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BY U.S. MAIL and EMAIL

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Re: City of Ashland, Wisconsin Lakefront Superfund Site

Dear Mr. Benson and Mr. Melodia:

Thank you for sharing with us Mr. Karg's letter about our negotiations with NSP for an access agreement. Not surprisingly, we disagree with his characterization of the negotiations. In fairness to Mr. Karg, he was not involved with the negotiations as far as we know. All of our communications were with Mr. Crass (NSP's Wisconsin counsel) and Ms. Kearney (Xcel's in-house counsel).

As to the assertion that the City is refusing to negotiate in good faith, the City has made at least as many concessions in the course of the negotiations as NSP. It is true that we have not engaged in negotiations for a little over a month, but as you know from our telephone conversations, we suspended negotiations when we learned that the State of

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Wisconsin claims ownership of part of the site that we thought was owned by the City. Based on recent conversations with Ms. Hess and other DNR representatives, we are now in a position to resume negotiations and will do so.

Mr. Karg's complaint about late cancellation of a meeting is not justified. The reason for the cancellation was that we had just learned about the State's ownership claim and had not determined how that might affect the negotiations. We felt no compunction about cancelling the meeting because we were told that the reason for choosing that date was that the NSP representatives were going to be in Ashland for other reasons anyway. Mr. Karg's letter is the first complaint we have heard about the cancellation.

We will address Mr. Karg's other complaints using the same numbers as in his letter.

1. As to training and equipment for City representatives entering the site, we agreed that our observers would have proper training and otherwise comply with the health and safety plan. The only issue on which we had not reached agreement had to do with City crews being able to repair breaks in sewer or water facilities. City sewer and water employees do not have the necessary training. We proposed that NSP arrange to have a contractor with appropriately trained employees that NSP could call in the event of a break. In response, NSP did propose, just before the suspension of negotiations, that it would pay for City employees to obtain the training. That proposal is acceptable to the City. If we have not already conveyed that acceptance to NSP, we will.

2. The assertion that we have resisted long term access to the site for NSP is simply wrong. NSP requested both an access agreement and a permanent easement, and we had agreed on most of the terms of both. Contrary to Mr. Karg's intimation, the City did not try to bifurcate the negotiations. Negotiation of both the access agreement and the easement was occurring simultaneously. NSP informed the City, shortly before the suspension of negotiations, that it wanted the access agreement to continue indefinitely, and possibly permanently. The City, not wanting to have overlapping and possibly inconsistent agreements, suggested that the access agreement should cover the immediate construction and remediation activities and that the long term activities should be covered by the easement. We have never received an explanation of why that is not acceptable to NSP. Finally, as you know, because of the State's claimed interest in the land, we can likely grant a 25-year easement, but not a permanent one. That issue has not yet been raised with NSP.

3. The City is not trying to resolve issues of site liability in the access agreement. The parties have agreed to language that preserves their rights to make claims against each other.

   NSP will have effective control of the site and the work. If third party claims arise, the City believes that NSP should defend and indemnify it. The City does not ask to be indemnified for its own negligence. NSP has refused to agree even to this limited remedy.

   The City is also concerned that since NSP will be bringing contaminants onto City property, its actions could exacerbate the contamination problem or complicate the remediation. The City believes that NSP should defend and indemnify it if it exacerbates the problem. NSP refused to agree. The City then proposed to limit the indemnity to exacerbation caused by NSP's negligence. NSP should be responsible for its own negligence. It has refused to agree to that narrower proposal.

   Throughout the negotiations on the language on indemnity, NSP consistently refused to agree to language specific enough to be enforceable. It now seems apparent that it will not agree to any indemnity. To the extent that time was wasted in negotiations, that was the result of NSP refusing to agree to be responsible for its work or its negligence.

4. We see no reason for the institutional control issue to be included in the access agreement. It has nothing to do with access to do the work. Moreover, we have informed NSP that the City will agree to reasonable institutional controls, but (1) we see no reason the City needs to agree now to institutional controls that have not been defined; (2) nor should NSP have the ability to unilaterally decide on institutional controls for City property; and (3) we see nothing in the consent decree that requires the institutional controls to be part of the access agreement. Moreover, the access agreement and easement provide for NSP's long term access to the site.

   Finally, to date, NSP has asked the City to agree to institutional controls without any limit as to what might be included. If NSP will give us a sufficient description of what institutional controls it is asking the City to agree to, I expect that the City can agree to them now.

5. The property that is the subject of the access agreement and easement is on the shore of Lake Superior, which is an attraction to the public and an amenity for the City. It will be, following the completion of construction and on-site treatment of

excavated material, open to the public for access to the lake, enjoyment of its scenic beauty, and other public uses. Therefore, for esthetic and safety reasons, the City did propose compliance with its design requirements for buildings and structures that will remain on the property for the long term. NSP responded with a proposal that the City read as imposing no restrictions at all. If NSP is now willing to meet "reasonable esthetic and architectural standards," we should be able to negotiate some mutually agreeable language.

Conclusion

The City wants to see the remediation commenced and completed as soon as possible. We are ready and willing to resume negotiations with NSP and will contact them about that. If you have thoughts about any of the foregoing, we would appreciate hearing them. Thank you for taking the time to read this.

Very truly yours,

Richard C. Yde

RCY:kps

cc: Kristin Hess
Lacey Cochart