UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

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By Regular Mail and Electronic Mail

George C. Molnar
FWS Project Coordinator
U.S. Department of the Interior
Fish and Wildlife Service
Great Swamp National Wildlife Refuge
32 Pleasant Plains Road
Basking Ridge, NJ 07920

Melissa D. Papasavvas, Esq.
U.S. Department of the Interior
Office of the Solicitor – Land Resources
Environmental Compliance and
Response Branch
1849 C Street, NW; MS 6412
Washington, DC 20240

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

Dear Sir/Madam:

This letter is in response to Mr. Molnar's June 15, 2018 letter providing the U.S. Environmental Protection Agency (EPA) with comments from the U.S. Fish and Wildlife Service (FWS) to the draft Feasibility Study Report (draft FS) for the Rolling Knolls Superfund Site (Site). More particularly, this letter addresses the comments under the heading Wilderness Act found in pages 2 and 3 of FWS's comments. We are not including a response to the other comments provided by FWS given that FWS has requested, and EPA has agreed, to allow FWS to provide additional comments to the draft FS.

Wilderness Act

Your comments note that Record of Decision for the Site "should identify the Wilderness Act as an Applicable or Relevant and Appropriate Requirement (ARAR) and state whether each alternative will meet the ARAR." We note that, reflecting the recommendations in the *Compliance with Others Law Manual, Part II*, the Wilderness Act of 1964 is listed as a location specific ARAR for the Site in Table 4-1 of the May 2018 draft FS.

Your comments also note that EPA's *Compliance with Others Law Manual, Part II*, directs EPA to "Consult with DOI." Consistent with this guidance, EPA has sought DOI's and FWS's input throughout the FS process and both DOI and FWS have reviewed and submitted comments to drafts of the FS. Moreover, as you know, there have been numerous discussions, both by phone and written, between EPA and DOI and FWS to discuss various FS matters including what aspects of the Wilderness Act are potential ARARs for the Site. EPA also met with representatives of DOI and FWS at the Helen C. Fiske Visitor Center in Harding, New Jersey on August 15, 2018 to discuss, among other things, potential ARARs for the Site.

Consistent with the National Contingency Plan (NCP), and associated discussion in the preamble to the final NCP (see e.g., 55 Fed. Reg. at p. 8746, March 8, 1990), EPA, as the lead agency, is ultimately responsible for making the federal and state ARARs determination for the remedial action to be selected at this Site. In addition, we note that the preamble states:

> Furthermore, the language of CERCLA section 121(d)(2)(A) makes clear, and program expediency necessitates, that the specific requirements that are applicable or relevant and appropriate to a particular site be identified. It is not sufficient to provide a general "laundry" list of statutes and regulations that might be ARARs for a particular site.

To the extent the use of CERCLA response authority is warranted to address certain contamination at the Site, you correctly note that EPA's *Compliance with Others Law Manual, Part II*, states "[w]hen remedial activities will impact a wilderness area, the RI/FS should describe compliance with the Wilderness Act." We appreciate the fact that there may be differences of opinion on what the Wilderness Act and associated regulations published in 50 CFR 35.5 may require with respect to the remedial action for the Site. With respect to the potential prohibitions on certain activities, and possible exceptions to those prohibitions, EPA has gained valuable insights from its consultation with both DOI and FWS which will help us, as the lead agency, make our final ARARs determinations when selecting the remedial action for the Site.

In that regard, DOI's approach to the Wilderness Act for its CERCLA remedy decision for Operable Unit 3 (OU3) of the Asbestos Dump Site is helpful, particularly with respect to the exceptions to "prohibited" activities (e.g., use of "heavy construction equipment" may be permitted in the wilderness area of the Site; "waste material buried under an engineered cap, and not left in place exposed").

We recognize that the Refuge Manager is uniquely situated and should be consulted on specific activities evaluated in the remedial alternatives that may have an impact on the wilderness area at the Site in light of his knowledge and expertise. We do not, however, agree that the Wilderness Act, or the regulations found in 50 CFR 35.5, empower the Refuge Manager to select the remedy for the Site, which is the position that your comments seem to indicate. Pursuant to section 121(d)(2)(A) of CERCLA, an ARAR is a promulgated "standard, requirement, criteria, or limitation under any Federal environmental law." The Refuge Manager's belief or opinion of what is best for the wilderness area is not, therefore, an ARAR under CERCLA.

We look forward to our continuing dialogue with you on the draft FS and other matters concerning the Site.

Sincerely,

Juan M. Fajardo

Juan M. Fajardo
Assistant Regional Counsel

Cc: Kimberly H. Childe, Esq. DOI

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