

US EPA ARCHIVE DOCUMENT

Crelling, Linda A.

From: Karp, Jeffrey M.
Sent: Friday, January 18, 2008 10:56 PM
To: Eve Vaudo (vaudo.eve@epamail.epa.gov)
Cc: Muys, Jr., Jerome C.
Subject: Re: Centredale Manor Site--Correspondence Regarding Upland CDF Disposal Alternative

Attachments: Ltr. to Eve Vaudo.pdf

Hello Eve- As you requested, we've prepared the attached correspondence in which we raise several questions for EPA staff's consideration in further developing and evaluating the upland confined disposal facility (CDF) alternative for inclusion in EPA's Feasibility Study Report. As you will see, there are substantial technical, legal, and logistical hurdles to implementing the upland CDF alternative. We are available to discuss these issues further with you, Anna, and EPA's consultants at your convenience. Regards, Jeff Karp



Ltr. to Eve
'audo.pdf (789 KB):

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January 18, 2008

Via Electronic and Regular Mail

Eve Stolov Vaudo, Esq.
United States Environmental Protection Agency
1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

Re: Centredale Manor Superfund Site: Preliminary Questions in Evaluating
Upland CDF Disposal Alternative

Dear Eve:

In response to your request, we have identified several preliminary questions for EPA staff's consideration in further developing and evaluating the upland confined disposal facility (CDF) disposal alternative for inclusion in EPA's Feasibility Study Report. These questions are by no means intended to be comprehensive or dispositive. In our view, there are substantial technical, legal, and logistical challenges associated with the upland CDF alternative. Emhart Industries, Inc. reserves all rights, as well as its claims and defenses, to challenge EPA's selection of the upland CDF alternative or any other remedial or disposal alternative that EPA may consider for the Site.

The questions posed below are presented by category to track the feasibility study evaluative criteria in the National Contingency Plan (NCP).

Short-Term Effectiveness

- How will EPA address the impacts on the Johnston and North Providence roadways, communities, and neighborhoods resulting from the substantial number of dump truck trips that would be required to transport: 1) the existing soil and fill material from the two parcels located in Johnston that have been identified by EPA for siting the upland CDFs to create sufficient space for the disposal of excavated sediment; and 2) the sediment excavated from Allendale and Lyman Mill Ponds and the Woonasquatucket River to the upland CDFs in Johnston?
- How will EPA assess the costs associated with those impacts in accordance with the NCP requirements?

Implementability

- Does EPA intend to designate the two land parcels in Johnston that it identified for siting the upland CDFs as "on-site?" See CERCLA Section 121(e)(1) and 42 C.F.R.

300.400(c).

- If so, has EPA considered whether the properties would meet the "on-site" qualifying criteria of: (1) necessary; (2) suitable; and (3) in very close proximity to the Superfund Site? See U.S. v. General Motors, 460 F.Supp.2d 395, 403 (2006).
- If the parcels do not qualify for "on-site" status or if EPA intends to treat the properties as off-site disposal locations, would RCRA and other federal and state permitting and substantive requirements, including land disposal restrictions, apply?
- If so, would the disposal of heavy metals, dioxin-contaminated and PCB-contaminated sediment be permitted in the upland CDFs under the land disposal restrictions?
- Can EPA acquire or gain access to the two identified parcels to implement an upland CDF disposal alternative in a cost-effective and timely manner?
- How will EPA assess the costs of acquiring the properties or otherwise obtaining access in accordance with the NCP requirements?
- If EPA designates the two parcels as "on-site," will it seek to acquire the properties pursuant to its condemnation authority under CERCLA Section 104(j), if the property owners refuse to sell their parcels or demand payment in excess of fair market value?
- If EPA determines not to use its condemnation authority, or is unable to do so, will EPA seek to obtain access to the parcels to effectuate the upland CDF remedy pursuant to CERCLA Section 104(e) (1) and (3), if the property owners refuse to sell their parcels or demand payment in excess of fair market value?
- If EPA seeks to acquire the properties under either CERCLA Section 104(j) or 104(e), has EPA considered whether it is likely to successfully withstand a challenge by the property owners that EPA's actions are arbitrary and capricious or an abuse of discretion? See Hardage Steering Committee v. Whitehead, 58 F.3d 569 (10th Cir. 1995) and U.S. v. Grace, 134 F. Supp.2d 1182, 1189 (2001).
- If the soil and fill materials on the two identified land parcels are contaminated with hazardous substances, how will EPA address the impacts on property acquisition and implementation of the upland CDF alternative?
- How will EPA assess the costs associated with those impacts in accordance with the NCP requirements?
- Has EPA considered whether there is adequate space on the two identified land parcels for a staging area to mechanically dewater the excavated sediment and to construct a water treatment facility that would be required to implement the upland CDF alternative?

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- If there is insufficient room on the two identified land parcels for a sediment staging, dewatering, and water treatment facility, has EPA identified an available additional property in close proximity to the two identified parcels?
- If so, has EPA addressed all of the aforementioned implementability questions as they relate to that additional identified property upon which a sediment staging, dewatering, and water treatment facility would be sited?

Community and Regulatory Acceptance

- Has EPA assessed whether there will be resistance from Johnston officials and community members to the siting of two hazardous waste landfills in residential areas of the Town, and, in the likely event of such resistance, how it will affect EPA's alternatives analysis?
- Has EPA assessed whether there are objections to the destruction of the upland forested and forested wetland areas of the Oxbow, which have been identified by several stakeholders as a highly valued ecological resource and a limited habitat for certain species in the lower Woonsquatucket River watershed, that would occur if the upland CDFs are sited on the two land parcels identified by EPA, and, in the likely event there are such objections, how it will affect EPA's alternatives analysis?

* * *

If you require clarification or wish to discuss any of the issues raised by these questions, please contact either of us.

Sincerely,


Jerome C. Muys, Jr.
Jeffrey M. Karp