

Memorandum

Date: April 20, 2022

To: Sally Rubin, Chair, Rolling Knolls Community Advisory Group
Rolling Knolls Community Advisory Group
Pat Seppi, Community Involvement Coordinator, EPA Region 2
Rupika Ketu, Remedial Project Manager, EPA Region 2
Stephanie Vaughn, Section Chief, EPA Region 2

From: Matt Robbie, Skeo
Josie Torres, Skeo

Re: March 29 Rolling Knolls Landfill Site CAG Meeting

Introduction

On March 29, 2022, the Rolling Knolls Landfill Community Advisory Group (CAG) met from 6pm-8:00 pm on Zoom. The meeting included the Miele Trust's perspective on the July 26, 2021 Memorandum of Understanding and a presentation of U.S. Fish and Wildlife Data Gaps Investigation.

Miele Trust Address

Damon Sedita, an attorney representing the Miele Trust, introduced himself.

- Mr. Sedita clarified that the Trust has not participated in the CAG meetings due to certain legal issues and procedures. He indicated the Trust is aware the meetings are important and that the Trust's nonparticipation is not a comment on the CAG.
- Mr. Sedita clarified that the Trust intends to abide by the agreements they have made privately and publicly regarding the Site and have no intention of taking a position against those agreement documents. He added that the Trust has discussed and negotiated transferring their portion of the site to an entity other than the Trust, and those discussions continue to take place.
- Mr. Sedita clarified that any potential transfer would be consistent with all the agreements the Trust has made and that the Trust is interested in transferring the property.

Q&A and CAG Discussion

Following the address from the Miele Trust, CAG members and EPA asked questions and discussed various topics related property ownership and future use.

- A CAG Member asked what it will take for the Miele Trust to transfer the property and what kind of consideration the Trust is looking for. Sally Rubin, executive director of the Great Swamp Watershed Association said, Mr. Sedita, if the Great Swamp Watershed Association said they would accept title to the property would the Trust convey it to the Great Swamp Watershed Association? Mr. Sedita responded that the primary concern for the Trust is not a concern about

monetary consideration, that the Trust's primary concern is to not have any liability regarding natural resource damage claims against the Trust related to the property in the future.

- CAG Members asked if that liability regarding natural resources would come from State or Federal law. Mr. Sedita clarified that the Trust is seeking protection from any claim, State or Federal, related to natural resource damages and would want a document in hand before transferring the property. He added that he was sorry for advising the Trust not to participate in the CAG for legal reasons, but that the Trust has cooperated and will continue to cooperate with the CAG to resolve the issues in a less adversarial manner.
- CAG Members brought up the July 2021 Memorandum of Understanding (MOU) between the Miele Trust, U.S. Fish & Wildlife Service/U.S. Department of Interior (FWS/DOI) Chatham Township regarding the future use of privately owned property at the Site. Members asked for clarification on what the MOU means for the potential transfer of the site. Mr. Sedita clarified that the MOU is not a transfer agreement, and that the Trust has consistently maintained the position that if the Trust receives liability protection, they will transfer the site as long as the transfer is consistent with all existing agreements, including the restrictive covenant.
- Ms. Rubin referred to an EPA email from Stephanie Vaughn regarding discussions EPA has had with Miele Trust and DOI/FWS, and separately with Chatham Township. Ms. Rubin noted that the email stated EPA's determination that the MOU, and the Agency's related discussions with parties to the MOU, did not provide EPA with any basis for changing the Reasonably Anticipated Future Land use as documented in the RI/FS for the site. CAG Members asked what would it take for an MOU or other document to change the reasonability anticipated land use?
- Juan Fajardo, EPA Assistant Regional Counsel, commented that the MOU is aspirational in nature and that it is hard to say what EPA would need to change the reasonability anticipated land use. He indicated that if the property was transferred and the new owner had specific visions for the future use of the property, that could change the reasonability anticipated land use – but the MOU does not change the reasonability anticipated land use.
- CAG facilitator Matt Robbie noted that it could be helpful to think about Ms. Rubin's question in a different way. He pointed out that some CAG members may be assuming that a change in ownership and the potential for Miele property to become publicly accessible conservation land is actually a different scenario than EPA has anticipated in RI/FS and baseline human health risk assessment. He asked if EPA could also address this question.
- Mr. Sedita clarified that the Miele Trust did not draft the document, they just signed it. He characterized the MOU as hopeful. And he hopes that matters could be worked out between all the parties including EPA, so that the land is transferred and becomes accessible to the public, in a way that is consistent with previous documents and the restrictive covenants.
- Mr. Fajardo added that EPA selects remedies based on risk, and that if an entity wants to improve the property they can, but that EPA cannot force an entity to do a cleanup to improve the value of a property or to support a specific use – the cleanup just has to be protective of human health and the environment.
- Stephanie Vaughn, EPA Region 2, clarified that EPA's risk assessment assumed passive recreational use for the site, both at the public (National Wildlife Refuge wilderness area) and private (Miele Trust property) parts of the site. She explained that this means, that in evaluating potential remedial alternatives in the FS EPA has to evaluate protectiveness for passive recreation

across the site. She explained that the basis for assumed risk is related to 84 days of use and that EPA's risk assessor, Michael Sivak can speak to that further.

- CAG Members asked if drafting a contingent contract saying that the Miele Trust will turn the site over to the U.S. Fish and Wildlife Service or the Great Swamp Watershed Association for public use as soon as the site is cleaned up, would that change the reasonability anticipated land use?
- Michael Sivak detailed EPA's methodology for expecting passive recreational use of the site 84 days of the year. He noted EPA anticipates adolescents would be the highest risk population using the private part of the site, and that the number 84 accounts for 3 days a week in the summer, fewer days during the school year, none in the winter months. He explained that the determination is intentionally protective and conservative, aimed at protecting the most vulnerable to exposure. In response to CAG Members questions about why more days of the week or time was not assumed, or how anyone could go on the site if there was a fence, Mr. Sivak clarified that EPA cannot tell a private property owner what to do with their property, that they use guidance to determine the future reasonably anticipated use, looking at the property owners plans and the current zoning of the site. He added that with the reasonably anticipated land use being passive recreation, EPA will look to make the site cleanup match that scenario. If the situation at the site changes, EPA's recommendations may change, and more cleanup can happen.
- CAG Members asked why some sites have a fence around them and others do not? CAG members expressed frustration that EPA has said a fence will be needed to prevent access to the site after cleanup. Ms. Vaughn noted that cleanups address risk. She added that the Rolling Knolls Landfill site has discrete areas with contamination. At some sites, developers will come do more work to cleanup a site for reuse. On other landfills, hazards are more ubiquitous across the site and large areas are capped and can be used for other purposes. Ms. Vaughn also said that EPA is not saying there will necessarily need to be fence and reminded the CAG that EPA has not proposed or selected a remedy. She noted that some of the remedial alternatives in the draft FS may include a fence as one part of a potential alternative.
- CAG Members asked if the property were to remain in the Miele Trust, but they wanted to open it up to passive recreation, if that would change the change the reasonability anticipated land use. Mr. Fajardo and Mr. Sedita both expressed that the Trust would be unlikely to open the site to public use due to the liability and risk they would assume.

U.S. Fish and Wildlife Service Data Gaps Investigation

George Molnar, Contaminants Biologist, introduced Preston Sowell, Geotic Solutions. Mr. Sowell presented a presentation summarizing the Department of Fish & Wildlife Data Gaps Study and Remedial Alternative Analysis Report. The presentation reviewed the site background, Data Gaps Study methodology and findings. The Data Gaps Study concluded that:

- Drums and other uncovered and comingled industrial waste across the Refuge portion of the landfill
- Pervasive and extensive presence of hazardous substances exceeding screening criteria
- Empirical and analytical evidence of landfill leachate discharging into Refuge

- Results indicate that PCB contamination is higher and more widespread than indicated in the Remedial Investigation Report
- Mercury may represent more of a risk than indicated in the Remedial Investigation Report
- Presence of per- and polyfluoroalkyl substances (PFAS) compounds in pore water

In response to the Data Gaps Study, USFWS proposed new Alternative remedy in the Remedial Alternative Analysis Report. The Remedial Alternative Analysis Report summarizes the evaluation of the remedial alternative (number 6) which has been proposed by FWS to mitigate the impact of landfill waste and hazardous substances within the Wilderness Area of the Great Swamp National Wildlife Refuge. This alternative was developed to address the limitations of Alternative 5 currently featured in the latest revision of the Draft Feasibility Study for the Rolling Knolls Landfill Site. A key component of this proposed Alternative 6 is to use on-site borrow source material to significantly reduce the local truck traffic by reducing the number of loads of cap/cover material that would otherwise need to be transported to the site. This report also evaluates Alternative 6 against the EPA 7 threshold criteria for evaluating remedial alternatives. Additional information can be found in the FWS presentation and the Remedial Alternative Analysis Report:

<https://fileshare.fws.gov/?linkid=KZi4zr6VWWVszmQUbvjhngdnmAdaPPVI8YDODS6ncAGbVD1eHPkNAQ>

Q&A and CAG Discussion

After the presentation, meeting participants had further discussion. Key points are summarized below.

- Frances Schultz, Technical Advisor for the Great Swamp Watershed Association, asked if the drum and leachate findings in the study would change any of the ecological assumptions that the feasibility study is based on. Mr. Sowell responded that more evaluation of the data is needed. Mr. Molnar added that most of FWS comments on the risk assessment were overlooked. He added that there is a lot of talk about human exposure, but not as much of a focus on ecological receptors or seeps from the landfill into the refuge. Ms. Vaughn responded that the FWS data is consistent with what EPA found on the site, that they are aware of the drums and hazardous substances in many portions of the site and that all of the remedial alternatives under consideration address the risks associated with that waste. She added that EPA's evaluation has gone beyond initial screening and has included toxicity testing. She concluded that FWS data does not fundamentally change EPA's site model. Michael Clements, Ecological Risk Assessor for EPA Region 2, agreed with Ms. Vaughn.
- Ms. Schultz asked if the slurry wall proposed by FWS would cause the wetlands to dry up. Mr. Sowell responded that the scope of the wetlands is so great, that a slurry wall is unlikely to impact the entire wetlands, just the area immediately near the wall.
- CAG Members asked for clarification on how EPA could say that FWS's study showed nothing different than what EPA has found if EPA is saying that contamination is not widespread and FWS is saying that it is. Ms. Vaughn responded that EPA took and evaluated hundreds of samples, including soil samples, surface water and sediment all throughout the site. They sampled the drums and found that they contained limited hazardous substances. She added that the data that Mr. Sowell presented was a screening level sampling, not the more in-depth risk assessment that

EPA has already conducted. Mr. Clements added that screening level sampling does not include toxicity testing to see what the response to the contamination is and that screening level sampling takes that next step to determine toxicity.

- CAG Members asked if EPA would revisit investigation data or study the site further based on FWS screening level sampling. Ms. Vaughn responded that once a remedy is selected, EPA will do a pre-design investigation, collect many more samples and consider the information FWS gathered during this investigation. She added that the findings in the FWS assessment does not change EPA's current thoughts about the range of remedial alternatives to be evaluated. She stated EPA has the information the Agency needs to select a remedy.
- CAG Members asked if FWS and EPA would commit to creating a good overlay of the data that both agencies have collected. Ms. Vaughn confirmed that EPA is planning to look at how the data lines up. Mr. Molnar added that comparison to screening levels is not the same as risk assessment, what he is seeing out in the field does not pass the litmus test – that EPA says that they sampled the areas that FWS sampled, but EPA's remedial investigation does not mention seeps. He re-affirmed FWS commitment to working with EPA and sharing data. Mike Horn, Refuge manager, echoed that FWS is committed to combining the data sets into one data set and recalculating the risk, adding that mercury is more of a problem at the site and PCBs are more ubiquitous than EPA's data has shown.
- Andrea McLaughlin, Department of Fish & Wildlife, added that there might be more data collection by EPA and FWS, but that public comments are not available during the remedial design phase of the process. Ms. Vaughn confirmed that there is no public comment process during the remedial design process, but that the remedy will be modified as needed based on the pre-design evaluation. Ms. Schultz asked if different information is found during the pre-design evaluation, if the process goes back to the feasibility study. Ms. Vaughn clarified that during the pre-design evaluation, the exact extent of the contamination will be determined and refined. If the area of contamination expands, that is considered a refinement. If EPA were to determine that the remedy picked was the wrong approach based on the pre-design evaluation, that might be a reason to go back and there would be another comment period. She added that EPA has not even put out the feasibility study yet or a plan, so that is getting way ahead of where they are now. She added that EPA is taking in all of the information that EPA is hearing and what they ultimately propose will be subject to public comment.
- CAG Members commented that New Jersey has more superfund sites than any other State and that trust between the community and EPA is a very important issue. That combining the FWS and EPA data is important and that fencing a large portion of the site is not a good option.
- CAG Members asked when the CAG could see the FWS and EPA data overlaid. Ms. Vaughn said they would get back to the CAG.

Next Steps

The next CAG Meeting will be held on May 3, 2022. Potential topics for the meeting include:

- A presentation from the PRP group. CAG Members agreed that they would like to hear from the group, but expressed interest in having someone involved in the meeting who can help explain

how the information presented by the PRP group fits into the context what the CAG has heard so far.