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
9-2934-00022/00233
9-2934-00022/00232
9-2934-00022/00249

NEW YORK STATE FACILITY SITING BOARD

In the Matter of an Application for a Certificate of Environmental Safety and Public Necessity pursuant to 6 NYCRR Part 361 (Siting of Industrial Hazardous Waste Facilities) by

CWM Chemical Services, LLC,
Applicant (RE: Residuals Management Unit - Two [RMU-2]).

June 1, 2016

RE: Ruling on April 21, 2016 Motion to Reconvene the Issues Conference

Proceedings

In a ruling on proposed issues for adjudication and petitions for full party status and amicus status dated December 22, 2015 ([IR] at 151-152), I granted Amy Witryol's petition for full party status. Subsequently, Ms. Witryol inquired, in an email dated February 24, 2016, about the procedures to reconvene the issues conference to consider new information. I outlined the procedures in an email dated February 26, 2016.

By motion dated April 21, 2016, Ms. Witryol moved to reconvene the issues conference. The motion also includes Exhibits A, B, and C, which are described below. Ms. Witryol filed errata in a letter dated April 22, 2016. The Office of Hearings and Mediation Services (OHMS) received hard copies of the motion papers and the errata on April 25, 2016.

With an email dated April 25, 2016, I granted CWM's request, of the same date, to file a response to the motion, and extended the opportunity to respond to the other parties. I set May 10, 2016 as the due date for any responses. Subsequently, with a cover letter from Mr. Darragh dated April 29, 2016, CWM filed a response. With a cover letter from Ms. Mucha and Mr. Stever dated May 9, 2016, Department staff filed a response. CWM and Department staff oppose the motion to reconvene the issues conference.

Mr. Olsen, on behalf of his clients, Residents for Responsible Government, the Lewiston-Porter Central School District, and the Niagara County Farm Bureau (collectively, RRG), filed a response dated May 10, 2016. RRG supports the motion, and states that the purpose of its response is "to clarify the submissions and to identify areas of agreement and to state, as necessary, their interpretation of the Motion" (RRG's May 10, 2016 response [RRG] at 2]).

Mr. Abraham filed a letter dated May 10, 2016 on behalf of the municipalities responding to the motion. The municipalities support the motion.

Motion to Reconvene the Issues Conference

The applicable hearing regulations allow parties to file motions with the administrative law judge. Every motion must state an objective, present the facts on which it is based and, when appropriate, include legal argument to support the motion. (*See* 6 NYCRR 624.6[c][2]). As stated in Ms. Witryol's motion, its objective is "to reconvene the Issues Conference to evaluate new information not already addressed by post-petition submissions" (Motion at 1).

As outlined in my February 26, 2016 email to the parties, a motion to reconvene the issues conference to consider previously unavailable documents must include an offer of proof (*see generally* 6 NYCRR 624.6[c][2]). The offer of proof should include a description of each document, stating who prepared it, when the document was prepared, when it was released and how it was released, and when the party requested the document and, subsequently, obtained the document. The motion must identify any proposed witness who would offer testimony at the hearing as it relates to the new information (*see* 6 NYCRR 624.5[b][2][ii]). To prevail on a motion to reconvene the issues conference, the motion must demonstrate that the new information was not reasonably available at the time of the issues conference (*see* 6 NYCRR 624.4[b][1]), and would either lead to a reconsideration of the issues ruling, or result in the identification of new issues for adjudication.

Each of the four bases identified in Ms. Witryol's April 21, 2016 motion to reconvene the issues conference is discussed below. For the reasons that follow, a consideration of the newly available information identified in Ms. Witryol's April 21, 2016 motion would neither lead to a reconsideration of the issues ruling, nor result in the identification of new issues for adjudication.

I. Motion Issue No. 1

As Exhibit A to the motion, Ms. Witryol identifies the December 2015 proposed plan developed by the US Army Corps of Engineers (ACE) to remove the contents of the interim waste containment structure at the Niagara Falls Storage Site (NFSS). According to Ms. Witryol, ACE's announcement is significant to the applications pending before the Siting Board and the Commissioner because the announcement "elevates risk in the context of SEQR during the proposed operational period of RMU-2" (Motion at 2). With references to the Department's 2010 SEQR Handbook, Ms. Witryol asserts three new SEQR impacts raised by the proposed plan that, according to the motion, require an evaluation in the context of this proceeding (*see* Motion at 3-4).

The first new SEQR impact asserted in the motion is:

> [i]nevitable groundwater pumping in the lower aquifer at CWM which would be required for construction of an RMU-2 (over many years) and also for new Corrective Action needed for the lower aquifer would interfere with NFSS monitoring during higher risk remedial construction (Motion at 5).

With respect to this potential impact, Ms. Witryol references the municipalities' petition for full party status and Dr. Michalski's report, which was included with the petition. According to Ms. Witryol, the footprint of the proposed RMU-2 landfill would range from less than 1,500 feet to less than 10,000 feet from the NFSS. (*See* Motion at 5.)

The second new SEQR impact asserted in the motion is:

> [t]he Corps['s] health risk assessment did not evaluate, 'Cumulative or Long Term impacts…i.e., collectively significant actions taking place over a period of time…not all associated with one applicant' (Motion at 6).

According to Ms. Witryol, this statement means that air emissions that may result from opening the interim waste containment structure on the NFSS site have not been evaluated in combination with the potential air emissions from RMU-2. Ms. Witryol argues that CWM should be required to provide an assessment of its potential contribution from the proposed RMU-2 landfill. In addition, Ms. Witryol states that a similar analysis should be provided from the Modern Landfill. (*See* Motion at 6.)

The third new SEQR impact asserted in the motion is:

> [t]he discharges to ground or surface water which may occur from IWCS construction have not been evaluated *in combination with* RMU-2 discharges to shared ditches (Motion at 6 [italics in original]).

Ms. Witryol states that the shared ditches discharge to Four Mile Creek. According to Ms. Witryol, CWM should provide an assessment of its contribution to the cumulative impacts from the surface discharges anticipated with the proposed RMU-2 landfill. In addition, Ms.

Witryol argues that impacts from the Modern Landfill should be included in CWM's analysis. (*See* Motion at 6.)

A. Responses

CWM notes that the motion does not include any offer of proof and does not identify any witnesses. CWM asserts that it is not responsible to advise ACE about how to design the proposed remediation plan for the NFSS. With respect to the proposed remediation of the NFSS and any associated potential impacts, CWM argues that the December 22, 2015 issues ruling properly determined that issues related to the NFSS property are not relevant to this proceeding. (*See* CWM's April 29, 2016 response [CWM] at 2-3; *see also* Department staff's May 9, 2016 response [Staff] at 2-3.)

According to CWM, the proposed remediation of the NFSS is being developed pursuant to protocols outlined in the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). With reference to 42 USC § 9621, CWM argues that ACE needs to design the remediation plan to meet relevant and appropriate requirements, among them, air emission standards. CWM argues further that any surface water discharges from the NFSS would need to meet federal and New York SPDES permit equivalency requirements. (*See* CWM at 3-4.)

Department staff contends that the motion restates the previously presented claims about the potential adverse impacts associated with the NFSS and the legacy radiological contamination on the site of the Model City facility (*see* Staff at 2).

According to RRG, the implementation of the proposed remediation plan for the NFSS is highly probable. RRG notes that EPA, the New York State Departments of Health and Environmental Conservation, as well as the Niagara County Department of Health filed comments about the proposed remediation plan. RRG supports the motion, which seeks to require CWM and the operators of the Modern Landfill to evaluate the potential adverse cumulative impacts associated with the proposed remediation plan of the NFSS and CWM's proposal. (*See* RRG at 2, 4.)

With respect to the proposed remediation of the NFSS, the municipalities' response focuses on potential truck traffic impacts (*see* Municipalities' May 10, 2016 letter [Municipalities] at 1), which is addressed below under motion issue No. 4.

B. Discussion

The proposed plan by ACE to remove the contents of the interim waste containment structure at the Niagara Falls Storage Site was released in early December 2015. Accordingly, the proposed plan is new information that I did not consider during the preparation of the December 22, 2015 issues ruling.

Regardless of when it became available, ACE's proposed plan relates to an irrelevant topic. As noted (IR at 133), the SEQR action under consideration here is limited to the construction and operation of the proposed RMU-2 landfill and related modifications on the site of the Model City facility. ACE's proposed plan to remediate the NFSS is a separate action proposed by a different project sponsor. Moreover, CWM's proposal and ACE's proposed plan have entirely separate and different purposes.

Given the action (*see* 6 NYCRR 617.2[b][1][iii]) being considered in these captioned matters, neither the motion nor the responses in support of the motion identify any legal authority to support the request to direct CWM to consider the cumulative nature of any potential impacts that may be associated with ACE's proposed plan. Rather, the opposite is true. CWM's proposal and ACE's proposed plan are independent from each other and are not part of a larger plan. Therefore, the type of cumulative review proposed in the motion and in the responses supporting the motion is not required (*see Matter of Friends of Stanford Home v Town of Niskayuna*, 50 AD3d 1289, 1292 [2008], *citing Matter of Forman v Trustees of State Univ. of N. Y.*, 303 AD2d 1019, 1020 [2003]).

II. Motion Issue No. 2

The second issue identified in the motion concerns the release in March 2016 of two letters from the US Department of Energy (DOE) concerning vicinity properties (VP). The motion includes copies of the letters as Exhibit B to the motion. Both letters are dated September 22, 2014. The first letter relates to VP-H', and the second letter to VP-X. According to Ms. Witryol, DOE has never referred a certified vicinity property back to ACE for reopening (*see* Motion at 7). Ms. Witryol argues that the two letters demonstrate that reopening the vicinity properties "is 'reasonably foreseeable' during CWM's projected 32-year life for RMU-2" (Motion at 7).

In table format, Ms. Witryol outlines the differences between the draft CWM excavation plan for the proposed RMU-2 landfill, and ACE's December 2015 proposed plan. According to Ms. Witryol, the draft soil excavation monitoring and management plan (SEMMP) for the proposed RMU-2 landfill is significantly different from the investigation and remediation plans proposed by ACE for the NFSS. Among the differences, Ms. Witryol notes that the Department's plan does not provide for remediation. (*See* Motion at 10.) Ms. Witryol concludes that DOE's September 22, 2014 letters (*see* Exhibit B) show that the federal government would remediate portions of the site of the Model City facility that would become inaccessible with the construction of the proposed RMU-2 landfill (*see* Motion at 11). The motion discusses the nature of the radioactive materials from the Knolls Atomic Power Laboratory reactor that may be present on VP-H' and VP-X (*see* Motion at 11-14).

A. Responses

With respect to VP-H', CWM admits that the site of the Model City facility includes this particular vicinity property. CWM notes, however, that the footprint of the proposed RMU-2

landfill would not be located on VP-H'. CWM states that it does not own VP-X, and that VP-X is part of the NFSS. According to CWM, the information in DOE's letters dated September 22, 2014 does not provide any basis to reopen the issues previously discussed at the issues conference concerning the adequacy of the historic radiological surveys undertaken at the site of the Model City facility, the adequacy of the SEMMP, and the closure of Fac Pond 8. CWM states that these issues were addressed sufficiently in the December 22, 2015 issues ruling. (*See* CWM at 4.)

CWM acknowledges, however, that appeals from the issues ruling concerning the topics identified in the preceding paragraph are pending. CWM asserts that the motion proposes to revisit these issues. (*See* CWM at 5.)

Department staff argues that the September 22, 2014 DOE letters would not add anything substantive or significant to the extensive record. Department staff notes that the motion does not provide the information I requested in my February 26, 2016 email such as, when Ms. Witryol requested the September 22, 2014 letters and subsequently obtained them. (*See* Staff at 3.)

As argued in the motion, RRG agrees that DOE's September 22, 2014 letters concerning VP-H' and VP-X are cause to reconvene the issues conference. In addition, RRG argues that the environmental investigation leading to the potential remediation of the site of the Model City facility would be protective of human health and the environment. RRG argues further that CWM's proposal to construct the RMU-2 landfill would hinder the proposed environmental investigation and any associated remediation. RRG agrees that it would be appropriate to evaluate the proposed SEMMP against ACE's proposed remediation plan. RRG observes that the motion notes that the September 22, 2014 DOE letters were not available until the January 2016 poster presentation by ACE. (*See* RRG at 6-7.)

The municipalities state that ACE's decision to reinvestigate VP-H' and VP-X provides new support for the presumption of additional subsurface radiological contamination on the site of the Model City facility. The municipalities express concern that Fac Pond 8 was constructed from on-site contaminated materials. In addition, the municipalities reiterate their concerns about the closure of Fac Pond 8 pursuant to the terms and conditions of the 2013 site-wide Part 373 renewal permit. (*See* Municipalities at 2.)

B. Discussion

According to Ms. Witryol, ACE publicized the DOE September 22, 2014 letters as "a tiny bullet on one of many posters at a public hearing" (Motion at 7, note 6). Ms. Witryol states further that ACE subsequently posted the letters on its website in March 2016 in response to a federal Freedom of Information Act (FOIA) request (*see* Motion at 7, note 6).

Exhibit B to the motion consists of copies of the two DOE letters dated September 22, 2014 concerning VP-H' (*see* Motion, Exhibit B at 23-24), and VP-X (*see* Motion, Exhibit B-3 at 25-26). The locations of VP-H' and VP-X are not in dispute. Figure 3-13 of the DEIS (at 49)

depicts the general layout of the Model City facility and the vicinity properties. Although VP-H' is within the boundary of CWM's property, no portion of the footprint of the proposed RMU-2 landfill would be located on this vicinity property. VP-X is not part of the site of the Model City facility. Rather, VP-X is part of the NFSS. (*See also* Municipalities Petition, Appendix A at 10, Fig. A6.)

Because VP-X is located on the NFSS site and not on the site of the Model City facility, the information presented in the DOE letter dated September 22, 2014 (*see* Motion, Exhibit B-3 at 25-26) is not relevant to this proceeding.

Furthermore, the issues conference should not be reconvened to consider the information presented in DOE's September 22, 2014 letter concerning VP-H' because the location of the footprint for the proposed RMU-2 landfill would not be located on or near this particular vicinity property. Contrary to Ms. Witryol's contention (*see* Motion at 11), the construction of the proposed RMU-2 landfill, if subsequently authorized, would not preclude access to VP-H' in the event that ACE chooses to act on DOE's recommendation as outlined in the September 22, 2014 letter (*see* Motion, Exhibit B at 23-24).

Contrary to the arguments outlined in the motion and in the responses that support the motion, comparisons of the draft SEMMP with ACE's December 2015 proposed plan are beyond the scope of these proceedings and, therefore, misplaced. The purpose of the draft SEMMP is different from that of ACE's proposed plan. The purpose of ACE's proposed plan is to remediate the interim waste containment structure at NFSS. The purpose of the draft SEMMP, however, is to address potential encounters with legacy chemical or radiological contamination on the site of the Model City facility during the excavation of the footprint for the proposed RMU-2 landfill.

With respect to the municipalities' comment that ACE's decision to reinvestigate VP-H' and VP-X provides new support for the presumption of additional subsurface radiological contamination on the site of the Model City facility, I note no factual dispute exists about this presumption. The DOH 1972 Order presumes as much and, as explained in the issues ruling (at 135-136), provides the legal basis for requiring soil excavation monitoring and management plans such as the draft SEMMP, revised May 2015.

III. Motion Issue No. 3

According to Ms. Witryol, the US Environmental Protection Agency (EPA) and the Department failed to initiate timely consultation with the Tuscarora Nation about CWM as early as possible in the process pursuant to environmental justice guidance. Ms. Witryol refers to Chief Leo Henry's October 19, 2015 letter addressed to Judith Enck, EPA Region 2 Administrator, and James T. McClymonds, Chief Administrative Law Judge. (*See* Motion at 15.) Based on this correspondence and others discussed in the text of the motion, Ms. Witryol moves to reconvene the issues conference:

to allow petitioners to object to CWM's exclusion of the Tuscarora Nation as an impacted EJ community on the significance and substance of the letter and other supporting evidence (Motion at 15).

Ms. Witryol requests that the parties have an opportunity to explore and comment about the ramifications of Chief Henry's October 19, 2015 letter and related evidence (*see* Motion at 17).

A. Responses

CWM objects to the motion based on Chief Henry's October 19, 2015 letter. CWM argues that the DEIS addressed whether the Tuscarora Nation is an environmental justice community who would be adversely impacted by its proposal. CWM notes that Neil Patterson, a member of the Tuscarora Nation, appeared at the July 26, 2006 public scoping session for the DEIS. In August 2013, CWM states that Department staff provided it with a mailing list for quarterly reports. Among others, CWM has sent quarterly reports to Renee Rickard, Tuscarora Environmental Program, 2045 Upper Mountain Road, Tuscarora Nation via Sanborn, New York 14132-9236. Finally, CWM notes that nothing in the motion demonstrates that Ms. Witryol has authority to appear on behalf of the Tuscarora Nation. (*See* CWM at 6-7; *see also* Staff at 3.)

In addition, Department staff argues that the motion contains numerous mischaracterizations about the nature of the communications with members of the Tuscarora Nation concerning the captioned matters, and staff's compliance with Commissioner Policy (CP)-29. Department staff notes that the December 22, 2015 issues ruling found no error with staff's analysis. (*See* Staff at 3.)

According to RRG, whether Department staff complied with CP-29 (Environmental Justice) or CP-42 (Consultation with Indian Nations) based on Chief Henry's October 19, 2015 letter could not have been raised as an issue by the parties prior to January 21, 2016. On January 21, 2016, Ms. Witryol obtained a response to her January 6, 2016 Freedom of Information Law (FOIL) request. RRG supports the request in the motion to provide the parties the opportunity to comment about Chief Henry's letter. Furthermore, RRG notes that the parties do not need to be authorized as representatives of the Tuscarora Nation to do so. According to RRG, sending copies of public notices does not comply with the intent of CP-29 or CP-42. (*See* RRG at 9-10.)

The municipalities' response does not comment about motion issue No. 3.

B. Discussion

The issues ruling (at 62-64) discusses CP-29 concerning environmental justice, reviews the information presented in the DEIS, and considers Department staff's analysis of that information. In CP-29, the term "environmental justice community" is expressly defined. Also, the method recommended in CP-29 for identifying a potential environmental justice community relies upon data collected in 2010 from the US Census Bureau. Based on Department staff's

review of the census data, staff's preliminary screening did not identify any potential environmental justice community.

The issues ruling noted that no one challenged the results of Department staff's preliminary screening, the procedure for which is outlined in CP-29. The ruling concluded that Department staff followed the guidance outlined in CP-29. (*See* IR at 64.)

The motion presumes that the Tuscarora Nation is an environmental justice community as that term is defined in CP-29. To date, however, no one has offered any information to refute the results of Department staff's preliminary screening pursuant to the guidance outlined in CP-29. It is particularly significant to note that Chief Henry does not characterize the Tuscarora Nation as an environmental justice community in the October 19, 2015 comments about the DEIS. Consequently, the October 19, 2015 letter is not a sufficient offer of proof to reconvene the issues conference to further develop the record about potential environmental justice issues.

Chief Henry does state in the October 19, 2015 comments (at 2) that the DEIS overlooks environmental justice impacts of traditional cultural areas located outside the Reservation. In addition, Chief Henry states there are potential visual impacts associated with the proposed RMU-2 landfill. The nature of these comments, however, appears to be similar to the equity arguments presented in RRG's petition for full party status (*see* RRG Petition at 37-38), and as discussed in the issues ruling (at 64). In the ruling, proposed issues were identified for adjudication concerning the geographic distribution of hazardous waste landfills in New York State, in general, and in Niagara County, in particular (at 58), as well as the history of land disposal activities at the site of the Model City facility (at 61).[1] Moreover, in making a final determination about CWM's proposal, the Siting Board will consider the siting criteria related to the concerns expressed in Chief Henry's October 19, 2015 comments, among other comments received, as required by the statute and regulations (*see* ECL 27-1103; 6 NYCRR 361.7).

I note that OHMS sent copies of all notices to members of the Tuscarora Nation since Department staff referred these matters to OHMS in May 2014 (see IR at 9-13). The members include Neil Patterson and Renee Rickard. OHMS mailed copies of the various notices to all interested members of the public, who identified themselves to the Department, not to comply with the guidance in CP-29, but to comply with the applicable statutory and regulatory notice requirements.

Finally, for the first time in these proceedings, RRG contends in the response (at 9-10) that the issues conference should be reconvened to consider compliance with the guidance outlined in CP-42 concerning consultation with Indian Nations. I deny this request. RRG's request is untimely because then Commissioner Grannis issued CP-42 on March 27, 2009, which was prior to the due date for filing petitions for full party status (*i.e.*, November 25, 2014).

[1] No party appealed from the rulings concerning these issues for adjudication.

IV. Motion Issue No. 4

In the motion, Issue No. 4 is identified as follows:

> RMU-1 closed Nov. 17, 2015.
> a) The baseline for traffic and noise is therefore, -0-, not RMU-1 volume.
> b) CWM's parent still tells investors it operates '5 *active* hazardous waste landfills' (Motion at 17 [italics in original]).

With respect to Issue No. 4, Ms. Witryol refers to Exhibit C, which consists of two documents. The first is excerpts from transcripts of a public earnings telephone conference call held in February 2016. The second document is a copy of a slide from an investors' presentation in March 2016.

In the transcript portion of Exhibit C, a representative from Waste Management states that the company operates "5 active hazardous waste landfills" (Motion at 17, Exhibit C at 27-28). Ms. Witryol asserts that Waste Management has been assessed fines by the US Security and Exchange Commission (SEC) for violations related to financial reporting. Ms. Witryol argues that failing to disclose the true status of facilities is inappropriate. (*See* Motion at 17.) Ms. Witryol states that "a reasonable person may wish to inquire if this represents another violation of SEC rules" (Motion at 17).

A. Responses

CWM acknowledges that the capacity of the RMU-1 was exhausted in November 2015, and argues that such information is not new. CWM argues further that the exhausted capacity of the RMU-1 landfill does not impact the protocols used to update the traffic noise study, as directed in the December 22, 2015 issues ruling. According to CWM, the baseline for the CWM traffic study assumes no CWM related truck traffic, but does include truck traffic bound for the Modern Landfill. (*See* CWM at 7.)

According to Department staff, the motion does not proffer any evidence or present a legal argument to support the motion to reconvene the issues conference simply because the RMU-1 landfill reached maximum waste capacity in November 2015. Staff notes that the parties knew at the issues conference that such circumstances were imminent. (*See* Staff at 3.)

RRG's response does not comment about motion issue No. 4.

With respect to truck traffic, the municipalities support the motion that argues for a cumulative impact analysis. Based on the proposed remediation plan for the NFSS, ACE would be transporting the contents of the interim waste containment structure to an off-site disposal facility, according to the municipalities. The municipalities note that this activity would coincide with operations at the Model City facility, if CWM obtains all required approvals for its proposal. (*See* Municipalities at 1.)

B. Discussion

Other than the above quoted text (*see* Motion at 1, 17), no other information is presented about the closure of RMU-1 and traffic baselines in the motion. Therefore, it is not clear what Ms. Witryol's position is with respect to these topics, and what additional new information should be considered if the issues conference reconvenes.

With respect to their response, the municipalities offer no legal authority for why CWM should undertake additional analyses to consider potential impacts from the truck traffic associated with ACE's December 2015 proposed plan to remediate the NFSS. The municipalities' argument is contrary to the court's holding in *Stanford Home* (50 AD3d at 1292).

With Exhibit C, it appears that Ms. Witryol proposes to expand the scope of the compliance history issue already joined (*see* IR at 64-76) to include violations of regulations administered by the SEC. Prior to this motion, however, Ms. Witryol had not asserted that CWM, its related affiliates, or Waste Management violated any regulations administered by the SEC. Therefore, such a proposal as outlined in the April 21, 2016 motion is untimely.

Exhibit C to the motion does not support the assertion that the SEC assessed fines against Waste Management for prior violations of financial reporting requirements. In addition, it is not known whether the information outlined in Exhibit C would be sufficient to demonstrate any violation of SEC regulations. Consequently, the motion is insufficient.

Ruling

Based on the forgoing, a consideration of any newly available information identified in Ms. Witryol's April 21, 2016 motion would neither lead to a reconsideration of the issues ruling, nor result in the identification of new issues for adjudication. Therefore, I deny the April 21, 2016 motion to reconvene the issues conference.

Appeals

Appeals from this ruling are authorized (*see* 6 NYCRR 624.8[d]), and will be due by June 15, 2016. If appeals are timely filed, replies are authorized, and will be due by June 30, 2016.

An electronic copy, in PDF format, of any appeal shall be filed with Chief Administrative Law Judge James T. McClymonds at james.mcclymonds@dec.ny.gov by 3:30 PM on Wednesday, June 15, 2016. At the same time, an electronic copy shall be emailed to everyone named on the February 26, 2016 service list. Subsequently, one hard copy shall be sent, by US mail, to Chief ALJ McClymonds at the Office of Hearings and Mediation Services, New York State Department of Environmental Conservation, 625 Broadway, First Floor, Albany, New York 12233-1550, and to everyone named on the February 26, 2016 service list. The hard copy must be postmarked by Wednesday, June 15, 2016.

An electronic copy, in PDF format, of any reply shall be filed with Chief Administrative Law Judge James T. McClymonds at james.mcclymonds@dec.ny.gov by 3:30 PM on Thursday, June 30, 2016. At the same time, an electronic copy shall be emailed to everyone named on the February 26, 2016 service list. Subsequently, one hard copy shall be sent, by US mail, to Chief ALJ McClymonds at the Office of Hearings and Mediation Services, New York State Department of Environmental Conservation, 625 Broadway, First Floor, Albany, New York 12233-1550, and to everyone named on the February 26, 2016 service list. The hard copy must be postmarked by Thursday, June 30, 2016.

/s/

Daniel P. O'Connell
Administrative Law Judge

Dated: Albany, New York
June 1, 2016

To: Service List (February 26, 2016)