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THE LEAGUE OF WOMEN VOTERS *of New York State*

December 21, 2009

Commissioner Pete Grannis
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7250

RE: New York State Hazardous Waste Facility Siting Plan, Sept. 2009 Re-Draft (Plan)

Dear Commissioner Grannis,

The League of Women Voters of New York State (League) believes that the decision making process for determining the suitability of proposed hazardous waste treatment, storage and disposal facilities should conform with adopted and comprehensive plans at each level of government. We are pleased to comment on this particular Plan as part of that process.

The League supports the Plan conclusion that the state does not need additional hazardous waste landfill capacity. However, we do not view the Plan's conclusion that there is an equitable geographic distribution of hazardous waste facilities in the state as consistent with the principles of New York State Environmental Conservation Law (ECL) §27-1102.

We urge the New York State Department of Environmental Conservation (DEC) to revise the Plan to conclude that currently, hazardous waste treatment, storage and disposal facilities are not equitably distributed primarily due to the high concentration of commercial hazardous waste landfills in only one area of the state.

Equitable Geographic Distribution:

ECL "§ 27-1102. Hazardous waste disposal capacity assurances and statewide hazardous waste facility siting plan" directs that, '2. The plan shall include but not be limited to:

- f. a determination of the number, size, type and location by area of the state of new or expanded industrial hazardous waste treatment, storage and disposal facilities which will be needed for the proper long-term management of hazardous waste consistent with the assurances required pursuant to subdivision one of this section and an equitable geographic distribution of facilities.'

We object to the almost exclusive reliance on the number of facilities used for evaluating burden. This law states that the *type* and *size* of hazardous waste facility should be considered significant when evaluating burden, not just the *number* of facilities.

The Plan's discussion of equitable geographic distribution includes a presentation of six maps. However, four maps are exclusive to identifying the *number* of facilities. The fifth map identifies some types of facilities, but does not identify all types of existing facilities such as closed commercial landfills. A sixth map (page 6-16) identifies the amount of waste received in each region over the course of one year, however, this approach does not address the requirement to identify the *size* of the facilities in each region because it excludes the amount of waste managed in closed commercial landfills.

To determine equitable distribution, Siting law requires identification of facilities needed for *long-term management* of hazardous waste. Closed landfills generate leachate, require maintenance and repairs, and operate under post-closure permits. Therefore, the identification of facility size for purposes of determining equitable distribution should include the amount of hazardous waste managed in closed as well as open commercial landfills. There are an estimated 10 million tons of hazardous waste managed in commercial landfills, only in Niagara County. This inequitable burden should have been considered in the Plan.

We also object to the Plan's equitable distribution evaluation based upon operator locations rather than "facilities." The Plan unfairly consolidated multiple facilities owned by the same operator into just one facility for the purposes of evaluating burden. Each open or closed commercial hazardous waste landfill should be considered a separate facility to be consistent with the premise of "new or expanded capacity" established in siting law:

There are six land disposal facilities at CWM Chemical Services, LLC referenced in chapter one of the Plan¹, but in the equitable distribution evaluation found in chapter six, the Plan improperly referred to only one landfill. CWM is also a storage facility and a treatment facility, which were improperly excluded from each map presented in the plan. Similarly, the Plan should be revised to include each of the closed commercial hazardous waste landfills in Niagara Falls at the former CECOS facility.

The League objects to the use of four areas of the state for determining burden, without explanation or rationale. Including New York City suburbs and Syracuse in the same geographic area of the state for this purpose is akin to gerrymandering.

Although the Plan analyzed equitable distribution using only four areas of the state, the maps in the equitable distribution chapter (six) of the Plan show New York State divided into the nine DEC regions. To comply with the siting law requirement to hold hearings in each region of the state, DEC selected nine areas. Therefore, it stands to reason that the Plan should consider at least nine areas in the state when evaluating burden.

¹ Pages 1-7, 1-8.

Chapter 6 of the Plan also notes that there is an incinerator (cement kiln)² in the eastern part of the state and a landfill in the western part of the state. But, the reader is not informed that the incinerator burns 7,000 tons of low grade fuel and recovers another 16,000 tons for energy³, or that the hazardous waste landfill is permitted to accept up to 500,000 tons per year of the widest variety of toxics, the most dangerous of toxics, and some of the highest concentrations of toxics.⁴

The Plan's failure to consider *type* and *size* of facility could, for example, render as "equitable" an incinerator application in Albany to; 1) increase the amount of material incinerated from 7,000 tons to 200,000 tons per year, 2) burn the most dangerous toxics, rather than low grade fuel and 3) construct several smokestacks that would be combined into "one" facility for purposes of determining equitable distribution.

Hazardous Waste Capacity:

ECL "§ 27-1102. Hazardous waste disposal capacity assurances and statewide hazardous waste facility siting plan" also directs that,

'1. The department shall immediately begin preparation of a statewide hazardous waste facility siting plan to . . . assure the availability of industrial hazardous waste treatment, storage and disposal facilities which: a. have adequate capacity for the destruction, treatment or secure disposition of all hazardous wastes that are reasonably expected to be generated within the state in the next twenty years;'

The League supports the Plan's conclusion that there is no need for expansion of hazardous waste capacity in the state, even after the remaining CWM landfill capacity is extinguished in approximately four years. For each of the last 15 years, EPA has stated that hazardous waste landfill capacity is adequate for the next 20 years.⁵ The 2008 draft Plan included results of a DEC survey which demonstrated that there is conservatively estimated 40 years of land disposal capacity nationwide, without additional land disposal capacity sited in-state.

We recommend that the Plan be more proactive and consistent throughout in integrating each step on the preferred statewide hazardous waste management practices hierarchy, particularly the DEC position that land disposal is the least preferred practice. In some areas, the Plan appears to contradict rather than promote the hierarchy. For example, on page 6-7: "This Siting Plan embraces market forces that have served to assure adequate hazardous waste management capacity and does not discourage the consideration of private sector siting proposals that meet the requirements of ECL and regulations, including the siting criteria at 6 NYCRR 361."

In fact, the Plan has an obligation to discourage applications for land disposal capacity when not equitably distributed. Under the siting law, the Plan also has an obligation to promote on-site

² See page 1-8 for description of Norlite Corp. operation

³ Appendix C, Listing 2007, p. 2 of 23; Norlite Corp, Cohoes, NY code H040=Incineration, code H050=energy recovery

⁴ In contrast to cement kiln description, the hazardous waste landfill description in Ch. 1 does not mention the toxicity and concentrations permitted, or that the vast majority of wastes accepted are classified as hazardous.

⁵ Per U.S. EPA Capacity Assurances <http://www.epa.gov/waste/hazard/tsd/capacity/index.htm>

treatment and destruction of waste, and wherever possible, to promote reclamation, recycling or reuse when waste cannot be reduced.⁶

The Plan also ignores the impact of state policy on market forces which have led to reductions in hazardous waste generation over the years⁷, and conversely, policies which improperly encourage land disposal over treatment or reclamation, etc. For example, the CWM landfill operation; 1) pays no disposal tax to New York in contrast to its competitors in other states, 2) pays no fees for applications or major modifications of permits which can require years and millions of dollars in DEC staff time to review, 3) receives low cost power from the New York Power Authority Power for Jobs Program, and 4) pays a low \$573 per acre in school tax.⁸

This section of the Plan notes, “the continuing decline in the number of facilities in the state demonstrates that small facilities are no longer economically viable and that there may not be a meaningful market for new facilities in the State simply because of the availability of hazardous waste management services elsewhere.” This statement ignores the impact of managing hazardous waste on-site by reduction, reclamation or recycling, and again, the Plan misses the opportunity to support the hierarchy by promoting on-site treatment of both primary and remedial wastes. The absence of remedial waste from inclusion in the state’s hazardous waste reduction program⁹ does not preclude the obligation to promote on-site remedies and policies that positively impact markets for safe, cost-effective on-site treatment or destruction methods.

The Plan projects a modest effect of Brownfields legislation on the land disposal market, but neglects to observe that overcapacity of land disposal may adversely impact the availability of preferred management alternatives for remedial and primary wastes. The Plan provided examples of three remedial projects to assert that most volume for land disposal comes from a few large projects. However, all three examples underwent changes to the remedy selected in the original DEC Records of Decision;¹⁰ from treatment, to land disposal. It is not apparent in the Plan, here or elsewhere, that DEC has considered policies to improve market availability of soil washing or other preferred on-site treatments to promote the hierarchy. We recommend that the Plan call for such policy development to promote the hierarchy required by siting law, not only for primary waste, but for remedial waste as well.

We also note that although the vast majority of waste shipped to CWM in recent decades has originated from outside New York State¹¹, the Plan selected only in-state examples of large volume projects for the reader.

⁶ ECL “§27-1102. *Hazardous waste disposal capacity assurances and statewide hazardous waste facility siting plan.*
1. The department shall immediately begin preparation of a statewide hazardous waste facility siting plan to establish a framework to guide state agencies and authorities and the facility siting board established pursuant to section 27-1105 of this title in the discharge of their responsibilities and to assure the availability of industrial hazardous waste treatment, storage and disposal facilities which: . . . d. **comply with the preferred hazardous waste management practices hierarchy established pursuant to section 27-0105 of this article.**”

⁷ Discussed in Chapter 2 Pollution Prevention, but not in Chapter 6 Equitable Distribution

⁸ \$468,550 as published by CWM in the April 2009 Lewiston-Porter *Sentinel*, + 817.8 acres owned in the Towns of Porter and Lewiston, NY is \$573/acres. Assessment regulation is promulgated at the state level.

⁹ Pages 2-9 through 2-15

¹⁰ Pages 3-11

¹¹ *Figure 1-4* on page 1-19

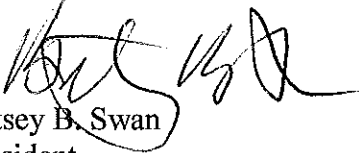
Summary:

The Plan is lengthy and gives rise to many other hazardous waste management issues such as toxics reduction that will surely be revisited in other policy or legislative venues. However, we are compelled to reiterate in the strongest possible terms that a proper conclusion on the issue of equitable distribution in conformance with ECL § 27-1102 is paramount to a credible Plan. The Plan as currently drafted fails to recognize the unfair burden borne by the only area of the state with facilities which import hazardous waste for land disposal.

We urge the DEC to do a more appropriate analysis under the law and determine that facilities are not equitably distributed when considering the significance of the size and type of facilities utilized for long-term management of hazardous waste.

Thank you for the opportunity to provide comments on this final draft of the New York Hazardous Waste Facility Siting Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Betsey B. Swan", written over a circular stamp or seal.

Betsey B. Swan
President

cc: John Iannotti