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Founding President Lewis C. Green, 1924-2003

Comments on Proposed Plan for West Lake Landfill, Bridgeton, MO

Great Rivers Environmental Law Center submits these comments on behalf of the Missouri Coalition for the Environment. Our comments address the applicable and appropriate and relevant requirements under the National Contingency Plan.

The proposed Plan determines that the presumptive remedy is the one for municipal solid waste landfills, specifically RCRA Subtitle D.

We disagree that RCRA Subtitle C or D is an applicable or even a relevant and appropriate requirement (ARAR). Radioactive waste is excluded from the definition of solid waste in 42 U.S.C. § 6903(27) and is classed instead with mixed waste that is subject to the Atomic Energy Act (AEA). 42 U.S.C. § 6903(41). RCRA does not apply to activities or substances regulated by the AEA except to the extent that application of RCRA is not inconsistent with the AEA. 42 U.S.C. § 6905(a). It is inconsistent to treat West Lake as just another municipal landfill. Furthermore, courts have decided that nuclear waste is regulated exclusively under the AEA. U.S. v. Commonwealth of Kentucky, 252 F.3d 816, 823-4 (6th Cir. 2001); Legal Environmental Assistance Foundation v. Hodel, 586 F.Supp. 1163,1167-8 (E.D. Tenn. 1984).

The nuclear waste at West Lake is source material and byproduct material as defined by the AEA. It is source material because it includes uranium and thorium, 42 U.S.C. § 2014(z), and byproduct material because it is waste from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. 42 U.S.C. § 2014(e)(2) and 10 CFR § 962.3(a). Nuclear material is also excluded from the definition of solid waste in the Criteria for Municipal Solid Waste Landfills, 40 CFR § 258.2, and in 40 CFR § 261.4(a)(4). Therefore neither the solid waste nor hazardous waste title of RCRA applies or can be deemed appropriate or relevant to remediate this intensely radioactive and long-lived waste. The Plan should consider as an ARAR 10 CFR Part 40, Appendix A, "Criteria relating to the operation of uranium mills and the disposal of tailings or wastes produced by the extraction or concentration of source material from ores processed primarily for their source material content." In particular it should include Criterion 5 on the protection of groundwater; the absence of an adequate liner to prevent leaching to groundwater is one of the most serious deficiencies in the Plan.

10 CFR Part 40, Appendix A is more relevant and applicable than 40 CFR Part 192. The latter covers uranium mill tailings, defined as the remaining portion of the ore *after* the uranium is extracted, 40 CFR § 192.01(m); whereas the former includes uranium and thorium themselves (see Criterion 5B(1) and Criterion 13, list of Hazardous Constituents), which are abundantly present at West Lake.

In applying 40 CFR Part 192, Subpart B, the Proposed Plan, p. 22, and FS, p. 43, say that a rock armoring layer is inconsistent with the RCRA Subtitle D cover. Since Subtitle D does not apply, however, a rock armoring layer should be included.

Any application of Part 192 should include Subparts D and E, promulgated under the AEA; these include a permanent radon barrier.

If UMTRCA remedies are to be applied, it should be noted that UMTRCA includes removal and consolidation of residual radioactive material. 42 U.S.C. §§ 7914(b)(1), 7916 and 7918(a)(1)(referring to the AEA, 42 U.S.C.§ 2022(a)). The Plan should therefore be withdrawn for the purpose of treating this excavation and removal of the waste in OU-1 as a presumptive remedy. This was the remedy recommended by the St. Louis Site Remediation Task Force Report issued by St. Louis City and County in Sept., 1996, which should be given serious consideration.

EPA should consider as an ARAR 40 CFR Part 191, "Environmental and radiation protection standards for management and disposal of spent nuclear fuel, high-level and transuranic wastes." This requires, among other things, 10,000-year assurances of non-release to the accessible environment, 40 CFR § 191.13(a); maximum effective doses through all potential pathways from the disposal system for 10,000 years, § 191.15(a); and protection of groundwater for the same period. 40 CFR § 191.24(a)(1). The 1,000-year assumption in the BRA, p. 11, is inadequate.

Uranium should be considered as a chemical toxin, not only as a radiological toxin. See Oswer Guidance No. 9200.4-18, Question 26, and Directive 9283.1-14 (uranium drinking water standards). It does not appear that the Proposed Plan takes this into account.

The "To Be Considered" (TBC) document "Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills" is cited as justifying such a remedy in the presence of low-level radioactive waste. This is qualified by the statement in the document that such waste is "generally...no more hazardous than some wastes found in municipal landfills" (p. 3, Highlight 3), and the only example given is of a "No action" remedy at a radioactive instrumentation burial area (Data Summary Table appendix, p. A-7). On the face of it, this does

not justify treatment of West Lake as just another municipal landfill. As the Feasibility Study, Appen. A, p. 195 says, the CERCLA remedy may apply to an "appropriate" military landfill; this begs the question of whether West Lake is a comparable site for the presumptive remedy. The radioactive waste at West Lake should be classified as high-level residues and is not merely comparable to background radiation or to the hazards "generally...found in municipal landfills."

Thank you for considering these comments.

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