



MEMORANDUM

To: Gary A. Abraham, Esq.
From: Charles P. Rosenberg, Northern Ecological Associates, Inc. (NEA)
Subject: May 5, 2006 Site Visit to Portions of the CWM Model City Facility, Town of Porter, Niagara County, New York
Date: May 24, 2006

On May 5, 2006, I completed a site visit to portions of the CWM Chemical Services, LLC (CWM) Model City Property in the Town of Porter, Niagara County, New York with Gary Abraham and Scott King. We were accompanied by John Hino of CWM, as well as representatives from EDR and the Niagara County Health Department. The primary objectives of the May 5 site visit were to evaluate the extent and quality of wetlands on the Model City Property and assess potential project impacts to wetlands, streams, and associated fauna. Potential project impacts were assessed in light of the U.S. Army Corps of Engineers (USACE) March 28, 2006 Public Notice for CWM's proposed facility upgrades (USACE Application No. 2000-01534(6)).

Wetland Extent and Quality

During the site visit, we examined the following wetlands: A, C-K, O, R-W, EE, and FF. Based on these investigations, I generally concurred with the wetland boundaries delineated by EDR and verified by the USACE. I did not observe any substantial areas containing hydrophytic vegetation and/or wetland hydrology that were not included on the wetland location maps attached to the USACE Public Notice.

The quality of the wetlands listed above appears to be low to moderate, based on professional judgment (i.e., no formal wetland evaluation technique). The wetlands are small to medium-sized (<0.5 acre) and have been influenced by the site's history of disturbance. Many are linear wetlands associated with vegetated segments of manmade ditches. Common reed (*Phragmites australis*), an invasive species, is present in several of the wetlands. However, regardless of the disturbed nature of the wetlands, a fair diversity of wetlands-associated wildlife was observed within the wetlands (e.g., northern leopard frog, green frog, American toad, red-winged blackbird, Canada goose, mallard, tree swallow, barn swallow, spotted sandpiper, great blue heron, yellow warbler, common yellowthroat, swamp sparrow, and raccoon [tracks]). Frogs and toads were vocalizing (and, therefore, likely breeding) in several of the wetlands.

Direct Impacts to Wetlands and Streams:

The USACE Public Notice identified a total of 1.55 acres of wetland impact that would be associated with CWM's proposed facility upgrades. However, that impact area does not include

an additional 0.16 acre of impacts to Wetlands EE and FF that would result from CWM's proposed storm water upgrades (i.e., FAC Ponds 1 and 2). The planned upgrades are discussed in CWM's application to the New York State Department of Environmental Conservation (NYSDEC) for RMU-2. The upgrades would increase the lateral area of FAC Ponds 1 and 2 and substantially increase the height of all perimeter berms to increase the storm water retention capacity necessary for RMU-2, one of the noticed projects. Therefore, CWM's application for a Section 404 permit should be amended to include the additional 0.16 acre of wetland impact.

It is also important to note that CWM has already commenced one component of their proposed project, prior to issuance of the USACE's Section 404 permit. According to CWM's application, existing truck scales would be relocated from within RMU-2 to an area east of the Administration Building. We observed that the new truck scales and scale house (but not the proposed access road) have already been constructed adjacent to Wetland Areas B and X.

Associated Wetland and Stream Impacts

During the site walkover, we examined Outfall 002 located near the northwestern corner of the site. We observed a slow but steady flow of water at this location, which is out-of-compliance with CWM's SPDES permit. It is important to note that PCBs are a known contaminant in the watershed above Outfall 002 (i.e., the RMU-2 project area), having been detected previously at Outfall 002¹. Site disturbance associated with CWM's proposed facility upgrades would potentially result in the discharge of PCB-contaminated runoff to on-site and downstream receptors such as streams and wetlands, and the associated fish and wildlife.

The potential release of PCBs would expose fish and wildlife present in the on-site and downstream wetlands and waters to contamination. As mentioned above, a variety of wetlands wildlife occurs within the ditches and wetlands on-site. Similar species would likely be present in downstream waters. Moreover, the New York State Department of State (NYSDOS)-designated Fourmile Creek Bay Significant Coastal Fish and Wildlife Habitat (SCFWH) is located downstream of the CWM site. The SCFWH provides valuable habitat for a diversity of fish and wildlife species. It is incumbent upon the USACE to address, as part of their Section 404(b)(1) environmental assessment for the proposed project, the potentially significant environmental impact that could result due to the "biological availability" of contaminants in dredged or fill material.

Proposed Wetland Mitigation:

According to the USACE Public Notice, CWM proposes to compensate for impacts to 1.55 acres of wetland by creating 0.89 acre of on-site wetlands and donating \$30,000 to the Buffalo Audubon Society. The USACE Public Notice did not provide details about the proposed on-site creation of 0.89 acre of wetlands but, during the May 5 site visit, CWM described it as construction of linear wetlands (i.e., wetlands within ditches) as part of the RMU-2 water management plan to replace 0.89 acre of linear wetland impact, at a replacement ratio of 1:1. Considering the uncertainty of successfully replacing wetland functions that would be associated with the proposed wetland creation effort, I feel that the USACE should increase the replacement

¹ (CWM Permit Renewal [RMU-1], NYSDEC Responsiveness Summary, NYSDEC Response to Comment 94 (2005), <http://www.dec.state.ny.us/website/dshmh/hzwtstman/ressum1to67.pdf>)

ratio to 1.5:1. Furthermore, the USACE should mandate that CWM prepare a detailed design for this component of the mitigation plan and that a minimum of five years post-construction monitoring be required to ensure that wetland losses are adequately replaced.

The USACE Public Notice stated that CWM's proposed monetary donation to the Buffalo Audubon Society would not replace lost functions and values, and that CWM would need to mitigate "the remainder of the proposed impacts" (i.e., 0.66 acre of non-linear wetlands) at a ratio of 1.5:1, either on-site or off-site. The Public Notice stated that alternate mitigation options are currently being discussed with the applicant. CWM indicated during the May 5 site walkover that it had not yet prepared a mitigation plan for the replacement of non-linear wetlands. In my professional opinion, the USACE's requirement for a replacement ratio of 1.5:1 would sufficiently offset the proposed wetland losses, assuming that standard mitigation requirements (as outlined in the *Buffalo District Mitigation and Monitoring Guidelines*) would be followed (i.e., in-kind wetland creation/restoration focused on replacing lost wetland functions and values). However, the mitigation plan should be revised to address the 0.16 acre of impacts to Wetlands EE and FF that would result from CWM's proposed storm water upgrades (as described above). The USACE should require a detailed mitigation plan and a minimum of five years post-construction monitoring to ensure that wetland losses are adequately replaced.

During the May 5 site visit, we investigated CWM's on-site wetland creation areas in the southeastern and north-central portions of the site. Wetland conditions have been established in both mitigation areas, as evidenced by the presence of hydrophytic vegetation and wetland hydrology. However, we made no effort to verify that the required areas of wetland (4.5 acres and 7.2 acres, respectively) have been established. The wetland creation areas support palustrine emergent marsh and open water communities. A small area of palustrine scrub-shrub wetland is also present within the north-central wetland mitigation area. Common reed occurs in both areas, and is abundant around much of the perimeter of the north-central wetland mitigation area. Based on information from CWM and EDR, post-construction monitoring has been completed at both mitigation areas (and the USACE accepted CWM's request to end monitoring after just two years at the southeastern mitigation area), and there are no efforts being made to control common reed. For this reason, the USACE should require a minimum of five years post-construction monitoring of any future wetland creation areas constructed by CWM.