



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Great Swamp National Wildlife Refuge
32 Pleasant Plains Road
Basking Ridge, New Jersey 07920



VIA Electronic Mail

June 15, 2018

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Re: United States Fish and Wildlife Service Response to the Rolling Knolls Landfill Settling Parties Response to Comments made to the Draft Feasibility Study Report for the Rolling Knolls Landfill Superfund Site

Dear Ms. Donovan and Ms. Kaur:

This letter transmits United States Fish and Wildlife Service's ("FWS") responses to the Rolling Knolls Landfill Settling Parties'¹ ("PRP Group's") letter, dated May 16, 2018, regarding the Draft Feasibility Study Report ("Draft FS") for the Rolling Knolls Landfill Superfund Site ("Site"). The PRP Group's May 16 letter provided its responses to FWS's comments on the Draft FS, which was submitted to the Environmental Protection Agency ("EPA") on February 6, 2018.

FWS's February 6 letter provides comprehensive comments on the Draft FS, which still hold true and are incorporated by reference herein. Attached are a few additional comments regarding the PRP Group's May 16 responses that are necessary corrections or clarifications.

FWS is committed to continue discussions in an effort to promote what it believes is an appropriate remedy for the Site that is protective of human health and the environment, and beneficial to the residents of Britten Road and the local community.

Should you have any questions or concerns, please do not hesitate to contact me at (973) 425-1222, Extension 163, or george_molnar@fws.gov.

Sincerely,

George C. Molnar
FWS Project Coordinator

cc (via email): Michael Horne
Melissa Papasavvas

¹ Chevron Environmental Management Company, Kewanee Industries, Alcatel-Lucent USA, Inc., and Novartis Pharmaceuticals Corporation.



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Capping Alternative

In regards to the Rolling Knolls Landfill Settling Parties'¹ Group's ("PRP Group's") response to General Comment 2, the United States Fish and Wildlife Service ("FWS") fully supports a remedy that includes a cap. To echo what FWS has previously discussed with the Group and the United States Environmental Protection Agency ("EPA") on several occasions, FWS supports consolidation of all contaminated material, including surficial refuse found collectively throughout the entire site, and encapsulation on the private portion of the Site using on-Site materials. This would considerably reduce the dimensions of capped material in comparison with Alternate 5 in the Draft Feasibility Study Report ("Draft FS") which proposes capping the entire Site. In addition, the use of on-Site materials for a cap dramatically decreases the disruption of truck traffic, which is a major concern voiced by residents of Britten Road and neighbors of the Great Swamp National Wildlife Refuge ("Refuge").

Use of On-Site Materials

The FWS has advocated for the use of on-Site material in comments provided to EPA and the Group on the Draft Development and Screening of Remedial Alternatives Technical Memorandum, Draft FS report, and at several meetings. Use of on-Site material for encapsulation has been successfully implemented at Operable Unit 3 of the Asbestos Dump Superfund site ("OU3") located on the Refuge a short distance away from the Site. It is FWS's recommendation that the same clay unit utilized at OU3 which underlies the Site be used to encapsulate consolidated waste material and contaminated soils on the private portion of the Site.

FWS agrees that geotechnical analysis of this material would be required as noted in the Group's response but disagrees with the Group on the proper timing for such analysis. The Group states that "if a cap is part of the selected remedy, then the Pre-Design Investigation (PDI) is the appropriate vehicle for this evaluation..." However, as the Draft FS is currently written, the Group argues that the implementability of certain capping alternatives would be considerably reduced due to excessive truck traffic from hauling in off-Site material and increases in costs and emissions associated with such activities. Without an evaluation of the implementability and cost of utilizing on-Site materials in the FS as well, there is potential for the remedy selection process to rule out a capping alternative altogether due to the issues outlined regarding cost and implementability associated with off-Site material transport and heavy equipment traffic, both of which will presumably play a significant role in the final selection of the remedy. FWS believes that the appropriate time to evaluate the cost and implementability of utilizing on-

¹ Chevron Environmental Management Company, Kewanee Industries, Alcatel-Lucent USA, Inc., and Novartis Pharmaceuticals Corporation.

Site material as part of a capping alternative is during the FS process, not after a remedy has already been selected. This ensures that the FS provides true and accurate evaluation of all viable response action alternatives that are protective of human health and the environment, comply with ARARs, and meet the criteria outlined Section 300.430 of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) for remedy selection.

Habitat

Habitats of moderate quality are located on Site; however, most are primarily limited to the periphery of the landfill. The remaining Site habitats, which comprise a significant portion of the Site are of poor quality, consisting of non-native, highly invasive vegetative species indicative of disturbed landscapes. To suggest the site is of high quality or typical of shrub land habitats in New Jersey is misleading. These poor quality habitats may support wildlife species noted in the Group’s response; however, they are also commonly found in suburban environments which border portions of the landfill. This is one reason why FWS has advocated for the consolidation and capping of all waste material on the private portion of the Site, as some of the species, as noted by the Group, burrow and are in close association with contaminated soil and refuse. The remedy recommended by FWS would eliminate exposure pathways to these species. It is also interesting to note that, based on the Groups observations, the site plays hosts to an abundance of wildlife; however, EPA did not require the derivation of wildlife preliminary remedial goals (PRGs) even though risks to vermivorous birds and mammals were noted in the ecological risk assessment. It is FWS’s recommendation that the remedy implemented be protective of these receptors. Current alternatives evaluated in the Draft FS, with the exception of Alternative 5, would reduce risks only by up to 59%. Since none of the remedies with the exception of a full site-wide cap fully eliminate direct contact and ingestion pathways, any wildlife present on the Site would be at risk.

It is also noted several times in the Draft FS that Federally-listed species and high value habitats occur on the Refuge. The restoration with native vegetation following consolidation and encapsulation of waste material that FWS recommends would be beneficial for a number of reasons. For example, nonnative vegetation present on Site is encroaching into the environmentally sensitive and high value habitats present on the Refuge. Restoration with native grasses and forbs would prevent further colonization of these nonnative species, and create habitats that would enhance and promote wildlife usage.

Wilderness Act

Pursuant to EPA’s *CERCLA Compliance with Other Laws Manual, Part II*, “When remedial activities will impact a wilderness area, the RI/FS should describe compliance with the Wilderness Act. The Record of Decision (ROD) should identify the Wilderness Act as an Applicable or Relevant and Appropriate Requirement (ARAR) and state whether each alternative will meet the ARAR. For the selected remedy, the ROD should also briefly state what compliance with the Wilderness Act will entail.” (page 4-25) To further illustrate the process, the Manual provides a flow chart on the next page as Exhibit 4-5, explaining that once a determination is made that the proposed action may affect a wilderness area, the next step is to “Consult with DOI.” This process ensures that the agency with the most knowledge of the Act’s requirements and appropriate implementation is an integral part of the ARAR analysis for the remediation. EPA’s guidance, therefore acknowledges that FWS, as the bureau with the authority and responsibility to manage the Refuge in perpetuity, is the entity that must be consulted regarding how the Wilderness Act should be applied at a CERCLA site containing a designated Wilderness Area. The Refuge Manager in this case is eager to continue to participate in discussions regarding “what compliance with the Wilderness Act will entail” at this Site.

The Group references the CERCLA remedy selected at OU3 at the Refuge to bolster its interpretation of the Wilderness Act for this Site; however, many of the Group's assumptions and conclusions are inaccurate. While waste material was left on-site at OU3, with some contaminated soils removed for off-site disposal, the material that remained was consolidated, buried, and the area was contoured and subsequently restored using native grasses. To suggest the above activities are contradictory to the Wilderness Act is incorrect, as the end result was the complete restoration of a contaminated land parcel of no value, to something beneficial for wildlife and the public. Furthermore, the following statement, "USFWS effectively acknowledged that leaving contaminated material in place does not act as an impairment of future use and enjoyment by not requiring complete removal of waste and contaminated materials in the OU3 ROD" is erroneous, as it fails to disclose that the material was buried under an engineered cap, not left in place exposed which is what some of the proposed alternatives in the Draft FS include for the Rolling Knolls Site.

In addition, the Group states that any activities associated with the removal of contaminated soils and restoration is prohibited by the Wilderness Act. This is simply incorrect. As noted above, an extensive remediation effort was successfully implemented and completed at the OU3 site using heavy construction equipment in an area entirely situated within a designated Wilderness Area. The Record of Decision for OU3, dated September 1998, in which the Department of the Interior ("DOI"), FWS, and EPA selected the remedy, identifies the Wilderness Act as an ARAR. In addition, it states that the selected remedy will impact the Wilderness Area, and, therefore:

"[T]he alternative must protect the character and value of the Wilderness Area and all improvements must be performed in accordance with location-specific ARARs and TBC criteria (e.g. U.S. Great Swamp NWR Wilderness Area Act, U.S. Wilderness Act, Endangered Species Act, U.S. Protection of Wetlands and Floodplains Executive Orders, U.S. Fish and Wildlife Coordination Act, U.S. Emergency Wetlands Resources Act of 1986, and the U.S. Clean Water Act).

This alternative will require post-closure monitoring and ensure future use of the land is consistent with management objectives for the surrounding Wilderness Area. Institutional controls already afforded the site under several ARARs (see above) allow active management strategies to achieve Wilderness Area protection. Therefore, as a result of this alternative, public use of the land may be restricted to passive or non-intrusive activities such as bird watching or hiking."¹

Moreover, the regulations implementing the Wilderness Act (50 CFR 35.5) expressly state that there are exceptions to the general rule that equipment, motor vehicles, motorized equipment, etc. should not be used in a Wilderness Area when FWS determines it is appropriate due to "the health and safety of persons, damage to property, violations of civil and criminal law, or other purposes." In other words, the land manager responsible for managing the area, in this case FWS, has the authority to determine what actions are compatible and appropriate on the Refuge, including the designated Wilderness Area.

¹ Record of Decision, Operable Unit 3 Asbestos Dump Superfund Site, Great Swamp National Wildlife Refuge, September 1998, Pages 35-36 discuss compliance with ARARs for the Selected Remedy.

As demonstrated in the OU3 ROD, and as acknowledged by EPA's ARARs Manual, consultation with DOI is essential to understand site-specific application of the Wilderness Act ARAR, as it is heavily dependent on the management objectives of the Refuge, which are outlined in the National Wildlife Refuge System Improvement Act, the Refuge's establishing legislation, and its Comprehensive Conservation Plan ("CCP"). These documents were also provided as ARARs by the FWS for the Rolling Knolls Site. In addition, not only is the Refuge Manager the best resource for understanding the Refuge's mission and management objectives, he has the statutory and regulatory responsibility to determine what actions are compatible and appropriate for the Refuge.

Recreational Use

The PRP Group insists the portion of the Site located within the Refuge is not open to recreation and cites the lack of evaluation of recreationalists in the baseline human health risk assessment (BHHRA) and a letter from 1975. These arguments, however, cannot negate the express language in the Wilderness Act, which states that:

Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character. Except as otherwise provided in this Act, wilderness areas shall be devoted to the public purposes of recreational, scenic, scientific, educational, conservation, and historical use.¹

This recreational use for the Wilderness Area at the Refuge was recognized in the OU3 ROD and is incorporated in the CCP and other management documents for the Refuge.

1975 Letter

The Group cites a letter from FWS to Chatham Township, dated May 16, 1975, to assert various arguments, including their understanding of the Wilderness Act, their assertion that that the area is not open for recreation, and that there should be no remediation within the Refuge portion of the Site. FWS simply notes that the express language of the applicable statutes, regulations, and Refuge management documents clearly carry more import than a letter from over 40 years ago, drafted prior to the enactment of CERCLA. The parties should rely on the express language of the appropriate laws and regulations and the comments and discussions of the current Refuge management staff in order to ascertain how the Refuge is to be managed and how ARARs should be applied.

¹ The Wilderness Act of 1964, Public Law 88-577 (16 U.S.C. 1131-1136). Section 4(b).