\$500) for each day after the report was originally due until the report is submitted.

B. Stipulated penalties for sub-paragraph (5) above

shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

C. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by the Department for such penalties.

D. Nothing in this Order shall be construed as prohibiting, altering or in any way limiting the ability of the Department to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which this Order is based, or for Respondent's violation of any applicable provision of law.

VII. THAT any public statement, oral or written, made by Respondent making reference to the Environmental Benefit Project shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the New York State Department of Environmental Conservation for violations of 6 NYCRR Part 373.

VIII. THAT this Consent Order shall not relieve Respondent of its obligations to comply with all applicable provisions of Federal, State or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any Federal, State or local permit.

IX. THAT leachate exceedances in RMU 1 occurring after the implementation of the plan approved under item 3 of

Schedule B, or subsequent to an unexcused failure to implement the schedule contained in said plan, shall be deemed enforceable violations, except for exceedances resulting from an event greater than the design storm event and no earlier than receipt of notice from the Department accepting work as completed.

X. THAT should Respondent breach any provision, term or condition of this Order or attached Schedules A and B, the Department reserves its right to take any other and future legal actions to which it is entitled by law.

XI. THAT upon receipt of this Order, Respondent shall be immediately bound by the terms, conditions and requirements of this Order and Abatement Schedules (Schedules A and B) which are attached hereto and incorporated herein.

XII. THAT the provisions, terms and conditions of this Order shall bind the Department and Respondent, its successors and assigns and all persons, firms and corporations acting for or on behalf of the Respondent.

XIII. THAT duly authorized representatives of the State of New York shall be permitted access to any and all landfills referred to in this Order on Consent, for the purpose of inspecting the condition of said landfills, performing any tests, or otherwise determining compliance with this Order, the ECL, and any rules promulgated thereunder.

XIV. THAT the terms and conditions of this Order shall bind the Respondent, its successors, and assigns.

DATED: 12/5/96

Buffalo, NY

Michael Zagata, Commissioner
New York State Department of
Environmental Conservation

Gerald F. Mikol

Gerald F. Mikol
Regional Director

Schedule A

Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Date</u>
1. Clean all areas of Facility contaminated by mud-tracking incidents.	Completed
2. Construct wash pad within landfill for stationing and cleaning trucks to minimize tracking.	Completed
3. Develop, subject to Department approval, new alternate cover material for use as daily cover on working face at RMU-1.	Completed
<ul style="list-style-type: none"> - Such experimentation shall take place only with close scrutiny by on-site Department monitors, as directed in the June 14, 1996 letter from Bidjan Rostami to Ms. Jill Knickerbocker. - Adoption of particular alternate material, developed through this experimentation, shall require written approval from the Department. 	
4. Submit to RHME for review and approval, a long range fill progression plan for all current cells of RMU-1 for inclusion in O & M Manual. Such plan shall include:	Current submittal under review.
<ul style="list-style-type: none"> . Measures for addressing minimization of leachate generation, including closure of existing cells . Indication by engineering design and calculation, how adequate stormwater runoff capacity will be maintained, both internally and externally, for current phases of RMU-1 cell construction 	

- . Provision for updates, prior to use of each successive cell at RMU-1
- 5. Submit report for Department review and approval indicating depth from bottom of each pumping well at SLF 1-6 to the uppermost layer of landfill liner system in the vicinity of such well, and the recommended plan for deepening selected wells, including a schedule for completion of the plan. Object of such plan is to increase leachate removal rates from selected wells. Sixty days from effective date of Order.
- 6. Initiate implementation of approved plan for deepening wells in SLF 1-6. Thirty days after approval of report or June 1, 1997, whichever is later.
- 7. Upon completing field work, Respondent shall have a period of six months in which to operate the newly deepened wells in order to achieve a maximum leachate level of two feet from the bottom of such deepened wells.
 - . During such trial period, Respondent shall orally report any exceedances to RHME by close of the following business day, together with Respondent's planned action to achieve compliance.
 - . Exceedances in the deepened wells during the trial period shall not constitute a violation of the permit, regulations or this Order.
 - . Within 30 days after the end of six month trial period,

Respondent shall submit a report indicating the results of its six months of operations, including the additional amount of leachate extracted from the wells, and describing all efforts made to achieve and maintain the allowable leachate level, and recommend what, if any, further action should be taken in such wells or whether different compliance standards should be established for such wells.

Failure to achieve and maintain the two foot maximum leachate level in the deepened wells at the end of such six month operation shall not be a basis to take further enforcement action unless Respondent has failed to satisfy its obligations under this Order, which obligations shall include due diligence efforts to design and operate the program described herein to extract additional leachate from SLF 1-6 and to meet the two foot maximum leachate level.

S C H E D U L E B

- | <u>Item</u> | <u>Date</u> |
|---|--|
| <p>1. Submit to RHME for review and approval, a scope of proposed remedies for the RMU-1 Leachate Level Compliance Plan (Plan). The purpose of the Plan is to recommend and implement remedies which will maintain RMU-1 leachate levels below the permitted level of one foot. The scope shall include, but will not be limited to:</p> <ul style="list-style-type: none"> . leachate pumping capacity upgrades . leachate storage and transport capacity upgrades . final capping of open landfill cells . intermediate capping of open landfill cells . AWT capacity increases . design storm event analysis based on upgrades/operating practices determined to be feasible . a determination of the maximum open landfill area that ensures compliance, and a provision, with an approvable schedule of implementation, for closure of existing cells consistent with limiting open landfill area such that compliance is maintained . routing of stormwater to sumps considering stormwater basin plans | <p>15 days of effective date of Order.</p> |
| <p>2. Submit to RHME the RMU-1 Leachate Level Compliance Plan for NYSDEC review and approval. The Plan shall analyze all proposed remedies approved in the scoping document. Recommend implementation of all feasible remedies necessary to maintain RMU-1 leachate levels below the maximum permitted level of one foot. Contain a schedule for implementation</p> | <p>45 days from NYSDEC approval of Item 1.</p> |

of all selected remedies.

- | | | |
|----|--|--|
| 3. | Implement the approved RMU-1 Leachate Level Compliance Plan selected remedies. | Implement Plan in accordance with approved schedule. |
| 4. | If leachate levels exceed maximum permitted level for any precipitation events more frequent than "design storm event", despite implementation of approved Plan, Department may require additional leachate control measures. During implementation of the approved work, Respondent shall orally notify RHME by close of the following business day upon any exceedance of the one foot head limitation in any cell. In that event, subject to RHME approval, Respondent shall take appropriate actions to lower leachate to a compliant level. | Immediately implement. |

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent CWM - Chemical Services Inc.

By Michael P. McNamee

Title President

Date December 5, 1996

(Seal)

Corporate

State of _____)
County of _____)

On this _____ day of _____, 199 , before me personally came to me known, who being by me duly sworn did depose and say that he resides at _____ that he is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

NOTARY PUBLIC

Individual

State of New York)
County of Erie)

On this 5th day of December, 199 , before me came Michael P. McNamee and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

KAREN KRAWCZYK
Notary Public, State of New York
No. 01KR5051409
Qualified in Erie County
Commission Expires November 6, 1997

Karen Krawczyk
NOTARY PUBLIC

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of the New York
Environmental Conservation Law by:

CWM Chemical Services, LLC
P. O. Box 200
1550 Balmer Road
Model City, NY 14107

Order on Consent
R9-4682-98-09

File No. 98-80

(Niagara County)
Respondent

WHEREAS:

1. Article 27, Title 9 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Industrial Hazardous Waste Management" regulates the management of hazardous waste and facilities which treat, store, or dispose of hazardous waste in the State and provides for the promulgation and implementation of regulations by the Commissioner of Environmental Conservation to protect human health and the environment.
2. CWM Chemical Services, LLC (the "Respondent"), owns, operates and maintains control of a hazardous waste treatment, storage, and disposal facility (the "Facility") located on Balmer Road in Model City, New York in the County of Niagara.
3. Respondent operates its Facility subject to the State's hazardous waste laws and regulations and subject to Permit No. 9-2934-00022/00036 (RMU-1) and Permit No. 9-2934-00022/00097 (Sitewide), and permit conditions recited therein, which have been issued pursuant to 6 NYCRR Part 373..
4. Module I, Condition D(11), contained in Respondent's Sitewide Permit, requires that the Permittee self-report to the Department any violations of its permits and/or the State's hazardous waste laws or regulations.

5. Respondent has self-reported the following violations of its permits and/or the Part 373 regulations to the Department:

<u>Date</u>	<u>Violation</u>	<u>Enforcement Authority</u>
November 1996 to March 24, 1977	Failure to properly operate/monitor leak detection system for Tank T-310 and to perform daily inspection	6 NYCRR 373.2.10(d)(3)(iii), (d)(6), and (f)(2)(ii)
January 27, 1997 & March 25, 1997	Water was released from site (SMP 4) without prior testing and approval	Sitewide Permit, Mod II, A(13), SWSAP, Sec.3.2
March 7, 1997	Failure to follow procedures for solubility requirements for landfilled drums	Sitewide Permit, Waste Analysis Plan, Sec. C-2b
May 21, 1997 & May 29, 1997	Failure to follow incoming bulk solid load procedures; failure to sample and analyze waste prior to treatment and disposal	Sitewide Permit, Waste Analysis Plan, Sec. C-2e
June 11, 1997	Failure to follow procedures for cyanide evaluation on landfilled drums	Sitewide Permit, Waste Analysis Plan, Sec. C-2b
Second quarter 1997	Failure to report, on monthly report, several drums stored longer than six months	Sitewide Permit, Module II, Condition A(5)
July 3, 1997	12 drums, code B waste was stabilized & landfilled without generator's concurrence	Sitewide Permit, Mod II, K. and NYCRR 373-2.5(b)(1)(iii)
August 13, 1997	Lead-containing dust was landfilled prior to achieving LDR treatment limits for lead	Sitewide Permit, Module X, Condition C
September 29, 1997	PCB soil which exceeded characteristic level for lead was landfilled prior to testing and without treatment	Sitewide Permit, Module X, Condition C
March 20, 26, and 27, 1998	30,500 gallons of aqueous gate receipts were placed in leachate storage tanks when tank capacity was less than 625, 000 gallons	RMU-1 Permit, Module I, Condition E.(7)(a)(iii)
June 22, 1998	Driver dumped non-hazardous waste load in landfill without first proceeding to the scale and without laboratory inspection	Sitewide Permit, Waste Analysis Plan, Sec. C-2e

(Paragraph 5 continued)

<u>Date</u>	<u>Violation</u>	<u>Enforcement Authority</u>
November 4-9, 1999	Failure to pump containment areas at Stabilization South/North and tank T-58 within 24 hours. 24-hour limit exceeded 1 day at Stabilization South; 3 days at Stabilization North; and 5 days at Tank T-58 area	Sitewide Permit, Attachment B (Inspection Plan), Section F-1, Containment Management
November 2-7, 1999	Failure to maintain leachate levels below 1 foot at RMU-1 Cells 6, 7/8	RMU-1 Permit, Module I, Condition E(2)(a)
November 9-11, 1999	Failure to pump RMU-1 Stormwater Basins C and D below 1 foot within 7 days after level first exceeded 1 foot	RMU-1 Permit, Module I, Condition E(2)(d)
May 13, 2000 July 15, 2000	Landfill interior ditch overflowed causing thousands of gallons of landfill leachate to be released to the environment on each date	RMU-1 Permit, Module I, Condition E(5)(a) and 6 NYCRR 373-2.14(c)(8) 6 NYCRR 373-2.9(f)(1)(v)
May 13, 2000 July 15, 2000	Secondary containment for West/North parking lots at Stabilization Area overflowed releasing accumulated precipitation to the environment on each date	6 NYCRR 373-2.9(f)(1)(v)
May 16, 17, 18, 2000 and November 6, 7, 8, 1999	Failure to pump rainwater off all covered impoundments within 3 days after level exceeded one foot	Sitewide Permit, Module III, Attachment A, Appendix II, Condition 1.B.1
December 8, 2000	Solid residuals landfilled without DEC On-Site Monitors approval	RMU-1 Permit, Mod. I, Condition D(5)
January 2, and 30, 2001	Water released from site (SMP7) without prior testing and approval	Sitewide Permit, Attachment K, Sec.3.2

6. In addition to the aforesaid self-reported violations, the following operational violations of Respondent's permits and/or the Department's Part 373 regulations were observed during the RCRA inspection conducted by Department Staff at Respondent's facility on March 27, 28, & 29, 2000:

<u>Location</u>	<u>Violation</u>	<u>Enforcement Authority</u>
Drum Mgt. Bldg/ Loading Dock	Cracks and gaps in joints in concrete loading ramp	Sitewide Permit, Mod IV, B and 6 NYCRR 373-2.2(g)(3)
Full Trailer Parking Area (South)	Cracks and gaps in joints in concrete	Sitewide Permit, Mod IV, B and 6 NYCRR 373-2.2(g)(3)
Truck Wash Bldg.	Cracks and gaps in joints in concrete slab and FRP trench	Sitewide Permit, Mod IV, B and 6 NYCRR 373-2.2(g)(3)
Stabilization Bldg. (Special Client Treatment Room)	Rusty steel plates on SCTR floor, and joint gap between steel plates/concrete slab	Sitewide Permit, Mod IV, B and 6 NYCRR 373-2.2(g)(3)
AWT Drum Storage Area	Cracks, and gaps in joints in concrete near sump, and deteriorated coating under grating	Sitewide Permit, Mod IV, B and 6 NYCRR 373-2.2(g)(3)
Leachate Tank Farm Tanks T-101, T-102, and T-103	Chipped/peeled areas of coating in containment area	Sitewide Permit, Mod V, B.2.a and 6 NYCRR 373-2.2(g)(3)
SLF 12 Lift Station Tank T-150	Spots where coating chipped or missing	Sitewide Permit, Mod V, B.2.a and 6 NYCRR 373-2.2(g)(3)
AWTS Bldg. Tanks	Several locations, coating chipped or missing	Sitewide Permit, Mod V, B.2.a and 6 NYCRR 373-2.2(g)(3)
Solids Separation Tanks T-3010 T-3011, T-3012	Several locations, coating chipped or missing	Sitewide Permit, Mod V, B.2.a and 6 NYCRR 373-2.2(g)(3)

Subsequent to Department Staff's March 2002 inspection and prior to execution of this Order on Consent, Respondent has satisfactorily addressed the violations recited in this Paragraph, except for any actions required by attached Schedule A.

7. Respondent, as the owner/operator of the Facility where the violations occurred, is responsible for them and is subject to this enforcement action by the Department.

8. Respondent, having waived its right to a hearing as provided by law on the matters

recited herein, consents to the issuance and entry of this Order and agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. RELIEF

A. Respondent shall pay a penalty in the amount of One-Hundred-Thousand Dollars (\$100,000) which is to be paid by a check made payable to the Commissioner of Environmental Conservation and sent to the Department's Region 9 office together with this executed order.

B. Respondent shall, on or before the dates indicated therein, comply with the requirements recited in attached Schedule A which is incorporated herein and is an enforceable part of this Order.

II. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access, upon request, to any facility or site owned, operated, and controlled by Respondent including records maintained at the aforesaid facilities or sites in order to inspect and copy such records.

III. FAILURE, DEFAULT, AND VIOLATION

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed a violation of both this Order and the ECL.

IV. SETTLEMENT/RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the above-recited violations against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph A of this paragraph, nothing contained

in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. BINDING EFFECT

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations recited in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound by this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or her designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee

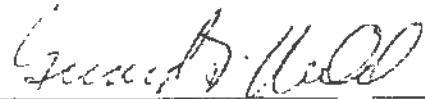
signs it.

Buffalo, New York

DATE:

11/20/02

ERIN M. CROTTY
Commissioner
New York State Department
of Environmental Conservation



by:

Gerald F. Mikol
Regional Director

CWM Chemical Services, LLC
Order on Consent No. 98-80
Schedule A

Respondent shall, on or before the dates recited herein comply with the following requirements:

A. To address the following self-reported violations:

<u>ACTION REQUIRED</u>	<u>DATE</u>
<p>Sitewide Permit, Mod. II, A(13), and Attachment K, Section 3.2</p> <p>Perform monthly inspection of surface water control mechanisms to verify integrity in accordance with section 3.4 of Attachment B (Inspection Plan) of the Sitewide Permit.</p>	<p>Immediately and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>
<p>Sitewide Permit, Mod. X, (C)</p> <p>Until the facility's Sitewide Permit is reissued and addresses the removal of a stabilized waste from interim storage in the landfill (which waste has been determined to fail to meet the LDR standards (TCLP results)), Respondent will retrieve such loads within 5 business days or place such loads into a covered roll-off in the landfill within 5 business days, where the loads may remain for an additional 2 weeks at which time the waste must be removed from the landfill for further treatment and disposal.</p>	<p>Immediately and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>
<p>RMU-1 Permit, Mod. I, E(2)(a) & E(5)(a), and 6 NYCRR 373-2.14(c)(8)</p> <p>In accordance with the landfill Operations Manual (O&MM), submit an engineering evaluation and survey for the landfill's stormwater and leachate management system including delineation of infiltration and basin drainage areas, actual waste slope gradients and set back dimensions to ensure that the landfill stormwater and leachate management system complies with the requirements of the Department approved Leachate Level Compliance Plan (LLCP), and RMU-1 O&MM within 30 days of the end of each quarter. Any identified problems in compliance with the LLCP and O&MM must be corrected prior to, and confirmed by the next consecutive quarterly landfill evaluation/survey.</p>	<p>Quarterly, from June 30, 2002 and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>

B. To address the March 2000 RCRA inspection violations:

<u>ACTION REQUIRED</u>	<u>DATE</u>
<p>Sitewide Permit Module IV, F, and Module V, J, and 6 NYCRR 373-2.2(g) Secondary Containment Inspections</p> <p>In accordance with Module IV, Sections (F)(2) and (4) and Module V, Sections (J)(1) and (3) of the Sitewide Permit, perform the Annual Secondary Containment Inspection, in such a manner that the final inspection report issued by the engineer documents that each area was satisfactory at the time of its final inspection on or before September 30 and that all previously identified defects have been repaired.</p> <p>For the Annual Inspection, all containers and non-secured equipment shall be moved so that all surfaces of the secondary containment are completely exposed for inspection.</p> <p>For the Annual Inspection, all secondary containment areas shall be inspected and all defects identified, on or before July 31 of each year. All defects must be repaired and the repaired secondary containment area(s) shall be re-inspected by the engineer/inspector, on or before September 30 of each year. The engineer's/inspector's report documenting the satisfactory condition of all secondary containment areas, shall be submitted to the Department on or before October 31 of each year.</p> <p>If necessary, Respondent may submit a written request for Department approval to extend any of the above dates by up to but not longer than 30 days.</p> <p>For any defect repair involving units remaining in use that take longer than, or are anticipated to take longer than 30 days to complete, as measured from the inspection date that the defect was identified, an Environmental Work Order (EWO) shall be submitted for Department approval which includes the date for completion of repairs.</p>	<p>Immediately and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>

(Item B. continued)	
<u>ACTION REQUIRED</u>	<u>DATE</u>
<p>Sitewide Permit, Mod IV, B, and 6 NYCRR 373-2.2 (g)(3) Drum Management Building Loading Dock</p> <p>Until the facility's Sitewide Permit is reissued and revised to address the operation of Drum Management Building Loading Dock, operate this area as a "solids only" storage area (liquids less than one day). As a "solids only" storage area, maintenance of the concrete containment system is not required.</p> <p>Containers holding free liquids must be removed from the DMB Loading Dock prior to the end of the last work shift on the date these containers arrived at the facility.</p>	<p>Immediately and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>
<p>Sitewide Permit, Mod IV,B, and 6 NYCRR 373-2.9(e), and (f), and 6 NYCRR 373-2(g)(3) Truck Wash Building</p> <p>Until the facility's Sitewide Permit is reissued and revised to address the Truck Wash Building, operate this area for washing the exteriors of vehicles and RCRA empty containers only. In addition, the area may be used for "solids only" waste storage. As such, the floor, sump and trench would not require maintenance as a secondary containment system.</p>	<p>Immediately and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>
<p>Sitewide Permit, Mod IV, B, and 6 NYCRR 373-2.2 (g)(3) Stabilization Building, Special Client Treatment Room</p> <p>Until the facility's Sitewide Permit is reissued and updated language is included to address the Stabilization Building, Special Client Treatment Room, operate this area as a "solids only" storage area. As a "solids only" storage area, maintenance of the secondary containment system is not required.</p>	<p>Immediately and ongoing until modified or superceded by conditions in the Sitewide Permit Renewal.</p>

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent: **CWM CHEMICAL SERVICES, LLC.**

By: *Richard D. Sturges*

Title: DISTRICT MANAGER

Date: OCTOBER 29, 2002

CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF Niagara)

On the 29th day of October in the year 2002 before me,
personally came Richard D. Sturges, to me known, who, being by me duly
sworn, did depose and say that he/she/they reside(s) at

13434 Ward Road, HOLLAND, NY 14080

that he/she/they is (are) the District Manager

of CWM Chemical Svcs, the corporation described in and which executed the above
instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of
directors of said corporation.

Lynn A. Piechowski
Notary Public

LYNN A. PIECHOWSKI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
MY COMM. EXPIRES 2/28/06

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violation of
Article 27 of the New York State Environmental
Conservation Law and Parts 373 and 376 of
Title 6 the Official Compilation of Codes, Rules and
Regulations of the State of New York by

ORDER
ON
CONSENT

CWM Chemical Services, L.L.C.,

Respondent

Case #900-03148A

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is a Department of the State of New York with jurisdiction over the environmental policy and programs of the State pursuant to the provisions of the New York State Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").
2. The Department is charged with jurisdiction to regulate the generation, transportation and disposal of solid and hazardous waste in the State of New York pursuant to Article 27 of the ECL and 6 NYCRR Part 370, et seq.
3. The Department is authorized to seek penalties and other appropriate sanctions for any violations of Article 27 of the ECL or the regulations promulgated thereunder, pursuant to Articles 27 and 71 of the ECL.
4. CWM Chemical Services, L.L.C. (the "Respondent") is a New York corporation with corporate offices located at 1550 Balmer Road, Model City, NY 14107 and is authorized to operate a hazardous waste management facility at that location pursuant to Sitewide Permit Number 90-87-0476 and RMU-1 Permit Number 9-2934-00022/00036 which were both issued

in accordance with 6NYCRR Part 373. Section C-2e(2) of the Waste Analysis Plan (Attachment "A") for Permit Number 90-87-0476 requires that all containers be inspected and RMU-1 Permit Number 9-2934-00022/00036 Module I, Condition 6(k) requires that the permittee open and visually inspect all drums and portable tanks prior to landfill disposal.

5. 6 NYCRR Part 373-1.6 (a)(1) requires a permittee to comply with all conditions of its permit.

6. 6NYCRR Part 373-2.5 (b)(1)(i)(a) requires the owner or operator of a facility to check for significant discrepancies between those wastes shipped to the facility and the description of the wastes contained on their accompanying manifests.

7. 6NYCRR Part 373-2.5 (b)(1)(iv)(a) requires the owner or operator of a facility when certifying receipt of a waste shipment to note on the accompanying manifest discrepancies uncovered without the use of waste analysis procedures.

8. 6NYCRR Parts 373-2.5 (c) and 373-2.14(f)(2) require the owner or operator of a facility to maintain as part of its written operating record the contents of each cell and the approximate location of each hazardous waste within each cell.

9. 6NYCRR Part 376.4(f) and 40 CFR 761.60(b)(2)(iii) require that large capacitors containing polychlorinated biphenyls in concentrations greater than 500 ppm be disposed by incineration.

10. On September 21, 2000 Clean Harbors of Connecticut, Inc. shipped to Respondent's facility six metal containers using Hazardous Waste Manifest #NYG 1150029 and Respondent's waste profile code BG1557, "TSCA Soils and Debris." Respondent received the six metal containers on September 22, 2000 and placed them in its landfill on September 25, 2000.

Respondent's receipt for this waste shipment indicated that the six metal containers were placed in "RMU-1," Cell 10, Grid P-18, Level 6. Three of the disposed containers did not contain soil and debris but in fact each held large capacitors containing PCBs in concentrations greater than 500 ppm. The combined total of the capacitors present in the three containers was one hundred eighty.

11. In a letter dated November 9, 2000 Clean Harbors of Connecticut, Inc. advised Respondent of the above discrepancy but Respondent did not include prior to disposal a statement with the above manifest which noted the discrepancy.

12. On January 5, 2002 one of the three disposed containers containing the capacitors was discovered in Grid M-19. On January 8, 2002 the second container was also discovered in Grid M-19 and the third container was discovered on the boundary line between Grids N18 and O18.

13. On May 22, 2000 Respondent accepted for disposal from Cycle Chem, Inc. a shipment of twelve drums accompanied by Hazardous Waste Manifest #NYG 0674892 which had Respondent's waste profile code CL3841, "light ballasts." Respondent placed the twelve drums in its landfill on May 23, 2000.

14. On June 7, 2000 Cycle Chem, Inc. notified Respondent that one of the twelve disposed drums contained two large capacitors and not ballasts. In a letter dated June 12, 2000 Respondent informed the Department that it had disposed two large capacitors but did not include prior to disposal a statement with the above manifest which noted the discrepancy. Respondent failed to properly identify the presence of the two large capacitors when visually inspecting the containers.

15. With respect to Paragraph 10, Respondent has violated 6 NYCRR Parts 373-1.6 (a)(1), 373-2.5 (b)(1)(i)(a) and Part 376.4(f) in that Respondent failed to comply with its operating permit by not opening and visually inspecting all containers shipped to its facility, not checking for discrepancies between the actual wastes shipped to the facility and the description of the wastes contained on their accompanying manifests, and disposing the capacitors within the containers by land filling rather than by incineration.

16. With respect to Paragraphs 10, 11, 13 and 14, Respondent has also violated 6NYCRR Part 373-2.5 (b)(1)(iv)(a) by failing to include with the manifests accompanying the three containers and the twelve drums a statement noting the discrepancies between the manifest description and the actual waste.

17. With respect to Paragraphs 10 and 12, Respondent has also violated 6NYCRR Parts 373-2.5 (c)(2)(ii) and 373-2.14(f)(2) in that Respondent failed to properly record the contents of each cell and the approximate location of each hazardous waste within each cell.

Respondent affirmatively waives its right to a hearing in this matter, consents to the issuance of this Order, and agrees to be bound by the provisions, terms and conditions of this Order.

NOW, being duly advised and having considered the matter, IT IS ORDERED THAT:

I. Civil Penalty

Relative to the violations described in Paragraphs 15, 16, and 17 above, Respondent is hereby assessed a civil penalty in the amount of One Hundred Thousand Dollars (\$100,000.00). The Order and penalty shall be sent to the attention of James Charles, Esq., New

York State Department of Environmental Conservation, Division of Environmental Enforcement,
270 Michigan Avenue, Buffalo, New York 14203.

II Remediation

Respondent shall submit within 30 days of the effective date of this Order documentation satisfactory to the Department that the Respondent has revised its procedures at its Model City, New York facility for the handling, receiving, and reporting of wastes containing polychlorinated biphenyls and for properly recording the contents of each cell and the approximate location of each hazardous waste within each cell. The documentation and plan shall be sent to the attention of James Strickland, New York State Department of Environmental Conservation, Division of Solid and Hazardous Substances, 270 Michigan Avenue, Buffalo, New York 14203-2999.

III. Standard Provisions

Respondent shall further comply with the Standard Provisions recited on pages seven and eight of this Consent Order which constitute material and integral terms and conditions of this Order.

DATED: 12/5/02
Buffalo, New York

Erin M. Crotty, Commissioner
New York State Department of
Environmental Conservation

By: _____

Gerald Mikol,
Regional Director

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance of the foregoing Order, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

CWM Chemical Services, L.L.C.

By

Richard D. Sturges

Title

DISTRICT MANAGER

Date

NOVEMBER 4, 2002

STATE OF NEW YORK)

) SS.:

COUNTY OF NIAGARA)

On the 4th day of NOV., in the year 2002, before me, the undersigned, personally appeared RICHARD D. Sturges, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lynn A. Piechowski
NOTARY PUBLIC

LYNN A. PIECHOWSKI
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN NIAGARA COUNTY
MY COMM. EXPIRES 2/28/06

STANDARD PROVISIONS

Payment. Any penalty assessed pursuant to the terms and conditions of this Order shall be paid by submitting a certified or cashier's check or money order, payable to the Department of Environmental Conservation. Unpaid penalties imposed by this Order shall bear interest at the rate of 9 percent per annum for each day the penalty, or any portion thereof, remains unpaid. Payments received shall first be applied to accrued interest charges and then to the unpaid balance of the penalty.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to the Regional Director of the Region 9 office of the Department, located at 270 Michigan Avenue, New York 14203-2999.

Duration. This Order shall take effect when it is signed by the Regional Director, as the authorized representative of the Commissioner of Environmental Conservation, and shall expire when Respondent has fully complied with the requirements of this Order.

Access. For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

Indemnity. Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

Modifications. No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, supra. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

Other Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent; (2) any right of the Department to enforce administratively or at law or in equity, the terms, provisions and conditions of this Order; (3) any right of the Department to bring any future action, either administrative or judicial, for any other violations of the ECL, the rules and regulations promulgated thereunder, or conditions contained in orders or permits, if any, issued by the Department to Respondent; (4) the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Entire Agreement. This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

Service. If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
SHORT FORM ORDER ON CONSENT
NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

No. 89-25610921-67

CWM Chemical Services, LLC, hereby agrees to pay to the Department of Environmental Conservation of the State of New York the sum of \$10,000.00, which shall be suspended upon CWM Chemical Services, LLC strictly complying with the conditions stipulated in Schedule A, attached hereto and made a part hereof.

CWM Chemical Services, LLC so agrees by reason of discharging an effluent from stormwater outfall 002 in excess of the effluent limitations for PCB Aroclor 1242 contained in SPDES Permit NY00720061, the same being contrary to the provisions of §17-0815 of the Environmental Conservation Law of the State of New York. The discharges in issue occurred in the Town of Porter, County of Niagara, and were reported by CWM Chemical Services, LLC as detected on February 1, 2001 and April 2, 2001. The suspended penalty may be collected in part or in total should CWM Chemical Services, LLC not comply with any of the terms stipulated in this Order on Consent. In so stipulating, Respondent waives its right to a hearing in this matter.

[Signature]
Respondent's Signature

District Manager
Title of Individual Authorized to Sign on
Behalf of the LLC

Dated: Model City, New York

October 2, 2001

This order and settlement has been reviewed by:

John C. McMahon, Environmental Engineer 4
Print Name and Title of DEC Official

10/15/01
Date

[Signature]
Signature

WHEREAS:

CWM Chemical Services, LLC, having violated §17-0815 of the Environmental Conservation Law, and having waived the right to a hearing on said violation(s), and having offered to pay the sum of \$10,000.00 by reason of said violation(s) (which sum shall be suspended upon CWM Chemical Services, LLC strictly complying with the conditions stipulated in Schedule A which is attached hereto), and after due consideration having been had thereon and it appearing that this Order will be advantageous to the State, now therefore,

IT IS ORDERED, pursuant to the provisions of the Environmental Conservation Law, that the Respondent shall comply with the terms of the attached schedule by reason of the violation(s) of ECL §17-0815.

[Signature]
Commissioner by Regional Director

DATED: Buffalo, New York
10/22, 2001

CWM Chemical Services, Inc. NY-007-2061
Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Date</u>
<p>1. The permittee shall, for a period of ten calendar weeks, collect weekly, grab samples at Outfall 002 and at the following locations:</p> <p>SMP3, SMP4, SMP5, and SMP8</p> <p>under flowing conditions (if there is no flow at any time during a calendar week, samples will not be obtained), which samples shall be analyzed by a DOH Certified lab using gc/ec method 608, for PCB Arochlor 1016, Arochlor 1221, Arochlor 1232, Arochlor 1242, Arochlor 1248, Arochlor 1254, and Arochlor 1260. The grab samples at outfall 002 are in addition to the 24-hour composite samples required to be taken weekly, according to SPDES Permit conditions:</p>	Beginning June 25, 2001
<p>2. The permittee shall complete a field investigation to identify any other surface water streams located in the inactive area to the west which may be contributing to flow through Outfall 002, and are not controlled by an SMP gate; If such streams are identified, they will be sampled and analyzed as above:</p>	Beginning June 25, 2001
<p>3. The permittee will obtain the above additional PCB monitoring data for a period of ten (10) weeks. The data will be submitted to the Department within thirty days following receipt of the sampling results from the tenth weekly sampling; Together with this data, the permittee will include a narrative analysis of the data, along with the permittee's conclusions and recommendations for subsequent actions, in accordance with footnote 7b of the SPDES Permit. This report shall also include the information required for the 60-day followup report required by footnote 7b of the SPDES Permit, as a result of three consecutive months of detections of PCB AROCHLOR 1242 at outfall 002:</p>	February 1, 2002

Note: The Provisions of this schedule are in addition to the requirements contained in SPDES Permit NY0072061.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of the New York Environmental Conservation Law by: -X

CWM Chemical Services, LLC
P.O. Box 200
1550 Balmer Road
Model City, New York 14107

Order on Consent
File No. 07-72
R9-20071030-75

WHEREAS: -X

1. Article 27 Title 9 of the New York State Environmental Conservation Law of the State of New York (hereinafter "ECL") entitled "Industrial Hazardous Waste Management" regulates the management of hazardous waste and facilities which treat, store, or dispose of hazardous waste in the State and provides for the promulgation and implementation of regulations by the Commissioner of Environmental Conservation to protect human health and the environment.
2. CWM Chemical Services, LLC (the "Respondent"), owns, operates and maintains control of a hazardous waste treatment, storage, and disposal facility (the "Facility") located on Balmer Road in Model City, New York in the County of Niagara.
3. Respondent operates its Facility subject to the State's hazardous waste laws and regulations. During the times relevant to this matter, Respondent was subject to either the former RMU-1 and sitewide permits-Permit No. 9-2934-00022/00036 and Permit No. 90-87-0476, respectively-or the current, consolidated permit-Permit No. 9-2934-0022/00097 which governs both sitewide and RMU-1 operations.
4. Module I, Condition D(11), contained in Respondent's Sitewide Permits both former and current, requires that the Permittee self-report to the Department any violations of its permits and/or the State's hazardous waste laws or regulations.
5. Respondent has self-reported numerous violations of its permits and/or the Part 373 regulations to the Department, as set forth in Appendix A, attached to, and made part of, this Order.

6. Respondent, as documented during a Resource Conservation and Recovery Act (RCRA) inspection on August 3, 2006, maintained a cardboard drum in the drum handling building without a cover or a proper label identifying it as hazardous waste, in violation of 6 NYCRR Part 373-3.9(d)(1) and 6 NYCRR Part 373-3.9(d)(3).

7. Respondent, as noted in the RCRA inspection dated February 14, 2007, maintained several drums of hazardous waste in a leaking or bulging condition, in violation of the current Part 373 permit, Module III, Condition C and 6 NYCRR Part 373-2.9(b).

8. Respondent, as noted in the RCRA inspection dated February 14, 2007, violated its current Part 373 permit, Module IV, Condition E.2(i) by maintaining a ball valve at its leachate tank farm manifold partially open and thereby leaking leachate onto the floor of the aqueous waste treatment building.

9. Respondent, as noted by Department Monitors and RCRA Inspectors on February 14, 2008, maintained two 55-gallon drums of PCB waste in a leaking condition in the PCB warehouse, in violation of current Part 373 Permit, Module III, Condition C and 6 NYCRR Part 373-2.9(b).

10. Respondent operates its facility subject to the conditions and limitations imposed under State Pollutant Discharge Elimination System ("SPDES") Permit No. NY-007-2061 issued pursuant to ECL §17-0303 and 6 New York Codes, Rules and Regulations ("NYCRR") Part 750-1.1.

11. Respondent, on October 9, and November 1, 2007, discharged a substantial volume of visible foam, through a vent line in the vicinity of Outfall 001, in violation of 6 NYCRR Part 750-2.8(a)(4).

12. Respondent, in violation of ECL §17-0807(4), discharged the above-referenced visible foam on October 9, 10 and 26, 2007, from a discharge point-namely, an air vent that is not a permitted outfall for the purposes of SPDES Permit No. NY-007-2061.

13. Respondent, as the owner/operator of the Facility where the violations occurred, is responsible for those violations and is subject to this enforcement action by the Department.

14. Respondent, admits the violations herein, and, having waived its right to a hearing as provided by law on the matters recited herein, consents to the issuance and entry of this Order and agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, it is ORDERED THAT:

I. RELIEF

Respondents are hereby assessed a civil penalty in the amount of One Hundred Seventy Five Thousand Dollars (\$175,000)-which total is comprised of Twenty Thousand Dollars (\$20,000) for the violations set forth in paragraphs 10 and 11 and One Hundred Fifty Five Thousand Dollars (\$155,000) for the remaining violations-which shall be paid by certified check or money order made payable to the Commissioner of the Department of Environmental Conservation and sent to the Regional Attorney, 270 Michigan Avenue, Buffalo, New York, 14203-2915. This payment is due upon execution of this Order by Respondent.

II. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access, upon request, to any facility or site owned, operated, and controlled by Respondent including records maintained at the aforesaid facilities or sites in order to inspect and copy such records.

III. FAILURE, DEFAULT, AND VIOLATION

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed a violation of both this Order and the ECL.

IV. SETTLEMENT/RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the above-recited violations against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph A of this paragraph, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any or the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. BINDING EFFECT

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns

VI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations recited in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound by this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

DATED: *Nov. 12*, 2008
Buffalo, New York

Alexander B. Grannis, Commissioner
New York State Department of
Environmental Conservation

by:


Abby M. Snyder
Regional Director

APPENDIX A

<u>Date</u>	<u>Violation</u>	<u>Enforcement Authority</u>
November 15, 2000- November 26, 2001	Failure to submit timely notification of Intent to Import hazardous waste in advance of the first of eleven shipments from RPR Environmental.	6 NYCRR Part 373-2.2(d)(1)
January 2, 2001	Failure to recycle 25 boxes of high mercury lamps which, instead, were stabilized and landfilled.	6 NYCRR Part 376.4(a)(1) (i) and (iii)
August 27, 2001	Failure to recycle 28 boxes of high mercury lamps which, instead, were stabilized and landfilled.	6 NYCRR Part 376.4(a)(1) (i) and (iii)
December 28, 2000	Excessive leachate levels in Well #3 and Well #18 at SLF 1-6.	Former sitewide permit, Module VII, Condition A.2
February 6, 2001	Disposed of small quantity of non-hazardous waste without Department approval.	Former RMU-1 permit, Module I, Condition D(5)
March 6, 2001	Landfilling burner ash containing UHC's above the Universal Treatment Standards (UTS), in violation of LDR standards.	6 NYCRR Part 376.4(j)
February 1, 2001	Allowing tank T-3002 to overflow, thereby releasing approximately 3,000 gallons of untreated and partially-treated aqueous hazardous waste from the secondary containment area.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10 (e)(2)
April 12, 2001	Allowing a leachate level exceedance in Well 37 at SLF 11.	Former sitewide permit, Module VII, Condition A.2
April 8, 2001	Allowing leachate level exceedance at Well 61.	Former RMU-1 permit, Module I, Condition E(2) (a)

April 18, 2001	Allowing tank T-3003 overflow, releasing from the secondary containment area approximately 3,500 gallons of partially treated aqueous hazardous waste.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10(e)(2)
April 2, 2001	Landfilled 33,200 lbs. of waste with an estimated 2.5 gallons containing PCB's and benzene above LDR's.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
June 17, 2001	Allowed leachate exceedance, above the 1-ft. compliance level for more than 24 hours, at Well Nos. 23 and 24 in SLF 1-6.	Former sitewide permit, Module VII, Condition A.2
April 23, 2001	Landfilled a container, profiled as non-hazardous waste, which actually contained hazardous waste.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
June 10, 2001	Inadvertently micro encapsulated and landfilled several containers of hazardous waste which were designated for recycling.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
October 17, 2000	Landfilled without Department approval a small amount of stabilized residual.	Former RMU-1 permit, Module I, Condition D(5)
August 9, 2001	Allowed overflow of tank T-3003, thereby releasing approximately 50 gallons of partially treated aqueous hazardous waste from the tank secondary containment system.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10(e)(2)
September 12, 2001	High leachate level alarm malfunctioned and sounded at 7-8 because of pump electric line damage.	Former RMU-1 permit, Module I, Condition E.2.a; 6 NYCRR Part 373-2.14(c)(3)(ii)
January 30, 2001	Stabilized and landfilled without Department approval residual from two drums.	Former RMU-1 permit, Module I, Condition D(5)
October 30, 2000	Stabilized and landfilled without Department approval residual from three drums.	Former RMU-1 permit, Module I, Condition D(5)
January 14, 2002	Two contractors, not registered to the facility, passed through the landfill without CWM authorization.	Former RMU-1 permit, Module I, Condition E.6

January 15, 2002	Allowed a wasteload to be disposed at landfill prior to the required laboratory inspection.	Former sitewide permit, waste analysis plan (WAP), Attachment A, Section C-2e
August 28, 2001	Landfilled one drum of hazardous waste above LDR requirements.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
January 16, 2002	Failure to inspect the leak detection system for the filter press sump on a daily basis.	Former sitewide permit, Module II, Condition (E), inspection plan
June 15, 2001- Dec. 30, 2001	Failure to perform COD and phosphate analyses on samples of the influent and effluent of the biotowers.	Former sitewide permit, Waste Analysis Plan, Attachment A, Section C-2f(2)(b)
February 5, 2002	Failure of the site inspector to fully inspect drums stored in a box van in the full trailer parking area.	Former sitewide permit, Attachment B, Appendix F-1; 6 NYCRR Part 373-2.9(d); 6 NYCRR Part 373-2.3(f)
February 6, 2002	Failure to visually inspect empty containers prior to disposal in the landfill.	Former sitewide permit, Waste Analysis Plan, Attachment A, Section C-2d(1)(a)
February 9, 2002	Inadequate drum management included one drum of incompatible waste not separated, insufficient aisle space between drums, and failure to address these problems in a timely manner.	Former sitewide permit, Attachment B, Appendix F-1, Section 6; 6 NYCRR Part 373-2.3(f); 6 NYCRR Part 373-2.9(h)
March 11, 2002	Failure to address damage to the site perimeter fence in a timely manner.	Former sitewide permit, Attachment B, Appendix F-1, Section 6; 6 NYCRR Part 373-2.2(g)(3)
July 12, 2001- Nov. 30, 2001	Permittee failed to be able to determine the final disposition of four drums of hazardous waste received during this time.	6 NYCRR Part 373-2.5(c)(2)(i), and (ii)
Nov. 3, 2000- January 4, 2002	Sixty drums of F006 waste, possibly exceeding LDR standards for cyanide, were landfilled.	6 NYCRR Part 376.4(a)(1)(i) and (iii)

February 26, 2002	Failure to operate Baghouse No. 3 when processing a load of RCRA empty drums through the drum shredder.	6 NYCRR Part 373-2.2(i)(2)(ii) and (iii)
March 19, 2002	Allowed the overflow of approximately 50 gallons of aqueous hazardous waste filtrate from the secondary containment unit of the filter pressroom.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10(e)(2)
February 7, 2002	Landfilled without Department approval one drum of profile BE 8905 waste.	Former RMU-1 permit, Module I, Condition D(5)
May 3, 2002	Failure to consistently review results of the fingerprint analysis on drum shipments against the information provided by the generator.	Former sitewide permit, Waste Analysis Plan, Attachment A, Section C-2e(4)
May 3, 2002	Allowed hazardous waste from tank T-320 to back up into the boiler steamline.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10(e)(2)
January 10, 2002	Failure to record the disposal grid location of 20 drums of landfilled non-hazardous waste.	6 NYCRR Part 373-2.5(c)(2)(ii)
February 28, 2002	Landfilling a load of empty drums without recording the disposal grid location.	6 NYCRR Part 373-2.5(c)(2)(ii)
August 2001	Failure to apply tracking system when processing one drum of acid hazardous waste.	6 NYCRR Part 373-2.5(c)(2)(i)
October 17, 2000	Landfilled without Department approval the residue in five drums of non-hazardous waste, profile BX 6953.	Former RMU-1 permit, Module I, Condition D(5)
June 18, 2002	Failure to properly identify reactive hazardous waste caused uncontrolled reaction and fire in the mix tank, along with a failure to implement the contingency plan.	Former sitewide permit, Module II, Condition J.1; 6 NYCRR Part 373-2.4(b)(2)

June 4 or 5, 2001	Respondent failed to document the disposal of 24 bags of waste.	6 NYCRR Part 373-2.5(c)(2)(ii)
July 1, 2002	Failure to operate baghouses during stabilization process that involved the release of hydrogen sulfide gas into a building.	6 NYCRR Part 373-2.2(i)(2)(ii) and (iii)
June 27, 2002	Allowed approximately 1,000 gallons of stormwater run-on into the drum warehouse.	6 NYCRR Part 373-2.2(f)(1)(iv)
August 12, 2002	An estimated 100 gallons of water was released onto the ground from the groundwater extraction system.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10(e)(2)
October 2002	A self-audit indicated that Respondent has not consistently been obtaining the required void space certification or documenting the results of the tap test prior to disposal of asbestos containers in the landfill.	Former sitewide permit, Waste Analysis Plan, Attachment A, Section C-2e(2)
September 30, 2002	Upon the malfunctioning of the computer readout system, Respondent failed to take manual leachate level measurements.	Former sitewide permit, Module VII, Condition A.1
October 15, 2002	In well No. 1 at SLF 1 the leachate level exceeded the maximum allowable height for more than 24 hours.	Former sitewide permit, Module VII, Condition A.2
October 22, 2002	Failure to document the disposal location at the landfill of a non-hazardous waste material.	Former sitewide permit, Module II, Condition A(7)
May 17, 2002-October 22, 2002	Baghouse dust from a stabilization facility, profile X00272, was stabilized and landfilled without Department approval.	Former RMU-1 permit, Module I, Condition D(5)
November 7, 2002	Failure to provide treatment for one drum of hazardous waste debris prior to landfilling.	6 NYCRR Part 376.4(g)(1)(i)
November 6-9 2002	As a result of a computer problem,	Former RMU-1 permit,

	failure to document the quantity of liquid pumped from the RMU-1 secondary leachate collection system.	Module I, Condition G(1)(a)
June 24, 2002-December 20, 2002	Failure to send warning letters pursuant to transportation rules to the transportation companies of 12 drivers who arrived at the facility during blackout hours.	Former RMU-1 permit, Module I, Condition E(8); Former sitewide permit, Module II, Condition A(10)
Dec. 25-26, 2002	Failure to inspect several operating areas at the facility.	Former sitewide permit, Module II, Condition E, Inspection Plan
May 14, 2003	Stabilizing and landfilling, instead of recycling, one drum of mercury lamps.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
July 14 & 16, 2003	Two environmental work orders, for the repair of a leak from tank T-3011 and repair of an erosion rill on the interior Berm of Fack Pond 8, were not issued within the time frame specified in the inspection plan, Attachment B.	Former sitewide permit, Module II, Condition E, Inspection Plan
November 7, 2003	Failure to perform compatibility testing on several drums of aqueous waste prior to placement in aqueous waste treatment tanks.	Former sitewide permit, Attachment A, Condition C-2f(1)(b)
November 6, 2003	Improper identification of reactive hazardous waste and failure to wash or flush system resulted in an uncontrolled reaction and explosion of a drum servicing the tanker fuels blending pump; in addition, the contingency plan was not implemented for this incident.	Former sitewide permit, Module IV, Condition H.2; 6 NYCRR Part 373-2.2(i); Former sitewide permit, Module II, Condition J.1; 6 NYCRR Part 373-2.4(b)(2)
November 23, 2003	Tank T-3009 overflowed, releasing approximately 300 gallons of hazardous waste outside of secondary containment.	Former sitewide permit, Module V, Condition C.3; 6 NYCRR Part 373-2.10(e)(2)
December 5, 2003	Failure to determine potential flammability of incoming waste shipment resulted in reaction with water during treatment of the waste in stabilization, and set the	Former sitewide permit, Attachment A, Condition C-2f(5); Former sitewide permit, Module IV, operation of the

	waste on fire.	stabilization facility
Dec. 6 & 7, 2003	Failure to perform a required complete tank inspection on the stabilization pits.	Former sitewide permit, Module II, Condition E, Inspection Plan
January 7, 2004	The facility, in violation of the blackout rules, scheduled and received a tank truck of flammable solvent between 7:00 a.m. and 4:00 p.m. on a school day.	Former RMU-1 permit, Module I, Condition E(8); Former sitewide permit, Module II, Condition A(10)
January 7, 2004	22.4 tons of hazardous waste debris was landfilled initially without treatment.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
February 16, 2004	A truck initially exited the landfill without utilizing the truck tire wash.	Former RMU-1 permit, Module I, Condition E(6)
April 29, 2004	A truck initially exited the landfill without utilizing the truck tire wash.	Former RMU-1 permit, Module I, Condition E(6)
August 6, 2004	The leachate level in cell 11/13 exceeded 1 ft. above the liner elevation for a continuous period greater than 24 hours.	Former RMU-1 permit, Module I, Condition E(2)(a)
August 16, 2004	A load of lead contaminated soil was initially landfilled without treatment.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
September 9, 2004	The leachate level in basin G exceeded 1 ft., and remained above 1 ft., for more than seven days.	Former RMU-1 permit, Module I, Condition E(2)(d)
September 23, 2004	Sixteen drums of hazardous waste were landfilled initially without treatment.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
June 22, 2005	27,043 Kg of hazardous waste was landfilled initially without treatment.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
July 29, 2005	The leachate level in a well at SLF 5 exceeded the maximum specified level for more than 24 hours.	Former sitewide permit, Module VII, Condition A.2

October 17, 2005	Failure to retain historical copies of generator notification.	6 NYCRR Part 373-2.2(d)(2)
October 24, 2005	A load of oily solids containing a small quantity of PCB waste was disposed of at the landfill; said waste is supposed to be incinerated..	6 NYCRR Part 376.4(f)(1)(i)
May 6, 2004- July 28, 2005	Respondent received seven shipments of spent sodium nitrate heat treating salt, but managed the waste as hazardous waste debris, and disposed of said waste at the landfill.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
November 11, 2005	Approximately 2,000 gallons of aqueous hazardous waste was released from tank T-320 into the secondary containment area, resulting in approximately 10 lbs. of hazardous waste biomass sludge overflowing the secondary containment system.	Current Part 373 permit, Module IV, Condition D.2; 6 NYCRR Part 373-2.10(e)(2)
July 2004- January 2006	Failure to perform phosphate testing on the influent and effluent flows of the biotowers.	Current Part 373 permit, Attachment C, Condition C-2f(2)(b)
February 3, 2006	A waste profile was not approved until two days after said drums were received in the drum warehouse.	Current Part 373 permit, Attachment C, Section C-2d
November 3, 2005	Approximately 250 lbs. of residual solids of hazardous waste were landfilled without treatment.	6 NYCRR Part 376.4(a)(1)(i) and (iii)
October 23, 2006	Violations at tanks T-100 and TO125 included failure to perform bi-monthly impressed current inspections for cathodic protection systems, failure to issue timely environmental work orders to correct defects found in the cathodic protections.	Current Part 373 Permit, Module IV, Condition E.3 (ii); 6 NYCRR Part 373-2.10 (f)(3)(i) and (ii); Current Part 373 permit, Module I, Condition N.2
January 5, 2007	Failure to incorporate requirements of Current Part 373 permit for materials with a potential for vapor release, blackout hours, and use of the designated truck crew in all authorizations granted to transporters listing the Model City facility on their waste	Current Part 373 Permit, Module I, Condition M.1

transporter permits systems.

May 17, 2007	Shipment of wastewater treatment sludge placed in interim storage in a landfill possibly had contained toluene above LDR standard at time of receipt.	6 NYCRR Part 376.4(1)(i) & (ii)
May 23, 2007	Failure to inspect contents of a drum prior to disposal.	Current Part 373 Permit, Module I, Condition F; Attachment C (WAP), Condition C-2e (2)
July 18, 2008	Drum of lead sync traps of DOO8 debris and water was macroencapsulated and disposed at landfill.	6 NYCRR Part 376.4(a)(1) (i) & (ii); 6 NYCRR Part 376.4(e)(g)(1)
July 10 & 12, 2007	One waste shipment landfilled July 10, 2007 and two additional shipments landfilled July 12, 2007 subsequently found to exceed LDR standards.	6 NYCRR Part 376.4(a)(1) (i) & (ii)
Dec. 14, 2005	Failure to perform analysis required by waste analysis plan on drum of paint waste received Dec. 14, 2005 (incident reported Oct. 22, 2007).	Current Part 373 Permit; Module I, Condition F; Attachment C (WAP), Condition C-2e (2) & (3)
Oct. 31, 2007	Facility received and unwittingly stored small container of cartridges containing explosive compounds.	Current Part 373 Permit, Module I, Condition F; Attachment C (WAP), Condition C-1
Dec. 12, 2007	One drum containing free liquid was stored on flatbed overnight at the drum warehouse dock; drum was removed Dec. 14, 2007.	Current Part 373 Permit, Module III, Condition L.1

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: [Signature]
 Title: V.P.
 Date: 10/17/08

Acknowledgment by a corporation, in New York State:

STATE OF NEW YORK)
) ss.:
 COUNTY OF Cree)

KAREN KRAWCZYK
 Notary Public, State of New York
 No. 01KR50514
 Qualified in Erie County
 Commission Expires 12/31/2009

On the 17th day of October in the year 2008 before me, the undersigned,

personally appeared David Kallenberg
 (Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

2920 Amsdell Road - Hamburg, NY 14075

(Full mailing address)

and that he/she/they is (are) the Area Vice President

(President or other officer or director or attorney in fact duly appointed)

of the QMI Chemical Services, LLC.

(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

[Signature]
 Notary Public, State of New York

KAREN KRAWCZYK
 Public, State of New York
 No. 01KAS051409
 Filed in Erie County
 Date: 10/10/2009

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of the New York Environmental Conservation Law by:

CWM Chemical Services, LLC
P.O. Box 200
1550 Balmer Road
Model City, New York 14107
Niagara County

Order on Consent
File No. 10-48
R9-20101004-40

WHEREAS:

1. Article 27, Title 9 of the New York State Environmental Conservation Law of the State of New York (hereinafter "ECL") entitled "Industrial Hazardous Waste Management" regulates the management of hazardous waste and facilities which treat, store, or dispose of hazardous waste in the State and provides for the promulgation and implementation of regulations by the Commissioner of Environmental Conservation to protect human health and the environment.

2. CWM Chemical Services, LLC (the "Respondent"), owns, operates and maintains control of a hazardous waste treatment, storage, and disposal facility (the "Facility") located on Balmer Road in Model City, New York in the County of Niagara

3. Respondent operates its Facility subject to the State's hazardous waste laws and regulations. Respondent was subject to Permit No. 9-2934-0022/00097 during the times relevant to this matter.

4. Module I, Condition D (11), contained in the aforementioned Permit, requires that the Permittee self-report to the Department any violation of its permits and/or the State's hazardous waste laws or regulations.

5. Respondent has self-reported seven violations of its permit and/or Part 373 regulations to the Department, as set forth in Appendix A, attached to, and made part of, this Order. One additional violation is set forth separately below.

6. Respondent, in violation of its aforementioned Permit, Condition VI, E.4.a., failed to apply adequate daily cover on the open cells of RMU-1 between April 1, 2010 and April 30, 2010.

7. Respondent, as the owner/operator of the Facility where the violations occurred, is responsible for those violations and is subject to this enforcement action by the Department.

8. Respondent admits the violations herein and, having waived its right to a hearing as provided by law on the matters recited herein, consents to the issuance and entry of this Order and agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. RELIEF

Respondent is hereby assessed a civil penalty in the amount of Forty Five Thousand Dollars (\$45,000) which shall be paid by certified check or money order made payable to the Commissioner of the Department of Environmental Conservation and sent to the Regional Attorney, 270 Michigan Avenue, Buffalo, New York 14203-2915. This payment is due upon execution of this Order by Respondent.

II. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access, upon request, to any facility or site owned, operated, and controlled by Respondent including records maintained at the aforesaid facilities or sites in order to inspect and copy such records.

III. FAILURE, DEFAULT, AND VIOLATION

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed a violation of both this Order and the ECL.

IV. SETTLEMENT/RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the above-recited violations against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph A of this paragraph, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any or the civil, administrative, or criminal rights of the Department or of the Commissioner of the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. BINDING EFFECT

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written Order of the Commissioner or the Commissioner's designee.

VII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations recited in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound by this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel) with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

DATED: Feb 25, 2011
Buffalo, New York

Joseph Martens
Acting Commissioner
New York State Department of
Environmental Conservation

by: Abby M. Snyder
Abby M. Snyder
Regional Director

APPENDIX A

<u>Date</u>	<u>Violation</u>	<u>Enforcement Authority</u>
May 2008	Inability to verify shipment of three boxes of fluorescent bulbs intended for recycling	Permit No. 9-2934-0022/00097 (hereinafter "Facility Permit")
December 10, 2008	Deposition in the landfill of shipment of pond sediment which included bentonite as a sorbent used to solidified free liquid rather than a proper stabilization material	6NYCRR Part 373-2.14(j)
March 25, 2009	Four drums of asbestos containing waste landfilled without proper inspection for presence of free liquid	Facility Permit, Condition VII.A, attachment C-2e(2)
August 2009	Landfilled, without Department approval, drum of site-generated waste – soil borings from site investigation – with trace levels of radioactive material above background levels	Facility Permit, Condition VII.A, attachment C-1.6
September 22, 2009	Two shipments of soil, with greater than 500ppm volatile organic compounds, stabilized and placed in the landfill	6NYCRR Part 373-2.29(e)(2)(ii); 6NYCRR Part 376.4(k)
April 11 & 12, 2009	Failed to perform daily tank inspections on Groundwater Extraction System (GWES) tanks during startup sequence	Facility Permit, Condition IV.E
November 20, 2009	Drum of non-hazardous waste landfilled without Department approval	Facility Permit, Condition VI.D.2

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

CWM Chemical Services, Inc.

By: 

Title: V.A.

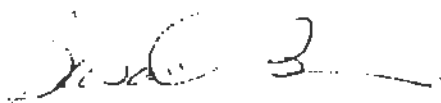
Date: 2/15/11

STATE OF NEW YORK)

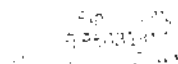
) ss:

(COUNTY OF NIAGARA)

On this 15th day of February in the year 2011 before me, the undersigned, personally appeared Dave Ballone 2, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public



1/6

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of the New York Environmental Conservation Law by:

CWM Chemical Services, LLC
P.O. Box 200
1550 Balmer Road
Model City, New York 14107
Niagara County

Order on Consent
File No. 12-16
R9-20120312-16

WHEREAS:

1. Article 27, Title 9 of the New York State Environmental Conservation Law of the State of New York (hereinafter "ECL") entitled "Industrial Hazardous Waste Management" regulates the management of hazardous waste and facilities which treat, store, or dispose of hazardous waste in the State and provides for the promulgation and implementation of regulations by the Commissioner of Environmental Conservation to protect human health and the environment.

2. CWM Chemical Services, LLC (the "Respondent"), owns, operates and maintains control of a hazardous waste treatment, storage, and disposal facility (the "Facility") located on Balmer Road in Model City, New York in the County of Niagara.

3. Respondent operates its Facility subject to the State's hazardous waste laws and regulations. Respondent was subject to Permit No. 9-2934-00022/00097 during the times relevant to this matter.

4. Module I, Condition D (11), contained in the aforementioned Permit, requires that the Permittee self-report to the Department any violation of its permits and/or the State's hazardous waste laws or regulations.

5. Pursuant to ECL Section 71-2705, violations of Title 9 of Article 27, including the violation of any term or condition of a permit issued under Title 9 Article 27, are subject to a civil penalty of up to Thirty Seven Thousand Five Hundred Dollars (\$37,500) for each initial violation and a maximum of Thirty Seven Thousand Five Hundred Dollars (\$37,500) for each day during which such violation continues.

6. Respondent, in violation of its Permit, Module VIII, Condition III.J, failed to timely notify the Department, within thirty days of such knowledge, instead providing such notice only after forty-five days, that it was unable to obtain a representative sample from Well F5802S.

7. Respondent, as indicated by on-site reports from Department monitors dated January 3, 2012, stored one hundred fifty-four liquid drums in the Drum Management Building, Area V, in violation of the one hundred seventeen drum limit allowed by its Permit, Module III, Condition A.

8. Respondent has self-reported four violations of its permit and of ECI, Section 71-2705, which are set forth below.

9. Respondent, in violation of its aforementioned Permit, Attachment M, Section 6.6, failed to submit a duplicate sample for every tenth sample collected for duplicate sampling events during 2011.

10. Respondent, failed to perform a complete daily inspection of tank P-165 to verify that the tank was not leaking between April 2011 and October 2011 in violation of its Permit, Module I, Condition E and Attachment F, Section F (Preparedness and Prevention) and 6 NYCRR Part 373-2.10(f).

11. Respondent, in violation of its Permit, Module VI, Condition E.3.a, allowed the primary leachate level in Cell 6 of RML-1 landfill to exceed a depth of one foot directly above the lowest elevation of the primary geomembrane for more than twenty-four hours, between April 1 and 4, 2011.

12. Respondent, in violation of its Permit, Module I, Condition A, and Attachment C, Waste Analysis Plan, Section C-1, improperly accepted for storage one five gallon container of flares, originally identified as "Flammable Solid", but eventually determined to be a "Class C explosive" which is not permitted to be stored on site.

13. Respondent, as the owner/operator of the Facility where the violations occurred, is responsible for those violations and is subject to this enforcement action by the Department.

14. Respondent admits the violations herein and, having waived its right to a hearing as provided by law on the matters recited herein, consents to the issuance and entry of this Order and agrees to be bound by its terms.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. RELIEF

Respondent is hereby assessed a civil penalty in the amount of Twenty One Thousand Dollars (\$21,000) which shall be paid by certified check or money order made payable to the Commissioner of the Department of Environmental Conservation and sent to the Regional Attorney, 270 Michigan Avenue, Buffalo, New York 14203-2915. This payment is due upon execution of this Order by Respondent.

II. ACCESS

For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access, upon request, to any facility or site owned, operated, and controlled by Respondent including records maintained at the aforesaid facilities or sites in order to inspect and copy such records.

III. FAILURE, DEFAULT, AND VIOLATION

Respondent's failure to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed a violation of both this Order and the ECL.

IV. SETTLEMENT/RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the above-recited violations against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in Subparagraph A of this paragraph, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any or the civil, administrative, or criminal rights of the Department or of the Commissioner of the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

V. BINDING EFFECT

The provisions of this Order shall inure to the benefit of and be binding upon the Department and Respondent and its successors (including successors in title) and assigns.

VI. MODIFICATION

No change in this Order shall be made or become effective except as set forth by a written Order of the Commissioner or the Commissioner's designee.

VII. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations recited in this Order. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound by this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent (or the Respondent's counsel)

with a fully executed copy of this Order as soon as practicable after the Commissioner or the Commissioner's designee signs it.

DATED: April 18, 2012
Buffalo, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

by: Abby M. Snyder
Abby M. Snyder
Regional Director

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

CWM Chemical Services, Inc.

By: [Signature]

Title: VP

Date: 4/13/12

STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

On this 13 day of April in the year 2012 before me, the undersigned, personally appeared Dave Bolinger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Notary Public

Notary Public, State of New York
No. 01BR5032814
County of Erie
September 6, 2014