



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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NEW YORK, NY 10007-1866

DEC 12 2019

By Electronic and Regular Mail:

Mark Pedersen, Assistant Commissioner
Site Remediation & Waste Management Program
Mail Code 401-06
401 East State Street
P.O. Box 420
Trenton, NJ 08625-0420

Re: Rolling Knolls Landfill Superfund Site, Chatham Township, New Jersey

Dear Mr. Pedersen:

Thank you for hosting me and members of my staff on September 4, 2019 to discuss the Rolling Knolls Superfund Site (Site) and, specifically, what role, if any, the State of New Jersey Solid Waste rules should play in the selection and implementation of the remedy for the Site.

Background

In December 2017, the potentially responsible parties (PRPs) performing the remedial investigation/feasibility study (RI/FS) for the Site submitted a draft FS report proposing several remedial alternatives for both soil and groundwater. EPA provided comments to the PRPs on that draft FS, including comments EPA received from the New Jersey Department of Environmental Protection (NJDEP) and the U.S. Fish and Wildlife Service (FWS). The PRPs then submitted a revised FS to EPA in May 2018, and that draft was subsequently revised by the PRPs in the summer of 2018.

We are awaiting NJDEP's comments to the summer 2018 draft FS. In the interim, however, EPA has prepared comments that will require significant revisions to the summer 2018 version of the draft FS. The nature of these revisions has been discussed with NJDEP, but they have not yet been provided in writing to either NJDEP or the PRPs. Since these revisions could impact NJDEP's interpretation of how the New Jersey Solid Waste Rules apply at the Site, we think it is important to clarify the key ones here:

- Groundwater remedial alternatives will not be included as part of this FS. As you know, there is no distinct GW plume of contamination at this Site. All elevated concentrations of Site-related contaminants were found in the shallow aquifer, above a thick clay layer, and were generally co-located with soil contamination. EPA's assumption, based on the data, is that addressing the source of GW contamination in the soil will address the limited GW concerns. This assumption will be evaluated after implementation of the soil remedy and a future decision document will memorialize the findings.

- The current version of the draft FS includes a remedial alternative consisting of capping an approximately 25-acre area that contains the highest density of sampling locations with elevated soil concentrations, capping or excavating any additional areas that exceed 3x the preliminary remediation goals (PRGs) for the Site, and either disposing of the excavated material off-site or consolidating it under the 25-acre cap (the "limited capping" alternative). EPA does not consider this alternative sufficiently protective to carry through the FS process since it would leave exceedances of the PRGs available for direct-contact exposure. Therefore, our comments on the draft FS will require the PRPs to revise this alternative so that all exposed exceedances of the PRGs would be either capped or excavated. It is anticipated that exposed exceedances of the PRGs that are less than 3x the PRG would have a vegetative cap placed over them to prevent direct contact risks.

Note that site-specific, risk-based PRGs were calculated for the Site consistent with NJDEP guidance and are based upon a reasonably anticipated future use for human exposure (trespassers/passive recreators). Since the PRGs are based on human exposure, a residual ecological risk evaluation was conducted; it demonstrated that unacceptable ecological risk would also be addressed through implementation of this alternative.

As such, under the revised limited capping alternative, direct contact exposure to all areas above the PRGs at the Site would be prevented, and both the human health and ecological risks posed by the Site would be addressed. The other alternatives evaluated in the FS include the use of engineering and institutional controls, and full capping of the entire landfill area. The need for leachate control has not been indicated and, as stated above, no distinct groundwater plume has been identified.

Also note that EPA has been regularly participating in meetings with a Community Advisory Group (CAG) that formed for the Site in September 2018. Over the past year or so, EPA has made presentations to the CAG on the entire RI/FS process, including a description of the remedy development process, and representatives of FWS regularly attend these meetings. Therefore, both the community and FWS are generally aware of the broad outlines of the alternatives that are likely to be included in the FS when it is released, as described above.

Solid Waste Rules

You indicated at our September 4, 2019 meeting that the Solid Waste rules (N.J.A.C. 7:26), and more specifically, the "landfill closure" rules therein, might apply to the remedy selection process for the Site. We are trying to better understand how those closure rules would apply to the Site and, specifically, how they might alter the details of the capping alternatives to be included in the FS, including the limited capping alternative described above.

There are two separate questions at hand – one is a legal interpretation of whether the landfill closure rules apply to a site listed on the National Priorities List (NPL¹) of Superfund Sites and the second is a

¹ The NPL is the list of known releases or threatened releases of hazardous substances, pollutants or contaminants that are those of the greatest national priority. Sites are not listed on a "fenceline-to-fenceline" basis; rather they contain only the contaminated areas, even if the site name implies that the entire facility or property is listed. For a discussion of EPA's listing policy, please see https://www.epa.gov/sites/production/files/documents/clarfctn_npl_list_plcy.pdf

technical interpretation of whether the substantive requirements of the solid waste rules would be met through implementation of alternatives for the Site, regardless of whether they are legally applicable or not. Each of these questions is discussed separately below.

1. Exclusion of Sites on the National Priorities List

On September 5, 2017, the NJDEP adopted amendments to Solid Waste rules to implement provisions of the Legacy Landfill Law N.J.S.A. 13:1E-125.1 et seq. As you know, the Legacy Landfill Law defines “closure” and “closure costs” as activities and costs associated with design, purchase, reuse, construction or maintenance of measures that NJDEP deems necessary to prevent, minimize, or monitor pollution or health hazards, “at the site of a legacy landfill or any other landfill *that is not listed on the National Priorities List* pursuant to the ‘Comprehensive Environmental Response, Compensation, and Liability Act of 1980,’ 42 U.S.C. s.9605.” Emphasis added, N.J.S.A. 13:1E-125.1.

That exemption for NPL sites was recognized when the amendments to the Solid Waste rules were proposed on August 15, 2016. Namely, the proposed amendments state that closure and closure costs apply “at the site of a legacy landfill or any other landfill *that is not listed on the National Priorities List* pursuant to the ‘Comprehensive Environmental Response, Compensation, and Liability Act of 1980,’ 42 U.S.C. s.9605.” Emphasis added, August 15, 2016 Proposed Amendments, page 8. The amended rules were adopted “with non-substantial changes.” September 5, 2017, Adopted Amendments, Solid Waste rules implementing provisions of the Legacy Landfill Law, page 1.

The exemption of NPL sites is also consistent with Section 13:1E-116.2 of the Solid Waste Management Act that defines “closure” as applying at “the site of any municipal solid waste landfill *that is not listed on the National Priorities List* pursuant to the ‘Comprehensive Environmental Response, Compensation, and Liability Act of 1980,’ 42 U.S.C. s.9605.” Emphasis added.

The Legacy Landfill law does not, therefore, appear to apply to the remedy selection process for the Site, which is listed on the NPL. At our September meeting, you indicated that the State Attorney General has developed a legal opinion on this issue. Therefore, EPA recommends a meeting between EPA’s Office of Regional Counsel and the Attorney General’s office be arranged to discuss the legal basis for your statement at our meeting that NPL sites are not exempt.

2. Technical Interpretation

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) requires that EPA address unacceptable human health and ecological risks posed by the Site. Those risks were determined through the RI/FS process, including the human health and ecological risk assessments that were performed for the Site. Therefore, the argument can be made that the RI/FS process is consistent with the State’s closure and post closure rules that are designed to “prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill subsequent to termination of operations.” N.J.A.C. 7:26-2A.9.

As explained above, EPA will be submitting comments on the draft FS to the performing PRPs that will significantly revise the FS alternatives so that none of the ‘action based’ alternatives would leave exceedances of the PRGs available for direct-contact exposure. As you know, the PRGs for the Site were developed consistent with NJDEP Alternative Remediation Standards guidance based upon the reasonably anticipated future use of the Site, as opposed to the Soil Remediation Standards identified in

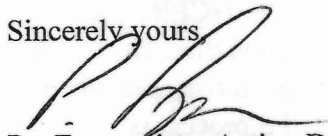
N.J.A.C 7:26D Appendix 1. Since we last spoke about this Site, EPA has been provided with a copy of the recently executed Restrictive Covenant between the PRPs and the Miele Trust (the private land owner) that limits future use of the privately owned portion of the Site property to open space, with fencing to mitigate unauthorized access. EPA is holding separate discussions with the FWS about the portion of the Site that is part of the Great Swamp National Wildlife Refuge; however, please note that the FWS property is "landlocked" by the Miele property and essentially inaccessible from public areas of the Refuge because the closest established trail is about a mile from the Site with extensive wetlands and dense vegetation surrounding the FWS part of the Site. As such, the future use of both the privately owned and FWS owned portions of the site is consistent with the assumptions that went into developing the site-specific PRGs.

Based on our conversations, it seems that NJDEP's primary concern relates to areas of the Site with exposed surface debris that may not be addressed by the limited capping alternative since they are not co-located with exposed hazardous substances in excess of the PRGs. To help put this concern in perspective, attached please find "Figure 1" that shows all of the PRG exceedances (red dots) for surface soil at the Site. Other than the dirt access roads, which are maintained and do not have exposed debris, the majority of the Site is vegetated. To support this statement, in December 2017, EPA conducted a Site reconnaissance to locate areas of the Site that were not vegetated. These areas are indicated in purple on "Figure 2" that is also enclosed. While additional non-vegetated areas may be present, they would likely not be readily accessible without the use of equipment to gain access by knocking down existing vegetation and, due to the general presence of heavy vegetation at the Site, are expected to be relatively few. While EPA did not record the presence or absence of exposed debris in the non-vegetated areas during the 2017 reconnaissance visit, in many cases these non-vegetated areas may align with surface debris². Note that if a limited-capping alternative were selected, these areas would be further refined during a pre-design investigation for the Site.

The remedy selection process under CERCLA will focus on addressing unacceptable risk to human health and the environment. As currently structured, alternatives include limited capping, with institutional and engineering controls (fencing) to address the Site as a whole, as well as a more comprehensive capping alternative. Therefore, based on the foregoing discussion, it is EPA's view that implementation of such a remedy would address NJDEP's expectations under the Solid Waste rules.

EPA is available to discuss this with you and your staff, along with any comments NJDEP may have on the revised draft FS.

Sincerely yours,



Pat Evangelista, Acting Director
Superfund and Emergency Management Division

Enclosure

² As a reminder, the landfill ceased operations prior to 1969, and considerable natural vegetative growth has occurred in the ensuing 50 years.

Figure 1

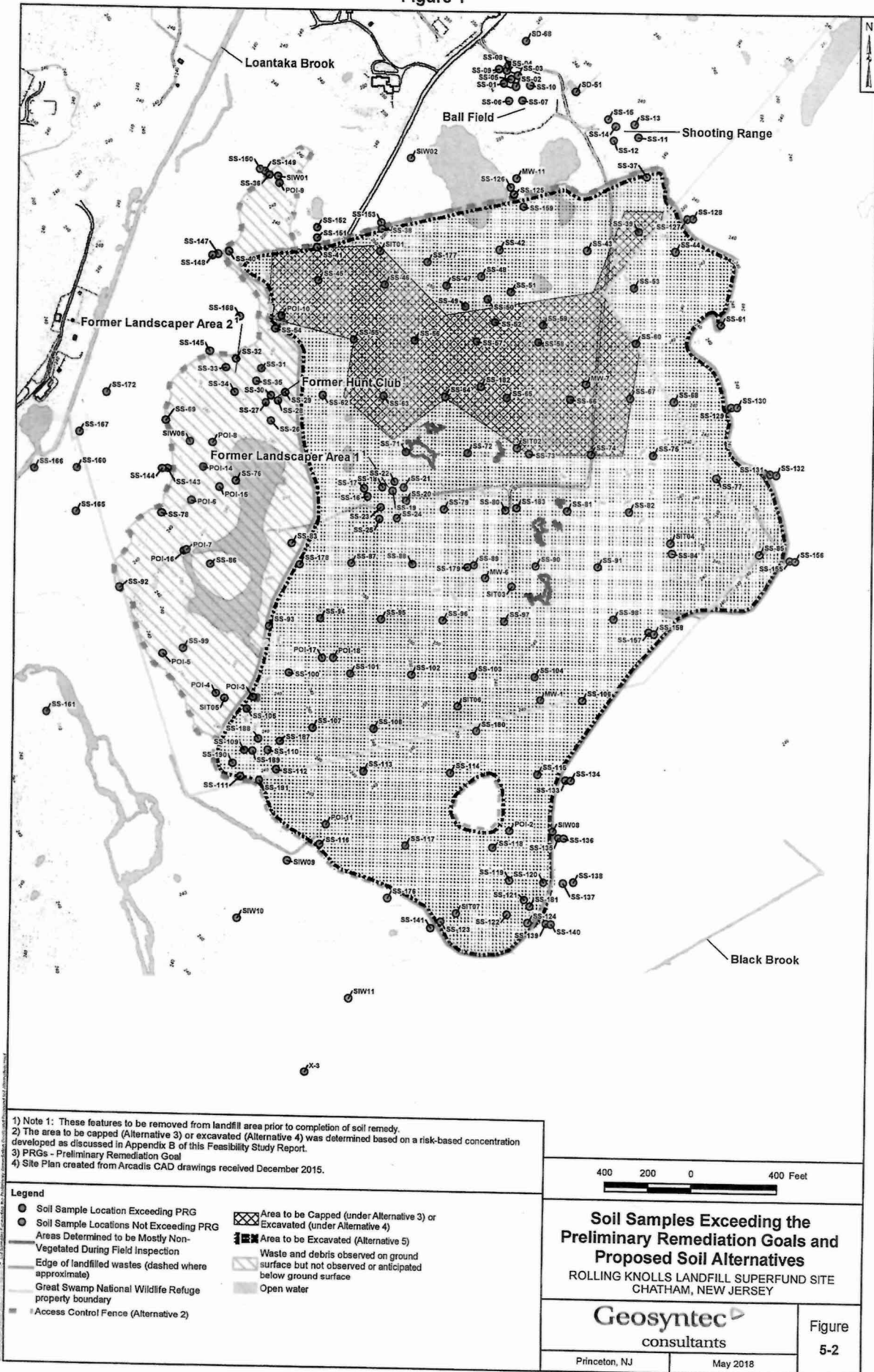
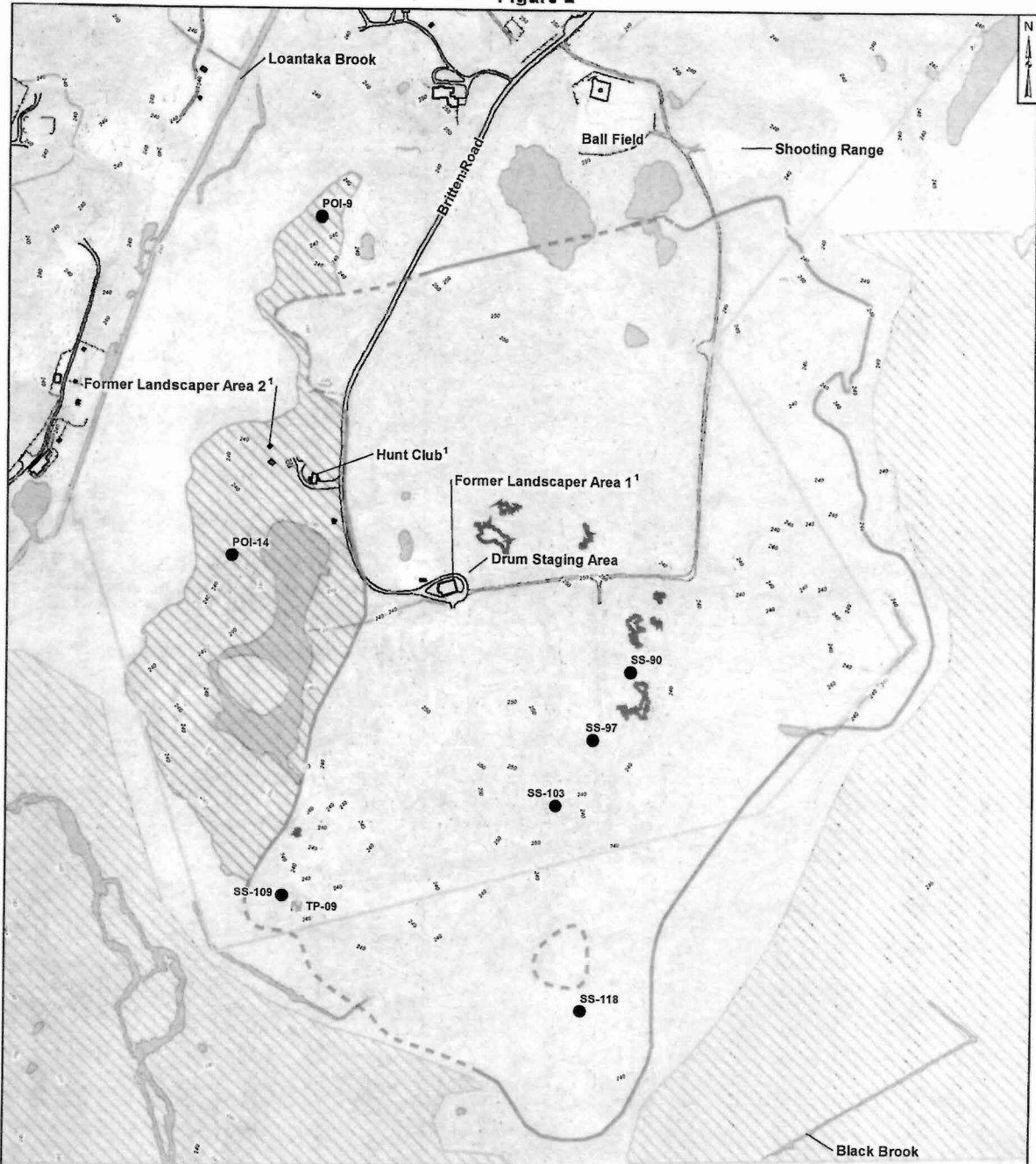


Figure 2



Note 1: These features to be removed from landfill area prior to completion of soil remedy.
Site Plan created from Arcadis CAD drawings received December 2015.
Aerial imagery accessed via ArcGIS Online and provided by the United States Department of Agriculture on 2 May 2018.
Image is dated 31 July 2015.

Legend

- Areas of Particular Concern (to be capped or excavated) (7)
- Potential Source Area to be Removed (1)
- Areas Determined to be Mostly Non-Vegetated During Field Inspection
- Edge of landfilled wastes (dashed where approximate)
- Great Swamp National Wildlife Refuge property boundary
- Areas where surface water flow does not exhibit typical bed and bank morphology
- Waste and debris observed on ground surface but not observed or anticipated below ground surface
- Open water

400 200 0 400 Feet

Location of APCs and Mostly Non-Vegetated Areas
ROLLING KNOLLS LANDFILL SUPERFUND SITE
CHATHAM, NEW JERSEY

Geosyntec
consultants

Princeton, NJ

May 2018

Figure
5-1

