Everett, Adolph

From: Debbie Mans <debbie@nynjbaykeeper.org>
Sent: Friday, March 21, 2014 2:25 PM
To: stephan.a.ryba@usace.army.mil
Cc: McCue, Zach (Booker);Zoe Baldwin;Schmitz, Jackie (Menendez);Fuller, Janice;debbie@nynjbaykeeper.org;savino@senate.state.ny.us;lanza@senate.state.ny.us;titonem@assembly.state.ny.us;borellij@assembly.state.ny.us;cusickm@assembly.state.ny.us;malliotakisn@assembly.state.ny.us;SMatteo@council.nyc.gov;vignizio@council.nyc.gov;drose@council.nyc.gov;jamesoddo@gmail.com;govcuomo.office@nygovoffice.gov;charles.silver@ag.ny.gov;Enck, Judith;Plevin, Lisa;Flax, Phil;Johnson, Blake (Payne)
Subject: Request for ACOE permits on Soil Safe Project
Attachments: ACOE Letter Soil Safe 21March14.pdf

Stephan
Attached please find a letter from NY/NJ Baykeeper requesting the Army Corps exert its requirements for permits on the proposed Soil Safe project in Carteret, Middlesex County, NJ. I look forward to your response, Debbie

Debbie Mans, Executive Director & Baykeeper
NY/NJ Baykeeper
732-888-9870 x2
debbie@nynjbaykeeper.org

NY/NJ Baykeeper
52 West Front Street
Keyport, NJ 07735

March 21, 2014

Stephan A. Ryba
Chief, Eastern Section
Regulatory Branch
NY District, Corps of Engineers
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090

Re: **Rahway Arch Properties, Borough of Carteret, Middlesex County, NJ**
Permit Application Number NAN-2012-01352-ESP

Dear Mr. Ryba:

We write to request that the New York District of the Army Corps of Engineers exert its requirements for Corps permits for the Rahway Arch site because that site will be discharging petroleum and PAH contaminated sediments, as well cyanide laden water into the waters of the United States, and, the New Jersey Department of Environmental Protection (NJDEP) requires the project to carry out work within the areas of Army Corps jurisdiction, and the project's Remedial Action Work Plan states that it will do so as well.

As per your letter (attached) from the Regulatory Branch regarding Rahway Arch Properties, the project site contains four tributaries of the Rahway River and four principal wetlands areas, all of which are "jurisdictional waters of the United States."

The letter states that:

> It is strongly recommended that any development of the site be carried out in such a manner as to avoid the discharge of dredged or fill material into the delineated wetlands and waters of the United States. If the activities proposed for the site involve such discharges, authorization from this office may be necessary prior to the initiation of the proposed work. The extent of such discharge of fill material will determine the level of authorization that would be required. (p. 4)

As documented below:

- Technical reviews by five (5) bureaus at the NJDEP state that
    - **discharges of alum-cyanide sludge into the surrounding environment and the Rahway River are "likely,"**;
    - **cyanide-laden pore water from the 2 million tons of alum sludge will be entirely expressed into these same waters**, an assertion that **is confirmed by the project's engineer**;

- the project's engineer also confirms that "berms were built directly over the meadow mat and **do not have center cores to prevent infiltration of water from the impoundments through the berms**;"

- The first three to five feet or more of contaminated soils will be placed loosely over the 90 acre site, when the project's engineer states that "**Low lying portions of the impoundments are routinely flooded by the Rahway River**,";
- The entire site was completely submerged during Hurricane Sandy, and partially submerged during hurricane Irene;
- NJDEP and the applicant, have stated that work **must** be done in the tidal portion of the project, which is under Corps jurisdiction.
- Despite NJDEP issuing Land Use permits for the project, none of these technical reviews have been explicitly revoked or amended.

Therefore, we assert that the Rahway Arch project must apply for project authorization from the Army Corps of Engineers in order to proceed. Our assertion is supported by the following.

1.) The site is characterized by the contractor's engineer as:

"...sludge is contained in six impoundments, encompassing approximately 85 acres. The sludge contains cyanide and metals. The sludge has negligible shear strength, is not capable of supporting any significant weight and is sensitive and thixotropic. In addition, the structural stability of the berms that form the impoundments is questionable."[1]

Yet Soil Safe, Inc., a Maryland company has proposed to "cap" the site with "at least 2 million tons"[2] of contaminated soils. Soil Safe, whose sole business in New Jersey since 1996 has been the importation and disposal of contaminated soils, is being sued in the U.S. District Court for the District of New Jersey for allegedly creating an imminent and substantial endangerment (under RCRA) and violating state environmental law[3] in its South Jersey projects.

2.) Among the statements made during the project's review by five (5) NJDEP Technical Bureaus are (**all emphasis ours**):

Regarding likely discharges to the river:

""Based on information ... regarding radial flow as well as differential compression rates of the sludge and underlying material ...it **raises concern that loading will likely result in a discharge to the river**. This likelihood was confirmed at the November 20, 2012 meeting. Since an increased amount of proposed fill may exacerbate the situation, please explain why this is not a valid concern.[4]" **[Licensed Site Remediation Professional Review]**

"...the **implimentability of these geotechnical recommendations is technically questionable as it will likely lead to displacement or release of sludge into the adjacent wetlands and/or the**

[1] EastStar Environmental group to Soil Safe, August 23, 2012, p. 1, para. 2
[2] Rahway Arch White Paper, July 28, 2010
[3] NJD 14-1349 Delaware Riverkeeper vs. Soil Safe
[4] LSRP Review, March 6, 2013

Rahway River (the 10 January 2013 BEERA-ETRA memo, entered into NJEMS, is in concurrence with this point), which would be an "uncontrolled or unpermitted discharge or transfer of contaminants from one medium to another" in violation of NJAC 7:26E-5.1(d)3. " **[BEERA Review]**

"Given that **fill will be placed on top of the sludge material, compaction could cause contaminants to leak out of the lagoons via groundwater or permeable areas in the berms, thus impacting the wetlands and transition areas.**[5]" **[Environmental Toxicology and Risk Assessment Unit]**

Discharge of cyanide-rich water:

"Rahway Arch proposes to backfill soil into the impoundments over cyanide-rich sludge (5 to 20 feet in thickness) that will neither be dewatered nor stabilized. Rahway Arch does not provide any information indicating that they have evaluated the possibility that backfilling the impoundments will drive cyanide-rich waters out of the impoundments and into the surrounding wetlands, ground water, and surface water. Other than reference to semi-annual monitoring, Rahway Arch does not propose to provide any plan for assessing whether the actions of backfilling the impoundments is driving cyanide-rich water out of the impoundment. **BGWPA [Bureau of ground Water Pollution Abatement] is concerned that the action of backfilling and compacting soils placed in the impoundments could drive cyanide-rich water out of the impoundments and into the underlying aquifer, surrounding wetlands, and adjacent surface water.**"[6] [BGWPA]

Regarding lack of ability of impoundments to bear weight:

"The detection of sludge outside the berms has been speculated to be from past berm failures. Given A) the lack of technical information submitted on the composition / construction of the berms, B) the significant volume of soil proposed to fill and cover the impoundments, and C) the reported detection of sludge under the berms, **BGWPA is concerned the proposed actions may lead to berm failure.**"[7] [BGWPA]

"Capping the non-weight bearing alum sludges with 2+ million tons of "alternative fill" material **may have very unexpected consequences in forcing out the alum sludge and/or dissolved contaminants into the adjacent Rahway River and GW** [ground water]." [8] [Bureau of Environmental Evaluation and Risk Assessment (BEERA) email]

Operating within a regularly flooded Flood Hazard Area:

"The **applicant has requested a hardship exception for the processing of solid waste and hazardous materials in the flood hazard area, and for the storage of unsecured materials** (stockpiles)... **the processing of petroleum contaminated soils and concrete, brick and block within the Flood Hazard Area could pose a threat to the environment and to the public health as these materials could easily be washed into nearby watercourses or onto neighboring**

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[5] Environmental Toxicology and Risk Assessment Unit memo, January 10, 2013
[6] Bureau of Ground Water Pollution Abatement Review 2013
[7] Ibid
[8] BEERA email July 29, 2010

properties during a flood. The section from which the applicant seeks relief is intended to protect the environment and the public health. Allowing the applicant relief from a section that protects the environment and the public from exposure to petroleum contaminated soils and ground concrete **would pose a threat to health and the environment.**"[9] [NJDEP Engineer's Report]

A lack of credible responses to these deficiencies:

After receiving the applicant's responses to the above (and many more) deficiency comments, the Bureau of Environmental Evaluation and Risk Assessment concluded that: **"In general, the responses are incorrect or do not dispute the incompleteness of the remedial investigation..."**[10]

3.) NJDEP has made it clear that the applicants must operate within tidal waters under Corps jurisdiction:

As NJDEP reviewers noted, the Remedial Investigation Report for Rahway Arch states that "'berm overtopping and berm failure events have been documented[11] from the lagoons to the adjacent wetlands."[12] The Bureau further states:

"Therefore, **delineation of contaminants in the nonproject areas of the site, mainly the wetlands, and potentially the Rahway River, is needed for both the surface water and sediment**."

Further, a succeeding review states:

It was agreed [at "the 5 April 2013 meeting"] that the appropriate surface water and sediment sampling and analysis **would be conducted in the adjacent wetlands** to complete an ecological investigation, if the proposed remedial action is approved. This is acceptable to BEERA, but **note that the sampling, analyses, and ecological investigation are required even if the proposed remedial action is not approved.**[13]

Thus NJDEP has clearly stated that **even if the remedial action is not approved, the applicants will have to work in the adjacent wetlands under Corps jurisdiction**.

4.) The applicant states that they will work outside the berms in Corps jurisdiction:

The Remedial Action Work Plan (page 24) states that "The approved remedial action plan included the following engineering controls to be implemented at the site" and includes:

"Repair tidal damage to the rip-rap containment system on the outsides of the berms"

5.) Soil Safe has a compliance history in New Jersey that would counsel caution in such an environmentally sensitive area.

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[9] DEP Engineer's Report, May 23, 2013
[10] BEERA Deficiencies/Comment, may 2, 2013
[11] Rahway Arch Properties Site, Remedial Investigation Report, November 15, 2012
[12] RIR-BEERA Review, January 16, 2013, page 1, item 1
[13] BEERA Deficiency Comments, May 2, 2013

- NJDEP ordered Soil Safe off its first New Jersey project in 2003,[14] a landfill closure, a 500 foot-long portion of which subsequently collapsed into adjacent wetlands.

- Their succeeding project in Logan Township (the object of the above cited law suit) was supposed to be another "cap" using "about one million tons" of contaminated soil, yet now has about four (4) million tons of contaminated soils on it, and Soil Safe applied for a further five year extension on that site.

- A recent inspection by NJDEP on their existing Logan Township facility conducted February 20, 2014 uncovered numerous potential violations related both to quantity and quality of material brought onto the site, storage of petroleum contaminated material and recordkeeping.

Conclusion

Since:

- NJDEP has repeatedly stated that discharges of sludges, sediments and cyanide laden water will occur into waters of the United States;
- NJDEP has stated that, even if the proposed remedial action were not approved, the applicant will be required to work in waters of the United States;
- The applicant has stated in their Remedial Action Work Plan that they will be working in waters of the United States,

We believe that the Corps must assert the requirement for its permission for the Rahway Arch project to proceed. Thank you for your attention to this matter. I may be reached at debbie@nynjbaykeeper.org or 732-888-9870 x2.

Sincerely,

Deborah A. Mans /s/
Baykeeper & Executive Director

cc: Senator Robert Menendez
Senator Cory Booker
Congressman Michael G. Grimm
Congressman Donald Payne, Jr.
Congressman Frank Pallone
Judith Enck, USEPA Region 2, Regional Administrator
Phil Flax, USEPA Region 2
Craig Spitz, US Army Corps
Charles Silver,New York State Attorney General Office
Borough President James S. Oddo
Senator Andrew J. Lanza

[14] DEP v. Soil Safe of Maryland, Inc. July 15, 2003

Senator Diane Savino
Assembly Member Joseph C. Borrelli
Assembly Member Nicole Maliotakis
Assembly Member Matthew Titone
Assembly Member Michael Cusick
NYC Council Member Vincent Ignizio
NYC Council Member Steven Matteo
NYC Council Member Debi Rose