



November 19, 2008

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NYSDEC  
Division of Solid and Hazardous Materials  
Attn: John Iannotti  
625 Broadway  
Albany, NY 12233-7250

**Re: New York Hazardous Waste Facility Siting Plan**

Dear Mr. Iannotti:

Buffalo Niagara Riverkeeper is a community-based organization founded by a group of concerned citizens in the 1980s, that uses legal, scientific, and policy tools to defend the Niagara River region, ensuring clean water, healthy environments and access to those waters for life and play.

Enclosed you will find written testimony prepared by Buffalo Niagara Riverkeeper regarding New York State's proposed *Hazardous Waste Facility Siting Plan*.

If there are any questions, please contact me directly at (716) 852-7483, or email [jedlicka@bnriverkeeper.org](mailto:jedlicka@bnriverkeeper.org).

Sincerely,

Jill Jedlicka  
Director of Ecological Programs

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**Buffalo Niagara Riverkeeper Comments on the  
NYS Hazardous Waste Siting Plan  
November 18, 2008**

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Buffalo Niagara Riverkeeper commends New York State for the development of the Pollution Prevention Institute, which seeks to reduce the amount of hazardous waste generated and ultimately disposed in New York State. However, we feel that NYSDEC has failed to draft a comprehensive *Hazardous Waste Facility Siting Plan* (“Plan”) that is either an improvement upon or reflective of the goals set forth in the “Preferred Hazardous Waste Management Practices Hierarchy” (“Hierarchy”), Section 27-0105 of the NYS Environmental Conservation Law.

From a local perspective, the continued operations and maintenance at the Chemical Waste Management (CWM) Facility (the only active Hazardous Waste Landfill in NYS and one of only 6 in the Northeast quarter of the U.S.) and located within the Great Lakes Watershed, is of major concern for Buffalo Niagara Riverkeeper. In particular, the Niagara River is a Class AA receiving water of several of CWM’s permitted outfalls.

**The concerns detailed below are even more relevant as evidenced by NYSDEC’s recent enforcement action against CWM (November 13, 2008), that resulted in a \$175,000 fine for violations that include, but are not limited to; SPDES permit violations, stormwater management violations, leachate exceedances, leaking and improperly labeled drums, and failure to comply with waste transporter conditions. All of these violations most certainly impacted the surrounding tributaries, groundwater and the Niagara River.**

**1. Preferred Statewide Hazardous Waste Management Practices “Hierarchy”.** The Draft New York Hazardous Waste Facility Siting Plan refers to the “Hierarchy” as an “*integral part of the State’s hazardous waste management strategy*”. However, the draft “Plan” fails to identify reduction and prevention programs in the context of each preference in the Hierarchy. While we agree that waste minimization is a priority, Buffalo Niagara Riverkeeper feels that on-site treatment or recycling and development of technologies should be incentivized via strong State recommendations in the “Plan,” and through funding through comparable programs. The State should adopt a Plan that takes every opportunity to discourage hazardous waste land disposal for remedial as well as primary wastes generated.

**2. Equitable Distribution of Treatment, Storage and Disposal Facilities.** The Siting Plan states that Treatment, Storage and Disposal facilities are equitably *distributed across the state*. However *equitable distribution must* be evaluated by management method, inventory and volume, and then be compared to the “Hierarchy” in order to comply with ECL 27-1102.1d. If such an inventory were to be completed of existing hazardous waste management facilities, Niagara County would have an estimated 8 million tons at CWM whereas the remainder of New York State facilities have none. This is not equitable distribution and Riverkeeper strongly disagrees with that conclusion.

Niagara County, and ultimately the Niagara River and Great Lakes Watershed, has been home to New York State’s only hazardous waste landfills for 37 years. New York State’s own “hierarchy” states that landfill disposal is the least preferred method of managing hazardous waste.

In addition, the Siting Plan identifies that 80-90% of New York Hazardous Waste IMPORTS go to CWM in Niagara County, conversely, 75% of New York Hazardous Waste EXPORTS are for recycling,

treatment or storage. Again, this is an inequitable distribution of waste management volumes and methodologies.

**3. New York State Capacity and Alternatives to Land-filling.** The Siting Plan estimates that national capacity is adequate for at least 42 years with NO expansion at CWM. New York's largest volume of hazardous waste exports, "Recycling and Treatment", were not evaluated in the Siting Plan to determine whether other on-site management methods are feasible through existing state and federal programs. Between 2007-2008, approximately 135,000 tons of hazardous waste was "bid out" by NYSDEC to be landfilled, even though the original Record of Decision's (RODs) called for on-site treatment of these wastes. Riverkeeper would request that the Siting Plan encourage the State of New York to provide incentives and programs to support on-site remedial technologies.

Also, the drop in cost of hazardous waste landfilling due to overcapacity is having an adverse affect on the "Hierarchy" as sited above (i.e.: increasing land disposal demand versus treatment and recycling).

Ultimately, the evaluation and assessment conducted in the "Plan" is flawed, as Riverkeeper believes there is no need for new or expanded landfills in New York State.

In addition, Riverkeeper believes that New York State DEC has acted in violation of the Environmental Conservation Law (Section 27-1105) regarding its "tentative determination of complete application" (dated November 14, 2008) related to CWM's application for modification of its Part 373 permit, i.e.: expansion of landfill capacity RMU-1 due to a modification in the thickness of its capping system. Riverkeeper submitted a request to NYSDEC in January 28, 2008 urging that the NYSDEC not take action on any application for increased hazardous waste landfill capacity at Chemical Waste Management's RMU-1 site, until the state has completed a Statewide Hazardous Waste Siting Plan, as required by **NYS ECL 27-1109 (6)**: *Notwithstanding any other provision of this title, no new or pending application for a disposal facility subject to section 27-1105 of this title shall be deemed complete until the department has determined such application is consistent with the facility siting plan adopted pursuant to section 27-1102 of this title.*

We do not concur with the conclusion by New York State DEC that an additional 160,000 tons of hazardous waste capacity for CWM has no significant impact on the environment.

**4. Transportation Risk to Surrounding Communities.** The Siting Plan states the risk of release of contaminants during transportation in New York State is "exceedingly low". To the contrary, in Riverkeeper's monitoring of spill reports, there have been more leaking trucks reported at CWM's front gate in one year than the Siting Plan reports for the entire state over 13 years. Referring to the November 13, 2008 enforcement action, even New York State DEC has concluded that CWM has been in violation of environmental regulations and failed to comply with waste transporter conditions.

**5. Treated Residuals.** The Siting Plan states that "Land Disposal Restrictions set specific treatment standards to assure the land disposal of the waste will pose no significant threat to the public health or the environment." We do not concur that treated wastes still classified as hazardous pose no significant threat to public health or the environment.