

# ***LAW OFFICE OF GARY A. ABRAHAM***

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June 23, 2008

Steven J. Doleski  
Regional Permit Administrator  
NYS DEC Region 9  
270 Michigan Avenue  
Buffalo, NY 14203-2999

**RE: CWM CHEMICAL SERVICES, LLC, RMU-1 FINAL COVER REDESIGN  
DEC ID 9-2934-00022/00097**

Dear Mr. Doleski:

Please accept the following preliminary comments on the above-referenced project on behalf of Niagara County.

The County has a longstanding position opposing any action by the Department to advance further expansion of landfilling at this facility until the Department adopts a state-wide hazardous waste siting plan. *See, e.g.*, Letter from Gerald F. Mikol, Regional Director, to Paulette M. Kline, Director, Niagara County Office of Public Health, dated October 13, 2004. The plan would, among other things, determine whether there is a sufficient state need for further landfilling at this site. The requirement to adopt such a plan in advance of determining whether a Part 373 permit application is complete is now incorporated into state law. *See* Env'tl. Conserv. L. § 27-1109(6).

On April 4, 2008, CWM wrote to the Department acknowledging this project is a major modification. Since the project is subject to Env'tl. Conserv. L. § 27-1109(6), the Department is constrained to wait for a final state siting plan before deeming the application complete.

Under a cover letter dated April 24, 2008, CWM submitted to the Department a Full Environmental Assessment Form (FEAF) for this project. By its terms, Part 1 of the FEAF impermissibly ties the above-referenced project to the larger pending Part 373 application for a new landfill, RMU-2. Item 7 of Part 1 states that the above-referenced project is part of a larger project that will be advanced in four phases to begin in May 2010 and be completed in 2014.

If the project is in fact tied to a larger project in four phases, complete information for all four phases should be provided and reviewed together by the Department. Otherwise, to avoid any prejudice for a larger project that should be reviewed apart from the above-referenced

project, the reference to a larger project in the FEAF should be stricken.

The FEAF also states that depth to bedrock is 30-60' and depth to water table is 2-5'. These values are the same as those provided in the Golder Associates 1993 Hydrogeologic Characterization Update report. However, beneath RMU-1 the overburden is no more than 45', and recent site inspections have found that the water table can be at the ground surface in the spring in some areas. These values should be corrected in the FEAF accordingly.

Sincerely yours,

Gary A. Abraham  
*Special Counsel to Niagara County*

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cc: Claude Jeorg, Niagara County Attorney  
Clyde Burmaster, Niagara County Legislature  
John Ceretto, Niagara County Legislature  
Daniel Stapleton, Director, Niagara County Office of Public Health