

**From:** [Mahar, Michael](#)  
**To:** [Rizzo, Jonathan](#)  
**Cc:** [DDarragh@cohenlaw.com](mailto:DDarragh@cohenlaw.com)  
**Subject:** FW: DEIS and Part 361 Application Comments  
**Date:** Wednesday, March 06, 2013 3:14:49 PM  
**Attachments:** [DEIS Comments\\_NYSDEC2013-03-06.docx](#)

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**From:** Gerard Burke [<mailto:gwburke@gw.dec.state.ny.us>]  
**Sent:** Wednesday, March 06, 2013 3:08 PM  
**To:** Michael Cruden; Mahar, Michael  
**Cc:** MDeVinney@db-eng.com; MHofgren@db-eng.com; Connie LaPort; Dennis Weiss; David Denk; Gerard Burke; Kent Johnson; Mark Passuite; Matthew Mortefolio; Thomas Killeen  
**Subject:** RE: DEIS and Part 361 Application Comments

Mike,

Attached are technical comments on the DEIS and Part 361 Application.

Gerard

Gerard Burke  
Section Chief, Section A  
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Division of Environmental Remediation  
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>>> "Mahar, Michael" <[MMahar@wm.com](mailto:MMahar@wm.com)> 3/6/2013 11:30 AM >>>

Thanks Mike, we look forward to getting the comments. Once we've had a chance to review them we can have some meaningful discussions.

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**From:** Michael Cruden [<mailto:mjcruden@gw.dec.state.ny.us>]  
**Sent:** Wednesday, March 06, 2013 11:27 AM  
**To:** Mahar, Michael  
**Cc:** Gerard Burke  
**Subject:** agenda for Friday's call

We'll have some comments from D&B coming your way re: DEIS and 361 application in advance of the call  
Most significant one seems to be part 361.3 (e) (1) requires the 361 application to include applications for

all permits and other entitlements for the proposed facility.

Region 9 DEP indicated they would expect an appendix to the part 361 application with Federal, State and local permit applications. The DEIS on the other hand would simply outline the permits obtained, applied for or to be applied for.

Also, apparently there are new changes to Part 201 and you now need to apply for an Air State Facility permit - w/i 6 months and for RMU-1 is my understanding, though any questions would need to be asked of the region 9 air resources folks. Likely we will ask you to include for RMU-2.

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**Recycling is a good thing. Please recycle any printed emails.**

**Comments below are based upon a technical review of the two referenced documents.**

**DEIS Comments:**

NYS Division of Air Resources: Comments on DEIS Residual Management Unit 2

- (1) The statements regarding air permits on page 7 and page 12 must be corrected to address the new changes to 6NYCRR Part 201 that became effective on February 22, 2013.
- (2) **Please Note:** This facility is no longer eligible for a Minor Facility Registration and must file for an Air State Facility permit regardless of if the RMU-2 landfill is approved.
- (3) The facility annual actual emissions of Persistent, Bioaccumulative or Toxic compounds are greater than the thresholds listed in table 1 of Subpart 201-9.
- (4) The exempt and trivial sources must be reviewed based on the new 6NYCRR Part 201-3 list.
- (5) Applicability and compliance with 40CFR60 Subpart Dc, 40CFR60 Subpart Kb, 40CFR63 Subpart ZZZZ and any other potentially applicable NSPS or NESHAP regulation must be evaluated.
- (6) The facility owner or operator shall have six months from receipt of the department's determination to submit a complete state facility permit application.

**Other comments on DEIS:**

Required Permits and Approvals - State

*Section 1.6.2.2 State*

It is acknowledged in the first bullet on page 8 of the revised DEIS that based on recent field delineation by NYSDEC, *"the new Drum Management Building Development will be in the 100 foot buffer adjacent area of a state freshwater wetland."* It is recommended that a statement be added at the end of the bullet to clarify that a Freshwater Wetlands Permit pursuant to Article 24 of ECL and 6 NYCRR Part 663 will be required for the new Drum Management Building. This statement should be repeated at the end of the fifth paragraph on page 87 and at the end of the third paragraph on page 135.

In addition, in accordance with the NYSDEC's comments, CWM should include copies of all transmittals between CWM, NYSDEC, the USACOE and any other regulating entity regarding wetlands impacts and mitigation in Appendix D.

### **NYCRR Part 361 Application:**

#### Permits:

6 NYCRR Part 361.3(e)(l) requires the application to include *"completed applications for all permits and other entitlements required under the ECL for the proposed facility, unless the applicant shows good cause not to submit any such application at this time."* Information regarding required permits is included in Section 1.1 of CWM's application.

#### *Federal Permits*

Section 1.1 of the 6 NYCRR Part 361 Permit Application only lists Toxic Substances Control Act (TSCA) approval to dispose polychlorinated biphenyls (PCBs) under the federal permits required for the project. However, Section 2.7.1 of the application states that *"approximately 2.5 acres of jurisdictional wetlands, as determined by the USACE, are located within the RMU-2 development area."* Section 2.7.1 further states that an application will be submitted to the USACE in 2013 for project impacts to jurisdictional wetlands and that CWM believes that USACE will require approximately 4 acres of compensatory wetlands to be restored on-site to mitigate impacts of the construction of RMU-2. Since CWM has not submitted the application to the USACE, and has not determined the final mitigation measures that will be implemented, it is D&B's understanding that the Part 361 Application cannot be considered technically complete. In addition, and for completeness, Section 1.1 of the 6 NYCRR Part 361 Permit Application should be updated to reference the approvals required from the USACE.

#### *State Permits*

Section 1.1 of the 6 NYCRR Part 361 Permit Application lists the following New York State Permits required for the project:

- 6 NYCRR Part 373 - Hazardous Waste Permit to Construct/Operate a Hazardous Waste Management Facility (HWMF);
- 6 NYCRR Part 361 - Certificate of Environmental Safety and Public Necessity;
- 6 NYCRR Part 201 - Air Permit to Construct/Operate an HWMF; and
- 6 NYCRR Part 401 - Water Quality Certification.

It is believed that the above referenced citation for 6 NYCRR Part 401 should be revised to Section 401 of the Clean Water Act to refer to the State Water Quality Certification required by Section 401 of the Clean Water Act. The submitted 6 NYCRR Part 361 Application does not appear to include the application to the NYSDEC for the Water Quality Certification. In addition, the facility's existing State Pollutant Discharge Elimination System (SPDES) Permit will need to be modified to construct RMU-2, and a SPDES General Permit for Stormwater Discharges from Construction Activity would be required for this project. It is recommended that CWM revise the application to identify and include any New York State permits or certifications required for the project related to the Division of Water.

In addition, Section 2.7.1 of the application states that NYSDEC determined that *"a portion of the new Drum Management Building will be in the 100-adjacent area of a state freshwater*

*wetland (RV-8).*" Section 2.7.1 further states that a joint application to USACE and NYSDEC will be submitted in 2013 to address the above referenced federal wetlands requirements as well as the State Water Quality Certification, State Article 24 application and impacts to NYSDEC freshwater wetlands. Since CWM has not submitted this joint application, it is D&B's understanding that the Part 361 Application cannot be considered technically complete. NYSDEC previously requested that all transmittals between CWM, NYSDEC, the USACE and any other regulating entity regarding wetlands impacts and mitigation be included as an appendix to the application. However, the February 2013 version of the 6 NYCRR Part 361 Application does not include copies of this correspondence.

In addition, Section 1.1 of the 6 NYCRR Part 361 Permit Application should be updated to reference the wetlands approvals required from the NYSDEC.

#### *Local Permits*

Section 1.1 of the 6 NYCRR Part 361 Permit Application lists the following Town of Porter Permits required for the project:

- Zoning Board permits for excavation and development.

However, the construction of RMU-2 requires the construction of a new Drum Management Building and relocation of several other site features and utilities. It is expected that site plan approvals and building permits will be required for this ancillary work associated with RMU-2. It is recommended that CWM determine what additional local permits and approvals are required for the project and include a list of all such permits and approvals in this section of the 6 NYCRR Part 361 Permit Application for consideration by the Siting Board.