

Oct, 2001

HOST COMMUNITY AGREEMENT

The parties to this Agreement (the "Agreement") are the Town of Porter, a municipal corporation in Niagara County, New York ("the Town") and CWM Chemical Services, LLC ("CWM"), a Delaware limited liability company engaged in the business of hazardous and industrial waste management in the Town of Porter.

RECITALS

WHEREAS, the Town, CWM and others entered into a Community Advisory Committee Agreement ("CAC Agreement") dated July 21, 1993 and revised September 23, 1997 relating to CWM's applications for permits to construct and operate and a certificate of environmental safety and public necessity for an industrial and hazardous waste landfill known as RMU-1 located at CWM's hazardous waste treatment, storage and disposal facility, 1550 Balmer Road, Model City, New York ("TSDF"), and

WHEREAS, in addition to the property comprising the TSDF, CWM owns contiguous property to the east (approximately 75 acres) (the "Eastern Area"), which property historically has been zoned M2, which classification does not permit any waste management and disposal activities. (The TSDF and Eastern Area, collectively, are referred to as the "Model City Facility Property"). CWM has applied to the Town for a rezoning of the Eastern Area to M3, which classification does allow for waste management and disposal activities. A final Generic Environmental Impact Statement (FGEIS) related to this application for rezoning was filed with the Town on April 19, 2000 and a Findings Statement was issued by the Town on May 14, 2001, and

WHEREAS, CWM proposes to use the Eastern Area for additional hazardous and industrial waste landfill and related facilities, and

WHEREAS, the Town and CWM recognize that the rezoning of the Eastern Area, if granted, is necessary for CWM to continue its hazardous and industrial waste landfill business, will have both positive and negative impacts on the community, and therefore the parties hereto desire to enter into a voluntary agreement to address these concerns. The Town wishes to preserve and extend the important employment base identified in the Generic Environmental Impact Statement which CWM has established within the Town as well as the substantial host community benefits that CWM provides to the Town and its residents. In addition, the Town wishes to encourage CWM to facilitate the growth of the community's employmentbase in non-waste disposal industries,

NOW THEREFORE the Town and CWM are entering into this Agreement to define the Town's role in CWM's expansion of the TSDf and development and utilization of the Eastern Area to extend the facility's life, as hereinafter described.

TERMS AND CONDITIONS

A. General Terms

1. Effective Date of Agreement.

The Effective Date of this Agreement and the date upon which each of its terms and provisions shall become effective, is the date when the following shall have occurred:

- (a) the Town Board shall have passed a resolution approving this Agreement and authorizing the Supervisor and/or Deputy Supervisor to execute this Agreement on behalf of the Town, and

- (b) the Town shall have considered CWM's request for rezoning of the Eastern Area to classification M3, and
- (c) the rezoning is granted, and
- (d) the time for making a judicial challenge to the rezoning has expired, or there has been a non-appealable judicial determination that the rezoning is valid.

If the rezoning is not granted or, if challenged, not deemed valid, this Agreement and all of its terms and conditions shall be null and void.

2. Application of Terms

Upon the Effective Date, the parties shall be required fully to comply with all of the terms and conditions of this Agreement. CWM's obligations hereunder, including its obligation to make payments hereunder, are not contingent upon the actual permitting by any non-Town agency or the actual use of the Eastern Area.

3. Relation to Existing CAC Agreement

This Agreement is not intended to and does not modify or amend the CAC Agreement relating to RMU- 1. Any and all promises made by CWM herein are separate and independent of the CAC Agreement relating to RMU-1 and may be separately enforced hereunder.

4. Term of Agreement.

The term of this Agreement shall be from its Effective Date through the exhaustion of all existing and future DEC permitted landfill space on the Model City Facility Property and the permanent cessation of landfilling activity on the Model City Facility Property ("Termination Date").

5. Vesting of Rights in Accordance with State Law.

The Town hereby acknowledges that upon the issuance of state and/or federal permits, certificates or other governmental authority required to conduct hazardous and industrial waste management/disposal activities on the Model City Facility, ("Required Approvals"), under applicable state or federal laws, rules or regulations, certain fundamental rights will, to the limited extent required by the law of the State of New York, vest in CWM to own and operate a hazardous and industrial waste disposal business within the Town. CWM acknowledges that its rights are expressly limited by the terms and conditions of this Agreement, by the New York Environmental Conservation Law, and by any other applicable federal or state laws, rules or regulations.

6. Compliance with Law.

CWM acknowledges that it will be required to obtain any Required Approvals before constructing or operating any such new waste management/disposal facilities on the Model City Facility. Additionally, CWM agrees to comply with all local, state, and/or federal laws, ordinances, rules, regulations, orders and permits.

B. Facility Closure and Liability Insurance.

1. Closure and Final Disposition of the Model City Facility Property.

When the last of the land filling operations at the Model City Facility permanently cease, CWM will cause the landfill facility to be closed in accordance with all applicable provisions of **any** state or federal permits, laws, rules and regulations. The final disposition and reuse of any landfill site on the Model City Facility Property will be as

open space. It will include final grading and landscaping plans that are physically and visually compatible with the natural landscape and will further mitigate the visual impact of the final land form. CWM hereby agrees to provide perpetual post-closure care and maintenance to any landfill permitted at the TSDF or Eastern Area using the same standards and procedures established for RMU-1 with the exception that the amount of financial security for the expansion area shall be established by the NYSDEC based upon its determination of the proper amount of money needed to complete these tasks at the Eastern Area. Closure will include the installation of a final cover system on the active uncapped portions of the landfill area. Post-closure care will include the inspection, maintenance, monitoring and leachate treatment for all landfills that will remain on site after closure, as specified in any applicable state and/or federal laws, rules, regulations or permits. In the event that such laws, regulations or permits fail to provide for perpetual care, CWM will nonetheless provide this care in perpetuity. This obligation of perpetual care shall survive the termination of this Agreement pursuant to Paragraph **A.4** hereof.

The initial amounts determined to be necessary to provide for perpetual care of the Model City Facility will be adjusted annually as specified-in the applicable regulations and permit conditions. The terms and conditions of the financial assurance mechanism(s) selected by CWM shall comply with the requirements specified in the applicable laws, rules, regulations and the NYSDEC issued permits.

2. Liability Insurance.

Liability insurance for the Model City Facility will be established in accordance with the applicable NYSDEC regulations for sudden and non-sudden accidental occurrences for bodily injury and property damage to third parties with minimum limits as specified in the applicable regulations. The wording of the insurance policy must be exactly as specified in the applicable regulations.

C. Limitations on operations at the Eastern Area.

1. Annual tonnage.

CWM may not accept for landfilling more than the total tons per year of wastes, in the aggregate, set forth in any applicable NYSDEC permits or Siting Certificates for the landfills located at the TSDf and Eastern Area. **If CWM shall ever apply to the NYSDEC, Siting Board or any other governmental authority for permission to increase the tonnage limits currently set forth in CWM's permits whether by modification of existing permits or in any future DEC permit applications and Siting Certificate applications, nothing in this Agreement shall prohibit the Town from opposing any such increase in any administrative or judicial forum.**

2. Use of the Eastern Area.

(a) The Town hereby agrees to consider any application by **CWM** to expand the landfill operations to include hazardous and industrial non-hazardous waste disposal in the area known as the Eastern Area subject to any required Supplemental

Environmental Impact Statement prepared in accordance with the State Environmental Quality Review Act and all other applicable state and local laws.

(b) During the term of this Agreement, the Town will not oppose any application by CWM for a DEC permit or other Required Approvals, that would authorize CWM to construct a hazardous and industrial waste landfill on the Model City Facility, to the extent such application is consistent with this Agreement and the Findings Statement dated May 14, 2001. Notwithstanding the foregoing, the Town does not waive its right to oppose any application by CWM that seeks to increase any threshold established in this Agreement or any application for permission to increase the tonnage limits currently set forth in CWM's permits whether by modification of existing permits or in any future DEC permit applications and Siting Certificate applications.

(c) CWM will be deemed to have vested rights, to the extent provided in this Agreement, to construct a hazardous and industrial waste landfill on the Model City Facility and to operate such a landfill(s) until the permitted landfill capacity of the Model City Facility is exhausted.

(d) Set back requirements for waste disposal facilities shall be no less than 150 feet from the property lines and 300 feet from any residence or public street.

3. Vertical expansion.

(a) The Town hereby agrees not to oppose or object to an application by CWM for permission to expand the landfills vertically to a maximum height of 120 feet above the existing mean elevation of 321 NGVD 29 datum. CWM will not, either during the

term of this Agreement or at any time thereafter, (a) deposit waste, fill, or cover at a height more than 120 feet above ground level (*i.e.*, 120 feet above the existing mean elevation of 321 NGVD 29 datum) or (b) submit any application for a permit from DEC or any other authority that contemplates vertical expansion above 120 feet above ground level.

(b) During the term of this Agreement, the Town will not oppose any application by CWM for a DEC permit or other Required Approvals that would authorize waste to be deposited to a height that would result in a final grade height of up to 120 feet above the existing mean elevation of 321 NFVD 29 datum.

(c) Upon receipt of any Required Approvals, CWM will be deemed to have vested rights, to the limited extent expressly provided Paragraph A.5 of this Agreement, to deposit waste, fill, or cover at its facility up to 120 feet, including any appurtenant structures or equipment, above the existing mean elevation of 321 NFVD 29 datum within the permitted landfill footprint and to operate the landfill until the permitted capacity of the TSDF and Eastern Area is exhausted.

4. Limitation on slope of landfill facility.

CWM will not, either during the term of this Agreement or at any time thereafter, (a) deposit waste, fill, or cover so as to result in a side slope for the landfill steeper than 1 foot of vertical rise to 2 feet of horizontal distance (1:2), or (b) submit any application for a permit, from **DEC** or any other governmental authority, that contemplates depositing waste, fill, or cover so as to result in a side slope for the landfill steeper than 1:2.

5. Truck traffic.

The Town has a particular interest in regulating CWM's truck traffic in the Town of Porter. CWM will make all reasonable efforts to mitigate the effect of truck traffic associated with its operations including utilizing appropriately sized vehicles. No deviation from the attached Schedule 1 related to the number, type, timing and routing of trucks carrying waste to CWM will be permitted without the consent of the Town during the term of this Agreement. If CWM proposes any change in the number, type, timing and routing of trucks carrying waste to CWM, the parties agree that the Town's approval, approval with conditions, or denial of the request constitutes an "action" within the meaning of the State Environmental Quality Review Act. CWM will complete any required Environmental Assessment Forms, Impact Statement and/or adequate and complete traffic studies requested at its own expense, and, if part of any conditioned approval, provide adequate assurances that all road safety and maintenance issues are adequately addressed (including financial assurances for road construction, maintenance and repair). The current limitations on truck traffic will not be affected by the future termination of the CAC agreement. Additionally, these imitations will be incorporated into any future DEC permit applications. Siting Certificate applications and/or CAC agreements as maximum limits on the number and types of trucks and hours of operations related to the Model City Facility Property. CWM may make changes to all other rules applicable to transporters, including safety rules and other portions of the Site

Operations Plan applicable to truck traffic, with the consent of the Town, which consent the Town shall not be unreasonably withheld or delayed.

6. Contents of waste stream.

CWM shall not accept for disposal any wastes that are not authorized for disposal pursuant to its Required Approvals.

7. Verification and inspection.

(a) Upon request and reasonable notice, CWM will afford the Town or its representatives access to its scale and volume reports for the purpose of permitting the Town to verify CWM's compliance with the tonnage limitation and tipping fee provisions of this Agreement.

(b) Provided that the Town gives 24 hours advance oral notice to the facility's general manager or other designated representative, CWM will permit site inspections, during normal business hours, by the Town's authorized representatives for the purposes of verifying CWM's compliance with the provisions of this Agreement, subject to CWM's obligation under its insurance contracts and safety and security procedures to assign appropriate CWM personnel to accompany persons visiting its facility.

(c) CWM prepares reports to the NYSDEC detailing scale and volume data summarizing activity at the facility. Concurrent with the submission of such reports to the NYSDEC, a copy of the report shall be submitted to the Town.

D. Host Community Benefits

1. Minimum Annual Host Community Fee Prior to Use of New Landfill

From and after the Effective Date of this Agreement until the date when waste is first placed in a landfill constructed for the acceptance of hazardous waste or industrial non-hazardous waste as permitted pursuant to the issuance of any new NYSDEC landfill permit on the property presently zoned M-3 and/or the Eastern Area, CWM will pay to the Town a Minimum Annual Host Community Fee as follows:

(i) during the first twelve (12) months after the Effective Date of this Agreement, the greater of an annual fee of \$500,000 or \$.50/ton for all waste land filled at the TSDF during such twelve (12) month period; and

(ii) during any subsequent twelve (12) month period that waste is landfilled at the TSDF, the greater of an annual fee of \$200,000 or \$.50/ton for all wastes landfilled at the TSDF.

2. Minimum Annual Host Community Fee After Use of New Landfill.

(a) From and after the date when waste is first placed in a new landfill constructed for the acceptance of hazardous waste and industrial non-hazardous waste as permitted pursuant to the issuance of a any new NYSDEC landfill permit on the property presently zoned M-3 and/or the Eastern Area, CWM will pay to the Town annually, measured from January 1 of such year, and for all subsequent years, a Minimum Annual Host Community Fee as follows:

(i) a sum equal to the greater of a minimum annual sum of \$200,000 or the total of the Permanent Tipping Fees for that year as provided in Paragraph D.5 hereof.

(b) Any payments made pursuant to Paragraph D.5 shall be treated as a credit towards the Limits on Minimum Annual Host Community Fee set forth in Paragraph D.4. The credit for payments made pursuant to Paragraph D.5, however, hereof shall be limited to the amount represented by the difference between the \$3.00/ton fee and the credit for gross receipts tax payments made to the Town of Porter as provided in section D. 5 (b). For example, if total tipping fees, less the credit set forth in Paragraph D.5 (b) for a given year, equal \$150,000, CWM will pay an additional \$50,000 to equal the minimum amount of \$200,000. If total tipping fees, less the credit set forth in Paragraph D.5 (b) for a given year, exceed \$200,000, no additional payment would be due.

(c) If the subsequent annual periods are less than 12 calendar months, the annual sum of \$200,000 shall be prorated over the number of calendar months in that second annual period.

(d) The minimum annual sum of \$200,000 shall be adjusted once for each successive three (3) year period on January 1, using the Consumer Price Index carried to four decimal places.

3. Limits on Minimum Host Community Fees

(a) Once CWM has paid the Town a total of Three Million Dollars (\$3,000,000) CWM's obligation to pay a Minimum Host Community Fee shall be of no farther force or effect, but its obligation to make payments under Paragraph D.5 hereof shall remain in full force and effect.

(b) If, as of May 1, 2007, CWM or its successors have not paid to the Town Three Million Dollars (\$3,000,000) pursuant to sections D. 1 and D. 2 hereof, CWM or its successors will immediately pay to the Town the difference between any amounts paid pursuant to sections D. 1 and D. 2. above and Three Million Dollars (\$3,000,000).

4. Timing of Minimum Host Community Fees

(a) Prior to the time when waste is first placed in a landfill constructed beyond the existing permitted footprint of RMU-1, one quarter of any Minimum Annual Host Community Fee will be paid quarterly at the end of each quarter. The balance of any amount due based upon the \$.50/ton tipping fee shall be paid within forty-five days of the end of each twelve (12) month period.

(b) Once waste is first placed in a landfill constructed beyond the existing permitted footprint of RMU-1, the \$.50/ton tipping fee for waste thereafter disposed of in RMU-1 shall be paid quarterly within forty-five days of the end of each quarter.

5. Permanent Tipping Fees.

Commencing on the Effective Date of this Agreement through the Termination Date hereof, the following tipping fees ("Permanent Tipping Fees") will apply to all waste landfilled in any landfill at the Model City Property, including the Eastern Area, except the presently permitted footprint of RMU-1:

(a) CWM will pay to the Town an Permanent Tipping Fee equal to \$3.00 per ton for all solid hazardous or non-hazardous waste, whether composed of waste which is subject to existing tonnage limitations in the applicable DEC permit or exempt from such

limitations as set forth in the permit, that is land disposed in any landfill constructed or to be constructed within the Model City Facility Property outside the existing permitted footprint of the RMU-1 landfill .

(b) The amount of such Permanent Tipping Fee will be reduced by the amount of any gross receipts tax payments made, pursuant to the applicable provision of the Environmental Conservation Law of the State of New York, to the Town of Borter with regard to such wastes (the "Gross Receipts Tax Credit").

(c) No Permanent Tipping Fee will be due on any clean fill actually used as cover. However, an additional Permanent Tipping Fee of \$1 .00/ ton shall be paid on any waste like materials approved by NYSDEC that are actually applied as daily or intermediate cover. Waste like materials not actually applied as intermediate cover shall be subject to the Permanent Tipping Fees set forth in Paragraph 5 (a).

(d) No Permanent Tipping Fee shall be due for any wastes not land disposed (*e.g.*, recyclables, transshipments) and no Permanent Tipping Fee shall be due for any on-site generated wastes that are land filled on site.

6. Timing of Payment of Permanent Tipping Fees

One half of the Permanent Tipping Fee for each calendar quarter (\$1.50/ton) shall be called the "Initial Quarterly Payment" and shall be made without application of the Gross Receipts Tax Credit. The Initial Quarterly Payment shall be paid within forty-five (45) days of the end of each calendar quarter. The remaining one half of the Permanent Tipping Fee for each calendar quarter (\$1.50/ton) shall be called the "Second Quarterly

Payment" and shall subject to a deduction of the Gross Receipts Tax Credit. The Second Quarterly Payment will be paid no later than February 15 of the following calendar year. In the event application of the Gross Receipts Tax Credit against the Second Quarterly Payment results in a net amount due to CWM, such amount shall be carried over and applied against the Initial Quarterly Payments due in the following quarter(s).

7. Inflation Adjustments to Permanent Tipping Fees .

All Permanent Tipping Fees described herein shall be adjusted upward or downward annually, commencing the earlier of January 1, 2008 or January 1 of the first year following the commencement of payment of any Permanent Tipping Fees, by applying the Consumer Price Index carried to the four decimal places. In no event, however, shall the Permanent Tipping Fees be reduced below \$3.00 per ton, which shall be the minimum Permanent Tipping Fee for the entire term of this agreement.

8. Audits of CWM

The Town, at its sole cost and expense, shall be entitled to inspect and audit CWM's books and records related to the volume of materials subject to the Minimum Annual Host Community Fees or Permanent Tipping Fee, and the payment of any gross receipts tax. In the event the Town challenges CWM's calculation of the any fees due hereunder and that challenge is not resolved through discussion between the Town and CWM, the dispute shall be referred to an independent certified public accounting firm mutually acceptable to the parties hereto and such accounting ~~firm's~~ resolution of the dispute will be final and binding on the parties. The costs incurred for such dispute

resolution shall be borne equally by the Town and CWM.

E. Additional Covenants of CWM

1. Definitions

For purposes of this Agreement the following definitions shall apply unless otherwise indicated:

(a) "Hazardous waste" shall mean any substance meeting the definition of hazardous waste in the Resource Conservation and Recovery Act, the Code of Federal Regulations, the Environmental Conservation Law of the State of New York or the New York Code of Rules and Regulations, as amended from time to time.

(b) "Hazardous waste incinerator" shall mean any device that meets the definitions of "Incinerator", "Boiler" or "Industrial Furnace" as set forth in the Resource Conservation and Recovery Act, the Code of Federal Regulations, the Environmental Conservation Law of the State of New York or the New York Code of Rules and Regulations, as amended from time to time.

(c) "Commercial hazardous waste incinerator" shall have the meaning set forth in the New York Code of Rules and Regulations for "commercial hazardous waste facilities" as applied to the definition of "hazardous waste incinerator" set forth in Paragraph E. 1.(b) above, except that a "commercial hazardous waste incinerator" shall also include any hazardous waste incinerator which accepts any off-site waste for incineration and any incinerator that incinerates hazardous waste initially generated on-site, including waste from any facility from the same trust, firm, joint-stock company, or corporation, and except that a "commercial hazardous waste incinerator" also includes any incinerator that incinerates hazardous waste initially generated on site from recycling of characteristic hazardous wastes or the reclamation of precious metals. The term "commercial hazardous waste incinerator" shall not, however, include an incinerator constructed solely for the purpose of conducting corrective action at the Model City Facility required by the New York State Department of Environmental Conservation or the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act.

2. Commercial hazardous waste incinerator prohibited

CWM agrees that at no time will CWM submit an application for a permit or siting certificate to construct or operate a commercial hazardous waste incinerator on the Eastern Area. CWM further agrees that at no time prior to July 21, 2018, will CWM submit an application for a permit or siting certificate to construct or operate a commercial hazardous waste incinerator at the Model City Facility or any other location partly or wholly located within Niagara County, New York. CWM further agrees that at no time prior to July 21, 2018, will it permit any other person, firm or entity to construct a commercial hazardous waste incinerator at any real property currently owned by CWM in Niagara County or any real property in Niagara County subsequently acquired by CWM. Nothing in this agreement shall prevent CWM from applying for or proposing to construct a hazardous waste incinerator at the Model City Facility solely for the purpose of conducting corrective action at the Model City Facility, if required to do so by the New York State Department of Environmental Conservation or the United States Environmental Protection Agency in a Final Corrective Measures Implementation or otherwise. The provisions of Paragraph E.2 shall apply with regard to any attempt to permit any such hazardous waste incinerator for commercial use, as defined in Paragraph E.1.(c), at the Model City Property or any other site in Niagara County. In the event the provisions of Paragraph E.2 are no longer in effect, CWM agrees that any attempt to commercialize the operation of any such incinerator shall be subject to all applicable siting and permitting requirements for a commercial hazardous waste incinerator. To

the maximum extent permissible by law, the covenants in this Paragraph shall be deemed to run with the land and be binding upon any purchaser taking title from, through or under CWM.

3. Hotline

CWM will establish a hotline number for community complaints concerning traffic and associated activities at the Model City Facility. This condition shall remain in effect to the expiration of this Agreement as set forth in Paragraph A.4.

4. Complaint Log

CWM will participate in a quarterly (or as needed) review of complaints, problems and concerns related to the Model City Facility with designated representatives of the Town of Porter. This condition shall remain in effect to the expiration of this Agreement as set forth in Paragraph A.4.

5. Notice of Unusual Traffic Activities

CWM will provide advance notice to the Town of Porter of any expected unusual traffic activities at the Model City Facility. This condition shall remain in effect to the expiration of this Agreement as set forth in Paragraph A.4.

6. Defense by CWM

In the event that any person or entity not a party to this Agreement challenges the legality, validity or enforceability of this Agreement or the process through which it was entered into or the authority of the Town to enter into this Agreement in any administrative or judicial forum of whatsoever kind or nature, CWM shall, at the request

of the Town, defend the Town and its officers, agents and employees in any such action or proceeding, by providing, at CWM's sole cost and expense, counsel to be chosen by the Town with the approval of CWM, which approval shall not be unreasonably withheld. CWM shall also pay the reasonable costs and disbursements arising in the defense of any such action or proceeding, including expert fees, if any.

F. Enforcement of Agreement and Rights of the Town in the Event of Breach

1. Availability of injunctive relief.

The Town may seek enforcement of any provision of this Agreement, in a legal or equitable proceeding in State Supreme Court seeking appropriate injunctive relief, which relief may include, but not be limited to either an order and judgment affirmatively directing CWM to comply with obligations imposed by this Agreement, an order and judgment directing CWM to refrain from conduct prohibited by this Agreement, an order and judgment directing CWM to pay monetary sums required under this Agreement, or a judgment declaring the rights of the parties under this Agreement.

2. Waiver of Certain Rights by CWM.

(a) For purposes of any application for preliminary or permanent injunctive relief that the Town may seek, CWM hereby stipulates that the Town will sustain "irreparable harm" from any failure by CWM to perform any non-monetary term or provision of this Agreement. CWM expressly waives any argument that the Town is required to establish irreparable harm as a condition to relief. CWM further stipulates that it will not contend, upon any application by the Town for injunctive relief, that the

Town's application is improper or should not be granted because it seeks affirmative or mandatory relief instead of prohibitory injunctive relief, or because it would grant the ultimate relief sought in the action; CWM hereby expressly waives any such contention or defense.

(b) CWM hereby waives any defense or objection it may raise regarding the Town's compliance with State Environmental Quality Review Act as it relates in any manner to the this Agreement.

(c) No provision of this Agreement shall be construed as a penalty against CWM and CWM shall not raise the defense of penalty in the event of any dispute which may arise regarding this Agreement.

3. Enforcement of Payment Provisions.

All payments required under the Agreement are due on the date stated, or, if no date is stated, within forty-five (45) days of the end of quarter or annual period for which the payment is due. Any payments not paid on the date required shall be assessed a 1% penalty for each month or portion of a month for which the payment is late. The Town shall have the right to recover any attorney fees and costs necessary to collect unpaid fees and penalties.

G. Miscellaneous Provisions

1. This Agreement reflects the entire agreement of the parties with respect to the subject matter addressed herein. It supersedes all prior discussions, agreements, and

understandings between the parties. There are no agreements or understandings between the parties, written or unwritten, that are not expressed in this Agreement.

2. The construction and interpretation of this Agreement shall be governed by New York law, and any action to enforce this Agreement or any or its terms or provisions will be commenced in New York Supreme Court, Niagara County.

3. If any provision of this Agreement is invalid or unenforceable, the remaining provisions shall, to the extent possible, be enforced, taking into account the purposes and spirit of this Agreement. To the extent any provision is held invalid or unenforceable for being too broad or extensive, it is the intention of the parties that the court enforce such provision to the limits of proper scope or breadth. The parties agree to replace any invalid provision with a valid-provision which most closely approximates the intent and economic effect of the invalid provision.

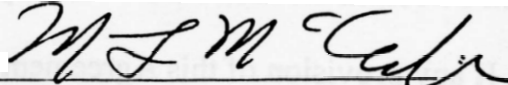
4. This Agreement is binding upon the parties hereto, their successors and assigns, including but not limited to any corporate parent, subsidiary or affiliate of CWM. CWM shall not transfer or assign any part of the permits for or the property constituting the Model City Facility to any party until that party has (1) confirmed in writing that it will comply with the Agreement and (2) demonstrated its financial ability to comply with this Agreement.

5. This Agreement may be executed in one or more counterparts, all of which

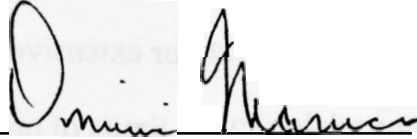
shall be considered one and the same agreement.

DATED: October 10, 2001

TOWN OF PORTER

By: 

CWM CHEMICAL SERVICES, LLC

By: 

Schedule 1

All trucks carrying waste to CWM will comply with these rules, including hazardous and non-hazardous waste trucks.

1. Non-CWM owned trucks carrying wastes or similar hazardous materials (e.g., acid used as a reagent in the AWT) will be scheduled for arrival or departure during the hours of 5:00 a.m. and 10:00 p.m., six days per week, except as noted below. CWM owned trucks will continue to be authorized to arrive and depart 24 hours per day. If non-CWM owned trucks carrying waste are within the boundaries of the Towns of Lewiston or Porter and are prevented from reaching the facility by 10:00 p.m. as a result of mechanical malfunction or otherwise, the trucks shall be permitted to enter the facility upon arrival. CWM will report monthly to the Town and County the number of late arrivals and the reasons therefore.

2. All trucks transporting, in bulk, blended fuels, PCB contaminated oils, or liquid or solid materials which present a risk of vapor release or fanning will be scheduled to arrive or depart the facility between 5:00 a.m. and 7:00 a.m. or between 4:00 p.m. and 9:00 p.m. on days when the Lewiston-Porter School complex is in session. CWM will obtain a copy of the Lew-Port School "event" calendar and attempt to schedule shipments of the aforesaid materials so as to avoid events that are expected to be heavily attended.

3. No trucks carrying waste will be scheduled for arrival or departure between 7:30 a.m. and 9:00 a.m. or between 2:15 p.m. and 3:45 p.m. on days when the Lewiston-Porter School complex is in session.

4. No more than 35 waste trucks per hour will be scheduled for arrival or departure during the hours of 600 a.m. and 1200 p.m. No more than 25 waste trucks per hour will be scheduled for arrival or departure during the hours of 5:00 a.m. to 6:00 a.m. and 1200 p.m. to 1000 p.m., with the exceptions noted above.

5. Not more than 220 waste trucks will be scheduled for arrival during any 24-hour period, except for unusual circumstances, in which event no more than 250 waste trucks will be scheduled for arrival during any 24 hour period. Notice of any such unusual circumstances will be provided to the Town, the County, and the Lewiston Porter School District.

6. Except in the event of an emergency situation, no more than 45 CWM owned waste trucks will be scheduled to arrive or depart between the hours of 1000 p.m. and 5:00 a.m. In the event of an emergency, any additional scheduling between 1000 p.m. and 5:00 a.m. will be subject to DEC approval with notice to the Town and the County.

7. These resolutions do not apply to trucks delivering supplies and materials (e.g., cement, diesel fuel, propane, etc.)

8. Trucks carrying wastes to the facility and arriving via I-190 shall use the existing designated route. Trucks carrying wastes to the facility arriving from the eastern part of Niagara County shall use available state highways to Balmer Road. CWM will designate an alternative inbound route for trucks arriving via I-190 if adequate traffic safety devices (signals) are installed at the cloverleaf off ramp left hand turn onto Rt. 104 East.

9. Trucks carrying wastes from the facility shall use the designated route.

10. No more than 8 empty waste trucks per hour leaving the facility eastbound shall be scheduled to use existing state highways to the East. Empty trucks leaving the facility southbound or westbound shall use the designated inbound route.

The landfill will operate 24-hours per day, 6-days per week, except where special permission is obtained from DEC to operate on Sunday.