



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION SITE REMEDIATION AND WASTE MANAGEMENT PROGRAM

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August 18, 2020

Pat Evangelista, Director
Superfund and Emergency Response Division
USEPA Region 2
290 Broadway
New York, NY 10007-1866

RE: Rolling Knolls Landfill Superfund Site
Chatham Twp., Morris County, NJ
PI No. G000004411

Dear Mr. Evangelista:

I am writing in response to your December 12, 2019 correspondence and subsequent meetings our staffs held on July 20, 2020 and August 5, 2020 regarding the Rolling Knolls Landfill Superfund Site in Chatham Township, Morris County, New Jersey. Your correspondence clarified USEPA's opinion regarding the role New Jersey's Solid Waste Management Act and the implementing regulations should play in remedy selection at the Site. In addition, it also informed the NJDEP that USEPA will be sending comments on the July 2018 Feasibility Study (FS) to the performing Potentially Responsible Parties (PRPs) that will result in the revision of the FS Alternatives currently under consideration.

Because USEPA will be requiring revisions to the feasibility study, the NJDEP looks forward to providing comment on the revised FS upon receipt and review. In the interim, the NJDEP provided its final comments on the July 2018 FS in a June 9, 2020 email, for consideration and inclusion into the next FS revision.

In response to the questions raised regarding the application of the Solid Waste Management Act (SWMA) as Applicable and Relevant and Appropriate Requirements (ARARs) and our July 20 discussion with you, NJDEP evaluated the application of both the SWMA and the Legacy Landfill Law (LLL), and has made the following conclusions.

NJDEP disagrees with USEPA's position that the "Legacy Landfill Law does not appear to apply to the remedy selection" at the Site. It is NJDEP's view that the CERCLA carve-out in the LLL means only that NJDEP cannot, independently, impose LLL-related restrictions on the Site while it is also under CERCLA jurisdiction. It does not mean that the LLL requirements, or any other

SWMA requirements, cannot be imposed by USEPA as ARARs or other requirements consistent with 42 U.S.C. § 9621(d)(2)(A)(ii). The related regulatory requirements at 40 C.F.R. § 300.400(g)(4) provide that “[o]nly those state standards that are promulgated, are identified by the state in a timely manner, and are more stringent than federal requirements may be applicable or relevant and appropriate [“ARAR”]. For purposes of identification and notification of promulgated state standards, the term promulgated means that the standards are of general applicability and are legally enforceable.” There is no dispute that the LLL regulations and other SWMA closure regulations are of general applicability, and as such are “legally enforceable.” The CERCLA carve-out in the LLL does not change this.

USEPA’s analysis of the LLL would effectively nullify the requirement for USEPA to utilize any validly promulgated State standard, requirement, or criteria that is more stringent than any Federal standard. *See* 40 C.F.R. § 300.400(g)(4). That is, no ARARs could apply at an LLL site like Rolling Knolls. NJDEP does not believe that this is what the NJ State legislature intended when it enacted the CERCLA carve-out language. As noted by the language of the LLL itself, the NJ State legislature’s goal was to address the public health and environmental issues at legacy landfill sites that were not properly closed. It is logical to believe that when the NJ State legislature enacted the LLL it assumed that CERCLA oversight of a legacy landfill site would be at least as protective as State oversight. The NJ State legislature certainly did not intend that CERCLA sites would be subject to lesser protections than those that the State would otherwise require under direct State oversight. The “carve-out” did not mean that State standards otherwise applicable to a legacy landfill would be precluded by CERCLA oversight.

When interpreting the LLL and CERCLA § 9621(d)(2)(A)(ii) in this way it harmonizes both State and Federal law as applied to Rolling Knolls Landfill and preserves the balance between State and Federal action. Because CERCLA applies, it makes sense to preclude NJDEP from directly imposing State closure or other requirements on the Site. USEPA may, however, require that the remedial actions incorporate valid state requirements (as ARARs) as a component of the Federal remedy. This is the intent of § 9621(d)(2)(A)(ii) and is reinforced in other sections of CERCLA. *See, e.g.,* § 9621(d)(4); § 9621(f); *see also* § 9621(f)(H)(2)(A), (B) (“if the President proposes to select a remedial action that does not attain a legally applicable or relevant and appropriate standard...the President shall provide an opportunity for the State to concur or not concur in the selection,” and “(B) If the State does not concur in such selection and the State desires to have the remedial action conform to such standard...the State shall intervene in the action under section 9606 of this title before entry of the consent decree.”). These latter provisions would be a nullity under USEPA’s analysis because if no LLL regulatory requirement could apply at all, then the State would have no ability to concur, not concur, or challenge the Federal remedial action.

For these reasons, NJDEP believes that both LLL and SWMA requirements are applicable as ARARs at the Site.

Therefore, the Solid Waste Regulations at N.J.A.C. 7:26, which require a final cover system over a landfill, are applicable to the Rolling Knolls Landfill Site. The final cover shall consist of at least a 2-foot thick clean soil cap that is properly graded to address surface drainage. In addition to the final cover requirement, periodic gas monitoring is required to evaluate if gas is migrating



from the landfill. Based on the results of the gas monitoring, a gas collection and control system may need to be installed if gas is determined to be migrating towards sensitive receptors.

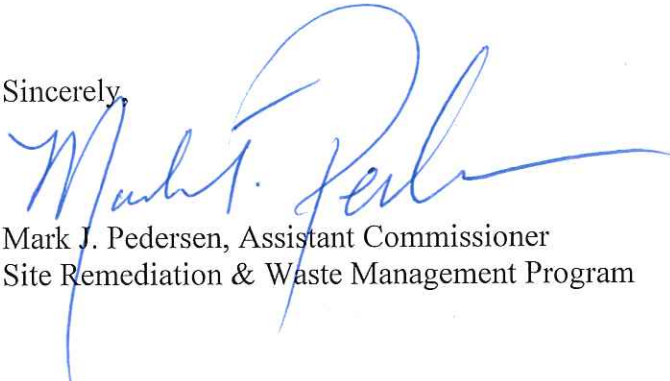
The following citations address the requirement for final cover and gas monitoring:

- N.J.A.C. 7:26-2A.7(i) – Final cover system design and construction
- N.J.A.C. 7:26-2A.7(h)6 – Gas monitoring system design and construction
- N.J.A.C. 7:26-2A.8(h)9ii through iv – Methane gas surveys

While the above referenced items are not a comprehensive list of requirements for a landfill closure plan, they are specifically mentioned here as actions to be implemented in addition to those already included in the CERCLA options being considered for the Rolling Knolls Landfill (*i.e.*, fencing, signage, institutional controls, a means to evaluate ground water, etc.).

Thank you for your continued cooperation in this matter. Should you wish to discuss this matter further, please feel free to contact me at (609) 292-1250.

Sincerely,



Mark J. Pedersen, Assistant Commissioner
Site Remediation & Waste Management Program

Cc: Ken Kloo, Director, NJDEP
Steve Maybury Bureau Chief, NJDEP, BCM
Jill McKenzie, NJDEP, BCM
Robert Kinney, DAG, DL&PS

