UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JAN 16 2015

City of Philadelphia
The Honorable Michael A. Nutter, Mayor
215 City Hall
Philadelphia, PA 19107-3214

Re: Lower Darby Creek Area Superfund Site:
Notice of Decision Not to Use "Special Notice" Procedures for Negotiations for Remedial Design & Remedial Action for Operable Unit 01 – Clearview Landfill

Dear Mayor Nutter:

This letter relates to the liability of the City of Philadelphia ("the City" or "you") in connection with the Lower Darby Creek Area Superfund Site ("Site"), Operable Unit 1 - Clearview Landfill ("OU1"), located in Darby Township, Delaware County, and in the City of Philadelphia, Pennsylvania.

By letters dated June 11, 2002 and March 4, 2013, EPA notified the City of its potential liability at OU1 pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607. On September 26, 2014, EPA selected a remedial action for implementation at OU1 of the Site, which is described in a document called a Record of Decision ("ROD"). Specifically, EPA's ROD requires the following remedial actions:

1. Pre-design investigation activities to delineate waste and contaminated soil boundaries.

2. Installation, maintenance and monitoring of an evapotranspiration ("ET") Cover System over approximately 50 acres, including relocation of on-site business and demolition of all structures within the ET Cover boundary, Site grading, storm water controls and erosion controls along the east bank of Darby Creek.

3. Removal and off-site disposal of Polychlorinated Biphenyls principal threat wastes.

4. Excavation and consolidation of wastes and contaminated soils above cleanup levels within and beneath the ET Cover.

5. Construction and maintenance of a leachate collection trench along the Landfill creek banks down to the mean high tide elevation of the creeks and construction, maintenance, and monitoring of engineered wetlands to treat contaminants to surface water discharge requirements.

6. Long-term monitoring of groundwater, leachate, landfill gas, surface water and sediment, to evaluate remedy performance and effectiveness.

7. Land and groundwater use restrictions to be implemented and maintained through institutional controls and engineering controls to protect the integrity of the selected remedy including the ET Cover, leachate collection trench, engineered wetlands, and prevent exposure to soils outside of the ET Cover above cleanup levels. Additional fishing advisories may also be required. Signs will be placed along the stream bank to warn fisherman of all fishing advisories and the potential risks from fish consumption. An Institutional Control Implementation and Assurance Plan will be developed for OU1 during remedial design to ensure appropriate land and groundwater use restrictions are implemented, and monitored and maintained against future land owners.

This letter notifies you pursuant to Section 122(a) of CERCLA, 42 U.S.C. § 9622(a), that EPA has determined not to use the Special Notice procedures described in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), for the remedial action selected for OU1. Rather, EPA has determined that it is more appropriate and in the public interest for it to implement the remedial action.

DECISION NOT TO USE SPECIAL NOTICE

Under CERCLA Section 122(e), 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to negotiate formally the terms of an agreement between EPA and Potentially Responsible Parties ("PRPs") to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the site while formal negotiations between EPA and the PRP or PRPs are conducted.

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures because EPA has determined that use of such procedures is not practicable or in the public interest, nor would use of such procedures facilitate an agreement or expedite remedial action. Accordingly, EPA will not issue the City a Special Notice letter under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), and does not plan to open a formal period of negotiations with you for an agreement under which remedial design and remedial action will be conducted for OU1. However, EPA reserves all rights under applicable statutes and regulations including, but not limited to, the right to issue administrative orders directing responsible parties to perform response actions, the right to perform response actions using Federal monies and to seek to recover all costs from responsible parties, and the right to seek Federal court orders directing responsible parties to perform response actions.

The decision not to use the Special Notice procedures described herein does not preclude you from entering into discussions with EPA regarding your participation in response actions at the Site. Rather, this decision simply means that EPA will not use the above-described procedures in conducting such discussions. EPA encourages all offers regarding settlement of this matter.

Administrative Record

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA establishes an administrative record that contains documents which form the basis for EPA's decision on the selection of each response action for a site. A copy of the record for each response action selected for this Site is available on the internet at www.epa.gov/arweb and may be available in hardcopy at specific locations.

Note that this letter pertains to one of several operable units requiring response at the Site. Unless otherwise specified herein, this letter does not apply to any other operable unit at the Site or any other site.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein.

If you have any questions pertaining to this letter, please contact Joshua Barber, Remedial Project Manager, at (215) 814-3393, or have your attorney contact Bonnie A. Pugh, Senior Assistant Regional Counsel, at (215) 814-2680.

Sincerely,

Cecil Rodrigues
Division Director
Hazardous Site Cleanup Division

cc: Larry Silver, (lsilver@lssh-law.com)
Peter Knight (NOAA)
Kate Barfield, Esq. (NOAA)
Lindy Nelson (DOI)
Anthony Conte, Esq. (DOI)
Andrew Hartzell, Esq. (PADEP)
John Moscato, Esq. (DOJ)
Bonnie A. Pugh, Esq. (EPA, 3RC43)
Joshua Barber (EPA, 3HS23)

Enclosures: List of Recipients
EPA Cost Report