Gravatt, Dan

From: Tapia, Cecilia
Sent: Wednesday, March 05, 2014 8:56 AM
To: esmith@moenviron.org; Brooks, Karl
Cc: Gravatt, Dan; Kerry DeGregorio; Joeana Middleton; Brecht Mulvihill; Steven Engelhardt
Subject: RE: MCE West Lake Questions
Attachments: MCE questions 1-31-14 - EPA response dated 3-5-14.pdf

Mr. Smith, attached are responses to your January questions.

Thanks
Cecilia Tapia
Director, Superfund

From: esmith@moenviron.org [mailto:esmith@moenviron.org]
Sent: Thursday, January 30, 2014 2:54 PM
To: Brooks, Karl
Cc: Tapia, Cecilia; Gravatt, Dan; Kerry DeGregorio; Joeana Middleton; Brecht Mulvihill; Steven Engelhardt
Subject: MCE West Lake Questions

Administrator Brooks,

Please see the attached questions from MCE and concerned citizens regarding the West Lake Landfill. Let me know if you need clarity regarding our questions.

Thanks,
Ed

Ed Smith
Safe Energy Director
Missouri Coalition for the Environment
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 Renner Boulevard
Lenexa, Kansas 66219

MAR - 5 2014

Mr. Ed Smith
Missouri Coalition for the Environment
3115 S. Grand Blvd., Suite 650
St. Louis, Missouri 63118

Dear Mr. Smith:

Karl Brooks, Regional Administrator, EPA Region 7, forwarded your January 30, 2014 e-mail to me for response. The EPA's responses to the questions you raised about the West Lake Landfill Superfund Site are addressed as follows:

1) Has EPA Region 7 considered the removal of the radioactive wastes due to the threat of the ongoing smoldering landfill fire?

A: EPA is re-evaluating alternatives and plans to issue a new Proposed Plan with a new public comment period once the re-evaluation is complete. The removal of the radiologically impacted material (RIM) was considered in detail by EPA during the feasibility study completed in 2006 and as reflected in EPA's 2006 Proposed Plan and the 2008 Record of Decision for the site. A detailed analysis of the possible effects of the subsurface smoldering event (SSE) impacting the RIM was recently submitted to EPA by Republic and that analysis is currently under EPA review. A supplemental feasibility study is currently being conducted by the responsible parties. Further analysis of the removal of the RIM will be included in that study and removal of the RIM will be considered by EPA in any future Proposed Plan and Record of Decision for OU-1.

2) Could Attorney General Koster have required Republic Services to remove the radioactive wastes through legal action?

A: EPA is unable to respond to this question as it pertains to State authorities. We suggest that this question be directed to the State of Missouri's Office of Attorney General.

3) Does the State of Missouri have legal authority over the disposition of the radioactive wastes?

A: EPA is unable to respond to this question as it pertains to State authorities. We suggest that this question be directed to the State of Missouri's Office of Attorney General.

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4) Did EPA Region 7 consider other options that would ensure the smoldering fire would not reach the radioactive wastes other than the isolation barrier plan negotiated between the State of Missouri and Republic Services? If yes, please describe the process and/or provide documents related to the options considered before deciding that an "isolation barrier" will be sufficient to protect the radioactive wastes from the smoldering landfill fire.

A: The "isolation break" concept arose in the State's *First Agreed Order of Preliminary Injunction* dated May 13, 2013 (State Order, paragraph 22.B.iii). The State Order also establishes "trigger criteria" for: (i) the installation of additional Temperature Monitoring Probes in the North Quarry (paragraph 22.A.i); (ii) for installing interceptor wells within the North Quarry to control further migration of the SSE (paragraph 22.A.ii); and (iii) capping the North Quarry with an EVOH geomembrane (paragraph 22.A.iii). While EPA staff have discussed and considered other options to prevent the SSE from impacting the RIM, EPA considers the State Order to be appropriate.

5) What analysis has EPA Region 7 conducted to determine how the contaminants at West Lake would be affected by elevated temperatures in the landfill, specifically, temperatures above 140 degrees Fahrenheit?

A: The OU-1 responsible parties have submitted to EPA for review a report evaluating the possible impacts of a SSE on contaminants at the site. EPA is currently reviewing that report.

6) Does EPA Region 7 have a contingency plan in the event of the isolation barrier plan failing or a smoldering fire starting within OU-1?

A: The contingency plan for dealing with the SSE is set forth in paragraph 22 of the State Order.

7) Will EPA Region 7 please make available all documents submitted by the PRP's, their contractors, and other agencies that are currently under review as it relates to the isolation barrier plan and its implementation? The Missouri Dept. of Natural Resources was able to post documents within days upon receipt. This effort allowed MCE and concerned citizens to submit comments related to our concerns.

A: Consistent with EPA's legal authorities (see EPA's response to question no. 8 below), documents will be made available to the public on EPA's web page.

8) Are there any laws that preclude EPA Region 7 from posting documents under review?

A: The Freedom of Information Act, 5 U.S.C. § 552, (FOIA) provides public access to federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine statutory exemptions. EPA makes publically available agency records not subject to an exemption. The determination to release a record must be made by EPA on a record-by-record basis, consistent with the requirements of the FOIA.

9) Does EPA Region 7 have the legal authority to request that the U.S. Army Corps of Engineers assume lead jurisdiction of the West Lake Landfill?

A: Sites involving radioactive materials resulting from facilities that supported Manhattan Engineer District (MED) and early U.S. Atomic Energy Commission (AEC) activities may be eligible to be addressed by the U.S. Department Energy's (DOE) Office of Legacy Management through the Formerly Utilized Sites Remedial Action Program (FUSRAP). FUSRAP remedial activities are administered and executed by the U.S. Army Corps of Engineers (USACE). Site entry into FUSRAP occurs through legislation or by the DOE determining that the site is eligible through the application of selection and exclusion criteria. Congress has directed the USACE to conduct remedial actions at FUSRAP sites in a manner consistent with the Comprehensive Environmental, Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 – 9675 (CERCLA), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (NCP). EPA has no legal authority to request that DOE or the USACE utilize FUSRAP for West Lake Landfill. More information on DOE's FUSRAP program may be obtained through http://www.lm.doe.gov/default.aspx?id=866 for inclusion.

10) Does EPA Region 7 have the ability to ask the U.S. Army Corps of Engineers to perform site studies and evaluation of the West Lake Landfill?

A: As discussed in response to question no. 9 above, there is an established process by which the USACE considers sites for inclusion in the FUSRAP program. As the lead agency for site remediation, EPA can obtain assistance from other federal agencies with specific expertise, such as the USGS and USACE, to evaluate the site and select a remedy.

11) Will EPA Region 7 contract with the Army Corps of Engineers FUSRAP (similar to how EPA Region 7 contracted the USGS on groundwater issues) to help characterize the radioactive wastes at West Lake Landfill because the St. Louis Army Corps of Engineers FUSRAP headquarters is already familiar with the contaminants, is located near the site where the radioactive wastes originated at Latty Ave., and has on-site laboratory facilities?

A: EPA is considering utilizing USACE technical assistance for both the installation of the isolation barrier and in developing a revised Proposed Plan and Record of Decision for OU-1.

12) Why has EPA Region 7 not tested for radioactivity throughout the landfill?

A: EPA's investigations began in the radiologically-contaminated areas identified by the Nuclear Regulatory Commission and proceeded until the limits of these areas were defined well enough to support the remedy evaluation and selection process (the Feasibility Study and the Record of Decision).

13) Given that the Gamma Cone Penetration Test (GCPT) found radioactivity in areas believed to be not contaminated, does EPA Region 7 plan to test the entire landfill in order to know with certainty exactly where radioactive wastes are present?

A: EPA anticipates that the remedial design phase for whichever remedy is selected will involve a higher density of sampling points along the perimeter of the radiologically-contaminated areas, as the level of detail needed for the design is greater than is needed for remedy selection. The GCPT data will be used in any future remedy selection processes.

14) Would EPA Region 7 be in charge of radioactive wastes found outside of OU-1?

A: Under CERCLA and the National Priority List designation for West Lake, EPA is the lead agency to address OU-1 related RIM within the landfill complex regardless of location.

15) Given that no formal commenting period was allowed when the isolation barrier was negotiated between Republic Services and EPA Region 7, do community members, businesses, or organizations have a legal right to comment on the isolation barrier as negotiations between EPA Region 7 and Republic Service unfold regarding the exact details?

A: Actions that EPA may direct the responsible parties to take to implement an isolation barrier are expected to be exercised pursuant to EPA's time-critical removal authority. Due to the time-critical nature of such an action, and consistent with the NCP, the removal will not be subject to public comment. However, EPA will establish a publically-available administrative record that contains the documents that form the basis for the selection of any removal action, including an isolation barrier.

16) Did EPA Region 7 seek/allow MDNR to comment on Phase 1, Phase 1b, Phase 1c, or Phase 2 of the isolation barrier plan?

A: MDNR commented on work plans connected with the implementation of the State Order.

17) Did DNR suggest establishing background radiation levels for the GCPT at an offsite location?

A: EPA suggests seeking the requested State information from the MDNR.

18) Did EPA Region 7 establish background radiation levels for the GCPT at an offsite location? If yes, please cite where this information can be found.

A: No. On-site background values representative of the specific soils and wastes in the area were established.

19) It's our understanding that background radiation was determined within the landfill. Our concern is that it will skew real background levels of radioactivity given that EPA Region 7 is now finding radioactivity in areas where it was presumed to be "clean." Will EPA Region 7 establish background radiation levels for the GCPT offsite in an area that are upstream, upwind and distant from the West Lake Landfill?

A: No. The on-site background levels are appropriate for determining the presence or absence of RIM for the purposes of the qualitative screening done with the GCPT instrument.

20) Did EPA Region 7 look for historical documents regarding the background level of radiation for St. Louis, Missouri before conducting the GCPT?

A: No. The on-site background levels are appropriate for determining the presence or absence of RIM for the purposes of the qualitative screening done with the GCPT instrument.

21) How does EPA Region 7 classify the work related to the isolation barrier? Is it a remedial action?

A: The "isolation break" is a requirement of the State Order. EPA's lead responsibility to oversee this work will be conducted as a time-critical removal action in accordance with the NCP (40 C.F.R. § 300.415).

22) Is EPA Region 7 able to request a Health Hazard Evaluation from the National Institute of Occupational Health and Safety at the West Lake Landfill? If yes, will EPA Region 7 request a Health Hazard Evaluation in order to ensure the full safety of onsite employees? The emergence of radioactive material outside of the fence around OU-1Area 1 within the landfill is of serious concern and because EPA Region 7 has not tested the entire landfill, radioactive material could be located elsewhere. The precautionary principle should be considered in order to protect human health for the landfill workers, nearby residents, and employees of nearby businesses.

A: EPA cannot request such an evaluation because EPA is not defined as the employer at the site. Employees, employee representatives, or employers can request an evaluation of possible health hazards associated with their job or workplace, by using one of the following methods: fill out an online request form http://www.cdc.gov/niosh/hhe/hheform.html, fill out the attached form and fax to (513) 841-4488, or mail to NIOSH, Health Hazard Evaluation Program 4676 Columbia Parkway, R-9 Cincinnati, OH 45226. For more information about the Health Hazard Evaluation Program call NIOSH toll-free at (800) 232-4636 you may also email NIOSH at HHERequestHelp@cdc.gov.

Thank you for your continued interest in this site. If you have additional questions or concerns, please do not hesitate to contact me at (913) 551-7733 or tapia.cecilia@epa.gov.

Sincerely,

Cecilia Tapia
Director
Superfund Division