

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Applications for Permits pursuant to Articles 17, 19, 24, and 27 of the Environmental Conservation Law (ECL); Parts 201-5 (State Facility Permits), 373 (Hazardous Waste Management Facilities), 663 (Freshwater Wetlands Permit Requirements), 750 (State Pollutant Discharge Elimination System [SPDES] Permits) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR); Section 401 of the federal Clean Water Act (CWA); and 6 NYCRR 608.9 (Water Quality Certifications), by

CWM Chemical Services, LLC,

Applicant (RE: Residuals Management Unit - Two [RMU-2]).

DEC Permit Application Nos.: 9-2934-00022/00225
 9-2934-00022/00231
 9-2934-00022/00232
 9-2934-00022/00233
 9-2934-00022/00249

NEW YORK STATE FACILITY SITING BOARD

In the Matter of an Application for a Certificate of Environmental Safety and Public Necessity pursuant to 6 NYCRR Part 377 (Siting of Industrial Hazardous Waste Facilities), by

CWM Chemical Services, LLC,

Applicant (RE: Residuals Management Unit - Two [RMU-2]).

**RULING
OF
THE DEPUTY COMMISSIONER
OF THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

RULING OF THE DEPUTY COMMISSIONER

By letter motion dated December 12, 2022 (December Letter Motion) to me as the designee of the Commissioner of the New York State Department of Environmental Conservation (DEC),¹ Ms. Amy H. Witryol requests permission to file an expedited appeal from the ruling of the New York State Facility Siting Board (Siting Board) dated December 2, 2022 (Siting Board Ruling) in the above-captioned proceeding. Ms. Witryol contends that the Siting Board Ruling “conflicts with” the procedural instructions of Administrative Law Judge (ALJ) Daniel P. O’Connell “resulting in prejudice to [her] case” (December Letter Motion at 1).

Furthermore, Ms. Witryol maintains that she was prohibited from introducing relevant evidence during the redirect of her witnesses during the hearing that was conducted in April 2022, and during cross-examination of CWM Chemical Services, LLC (CWM)’s witnesses at the hearing conducted in September 2022 (see December Letter Motion at 1). Ms. Witryol also states that she “was also denied a deposition and interrogatories” (id.). She then provides explanations relating to her contentions (see id. at 2-4). As part of the documentation that she offers in support is her November 14, 2022 letter to the Siting Board requesting leave to appeal the ALJ’s ruling denying her request to submit rebuttal to CWM’s public interest testimony.

CWM, by its attorneys Harris Beach PLLC, responded to Ms. Witryol’s request by letter dated December 19, 2022 (CWM Response). CWM argues that no basis exists in 6 NYCRR part 624, 6 NYCRR part 377, or the Memorandum of Agreement that was signed by Department of Environmental Conservation (DEC) Commissioner Joseph Martens and Siting Board Chair-Designee Paul J. D’Amato on July 8, 2014 (MOA) that would authorize parties to this proceeding to appeal rulings of the Siting Board to the DEC Commissioner (CWM Response at 2).

This proceeding has two decision makers, the Siting Board and the DEC Commissioner, and each has areas of specific jurisdiction. The applicable provisions of the Environmental Conservation Law, the accompanying regulations in 6 NYCRR parts 624 and 377, and the MOA do not authorize one decision maker to consider appeals from the decisions or rulings of the other. As such, Ms. Witryol’s request to appeal from the ruling of the Siting Board to the DEC Commissioner lacks a legal basis and must be denied.

Notwithstanding the foregoing, various issues in this proceeding may be within the jurisdictional authority of both decision makers. As to those overlapping issues, objections to an ALJ’s ruling may be the subject of a party’s appeal to both the DEC Commissioner and the Siting Board. Assuming, without deciding, that such was the situation here, any appeal to the DEC Commissioner must conform to the time requirements established by 6 NYCRR part 624.

¹ By memorandum dated December 21, 2015, DEC Commissioner Basil Seggos delegated decision-making authority on this matter to me.

In accordance with 6 NYCRR 624.6(e)(1), expedited appeals or applications for leave to appeal must be filed to the DEC Commissioner (or in this matter, to his designee) in writing within five days of the disputed ruling. Any such request for permission to file an expedited appeal of the ALJ's ruling to the DEC Commissioner at this juncture would be untimely.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

BY: _____ /s/
Louis A. Alexander
Deputy Commissioner

Dated: January 30, 2023
Albany, New York