

Ellen D. Gregory

Attorney at Law

March 30, 2017

Via U.S. Mail and E-Mail

George Ritchotte
Indiana Department of Environmental Management
100 North Senate Avenue IGCN 1101
Indianapolis, IN 46204
gritchot@idem.IN.gov

Jean Greensley
U.S. Environmental Protection Agency
Corrective Action Section 1 LU-16J
Chicago, IL 60604
greensley.jean@epa.gov

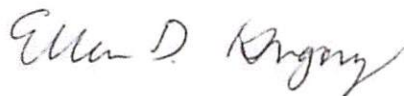
Re: East Chicago Waterway Management District's Comments on Draft
Risk-Based Approval to Dispose of TSCA-Regulated Sediment Containing PCBs

Dear Jean and George:

Attached please find the comments of the East Chicago Waterway Management District to the Draft Risk-Based Approval to Dispose of TSCA-Regulated Sediment Containing PCBs into the Indiana Harbor and Canal CDF.

If you have any questions about the comments, please feel free to call.

Sincerely,



Ellen D. Gregory

Enclosures

cc: ECWMD: Fernando M. Treviño; ECWMD Board Members
City of East Chicago: Val Gomez; Marino Solorio; William Allen; Irene Vera
City Council: Council President, Lenny Franciski
Honorable Congressman, Pete Visclosky
USACE: Kim Sabo; Natalie Mills; Jennifer Miller
IDEM: Beth Admire; Anne Remek
U.S. EPA: Rick Nagle

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**Comments of East Chicago Waterway Management District
on Draft Risk-Based Approval to Dispose of the United States Army Corps of Engineers
Indiana Harbor and Canal Dredging Project TSCA-Regulated Sediment Containing
Polychlorinated Biphenyls (PCBs) Issued Pursuant to 40 C.F.R. § 761.61(c)**

The U.S. Environmental Protection Agency issued a draft risk-based disposal approval for the Indiana Harbor Confined Disposal Facility at 3500 Indianapolis Boulevard, East Chicago, Indiana (the “Draft Approval.”) The Draft Approval permits the U.S. Army Corps of Engineers to place PCB remediation waste generated during the Indiana Harbor and Canal Dredging Project into the Indiana Harbor Confined Disposal Facility (“CDF.”) The East Chicago Waterway Management District (“ECWMD”) has provided comments in the past on the Draft Approval, but this formal submission, part of both IDEM’s and U.S. EPA’s regulatory public notice and comment procedures, re-states those earlier comments and presents additional comments and concerns raised at and subsequent to the public meeting that was held in East Chicago on March 6, 2017. (1/11/17 redacted letter attached.)

Comment 1—The PCB-Contaminated Sediment Should Be Removed from the Canal But Not Be Placed into the CDF and Should Be Disposed of in an Off-Site Facility.

Redevelopment Concerns: ECWMD has presented this recommendation as early as 2008. (See attached May 21, 2008 Email from Fernando M. Treviño, (Executive Director of ECWMD) to Dave Wethington (then-project manager from the Corps.)) The community, the City of East Chicago, and the ECWMD Board have concerns about the ability to re-use and/or redevelop the site after the CDF is closed. Approvals for redevelopment of a TSCA-regulated facility will be more complicated and possibly more costly than redevelopment of a site regulated by less-onerous RCRA requirements.

Proximity to School and Residences: In addition to the redevelopment issue, the community, ECWMD, and the City of East Chicago, have expressed concerns related to having a site with TSCA regulated material located in such close proximity to schools and nearby residences. Many residents of the East Chicago community have recently been displaced from their homes because of lead contamination associated with the USS Lead Superfund Site. This has exacerbated the community’s concerns related to environmental issues. The ECWMD shares these concerns and would like to see a detailed analysis, including cost-benefit calculation, of the off-site disposal option for the TSCA regulated sediments. Since the funding to pay for the CDF operations, closure and post-closure is expected to come from taxpayer money, we believe the lowest cost alternative should be selected, unless there is a good reason to select a higher cost option.

Comment 2—The Federal Government Should Perform a Cost Comparison Analysis and Detailed Risk Analysis Regarding On-Site Disposal, Off-Site Disposal, and Other Options

Cost Comparison: If the TSCA-regulated material is placed into an off-site facility, instead of into the CDF, the CDF would only need to comply with RCRA regulations, not the more onerous TSCA regulations. TSCA regulations currently require post-closure monitoring *in perpetuity*; whereas, RCRA regulations require monitoring for only thirty years post-closure. Earlier rough

estimates from the Corps state that annual costs for post-closure care are likely to be around \$3.05 Million/Year. It is likely, then, that the additional cost to transport and dispose of the material off-site may be made up by cost savings during the post-closure care period. In addition, if an off-site facility is used, the material would be placed into a disposal facility that is already permitted under TSCA to accept PCB contaminated material, thus reducing the total number of TSCA facilities in the Region. As stated above, we believe the lowest cost alternative should be selected, unless there is a good reason to select a higher cost option.

Risk Analysis: Both the U.S. EPA and the Indiana Department of Environmental Management (“IDEM”) draft approval letters state that disposal of the PCB contaminated material into the CDF “should not pose an unreasonable risk to human health or the environment.” However, we have not seen a recent risk analysis comparing on-site disposal, off-site disposal, or other options. If one has been done in the past, it should be updated with current data and assumptions. It seems probable that the risk to the East Chicago community is greater with on-site disposal than if the material is transported and disposed of outside of East Chicago. Has a human health and environment risk analysis been done on all options?

Environmental Justice: Under U.S. EPA’s 2020 Environmental Justice Action Agenda, one of the primary goals is to “improve on-the-ground results for overburdened communities through reduced impacts and enhanced benefits.” Environmental justice concerns dictate that the off-site disposal option be seriously considered. East Chicago is an “overburdened community” and, as mentioned above, has recently dealt with lead exposures from contaminated soil. Furthermore, the community and residents of East Chicago expressed concerns at the public meeting on March 6th regarding having a disposal site in their community that contains PCBs. If there is a viable alternative that would result in the CDF *not* receiving PCB contaminated material, that alternative should be investigated. The Environmental Justice goals must be taken into account, along with cost and risk analyses, when making the final determination of where to place the PCB material.

Comment 3—The Site Should Be Turned Over to ECWMD or the City of East Chicago After the Site is Properly Closed in Accordance with Applicable Regulations (TSCA or RCRA)

A 2008 letter from U.S. EPA (attached) supports our position that the ECWMD has always planned that it would be able to reuse the site for recreational or other approved purposes. This is a huge parcel of property that sits in a prime location near the high school and the Canal in the middle of the City. It’s also in the middle of an industrial area, so the parcel could fairly easily be redeveloped into additional industrial properties. Nothing in the PCA or any other document we can locate precludes ECWMD or the City of East Chicago from redeveloping the site, provided such redevelopment does not interfere with features required for site closure. Therefore, regardless of whether or not PCB material is placed into the CDF, the property should be turned over to the ECWMD for redevelopment and/or reuse after the site has been properly closed.

Comment 4—Only Material from East Chicago Should Go Into the CDF

Because ECWMD is the local sponsor for the CDF, it is ECWMD's position, as well as the City of East Chicago's, that only sediment material that originates from areas within East Chicago may be disposed of into the CDF. The USACE has given assurances that no material from outside the City of East Chicago will be deposited into the CDF. We request that this condition be written into the final Approval.

Comment 5—The PCB Contaminated Sediments Should Be Placed Into Only One Cell of the CDF

If, after reviewing the off-site disposal option (including the cost and risk analysis comparison between on and off-site disposal), the final decision is made to place the TSCA material into the CDF, we re-emphasize our recommendation that the TSCA material be placed into only one cell. The total estimated volume of TSCA material is only 60,000 cubic yards. This is a relatively small volume compared with the total capacity of the CDF, and the material will be placed into the CDF during only one dredging season. Consequently, it should not be overly burdensome to arrange to have that material placed into one cell. In addition, the material should be placed in as small an area as possible within that cell, and the precise location well-documented for future reference. These steps to minimize the area impacted by the TSCA material might aid in potential future development and could provide crucial information in the event the decision is made to remove the TSCA material from the site prior to placement of the final cap.

Comment 6—The Risk-Based Approval Should Not Be Finalized Until the Property Interest of Feddeler, LLC Has Been Resolved

Feddeler LLC has claimed an interest in a parcel of property within the CDF. We believe it is in both the Corps' and ECWMD's interest to resolve the Feddeler claim before placing any TSCA-regulated material into the CDF.

Comment 7—Notification and Participation of ECWMD (Reference 1/11/17 redacted letter, attached)

ECWMD requests notification of various submittals and reports, including those set forth in Paragraphs 48, 49, 58, 66, 74, 79, 80, 81, 83, 86, 87, 88, 94, and 95 of the Draft Approval.

Comment 8—Disposal of Records (Reference 1/11/17 redacted letter, attached, Comment regarding Paragraph 77 of Draft Approval)

Paragraph 77 of the Draft Approval states that records will be disposed of after 20 years. ECWMD requests that all documents relating to the location of TSCA material be maintained indefinitely, and that all other records scheduled for destruction, whether related to TSCA material or not, be offered to ECWMD prior to destruction.

Comment 9—ECWMD Should Have Final Say in PCB Cleanup Standard (Reference Draft Approval, Paragraph 97; and 1/11/17 redacted letter, attached)

The Draft Approval includes language related to the PCB cleanup standard for areas outside the CDF cells but within the fence line of the CDF. Since ECWMD plans to redevelop or re-use the

CDF property after site closure, it should be involved in the determination regarding the PCB cleanup standard.

Comment 10—Funding for O & M, Closure, and Post-Closure

Because of the uncertainty of the current Trump administration's initial position on funding for environmental programs, ECWMD has concerns about the continuous management of the CDF in terms of O & M, closure and post-closure. What procedures are in place to ensure the site is properly and safely managed and closed in the future?

Comment 11—Emergency Action Plan

If, after reviewing the off-site disposal option (including the cost and risk analysis comparison between on and off-site disposal), the final decision is made to place the TSCA material into the CDF, the existing Emergency Action Plan should be reviewed to ensure that it complies with TSCA requirements if PCB material is deposited into the CDF. Regardless of whether TSCA material is deposited into the CDF, training requirements, as stated in the Emergency Action Plan, should include at a minimum, periodic table top exercises and drills that involve local, county, and state emergency management personnel as well as ECWMD representatives. Also, initial training for new personnel should be conducted in accordance with the training provisions of the EAP and Appendix B. Refresher training should occur whenever new conditions exist, and as frequently as necessary to ensure the efficacy of the Emergency Action Plan.

January 11, 2017 Redacted Letter from
Ellen Gregory to
Kim Sabo

Ellen D. Gregory
Attorney at Law

January 11, 2017

Via E-Mail

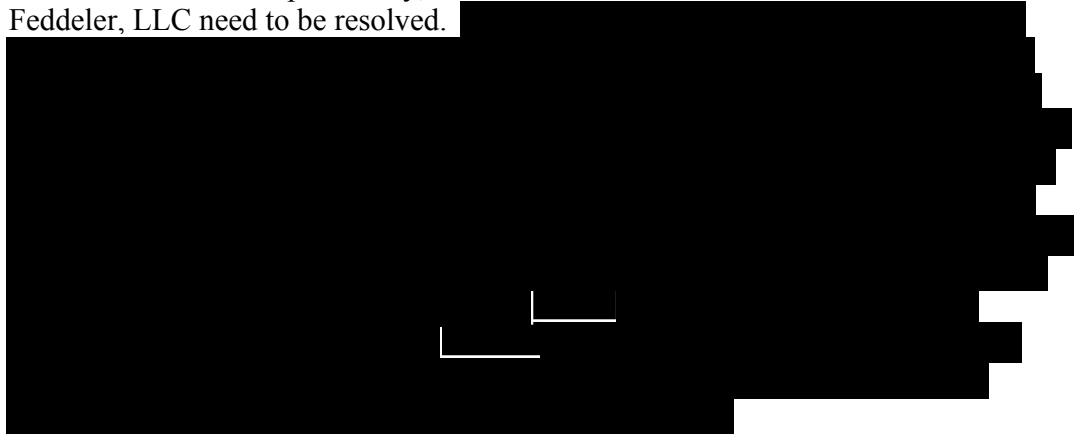
Kim J. Sabo
United States Army Corps of Engineers
District Counsel, Chicago District
231 S. LaSalle St., Suite 1500
Chicago, IL 60604

Re: ECWMD Comments to Draft TSCA Permit Application

Dear Kim:

Fernando and I have reviewed the draft TSCA permit which we received from Jennifer Miller on November 30, 2016. We have compared it with the earlier version from July 2015. The following are ECWMD's comments to the draft. References to "Old Paragraphs" are to the 7/15 draft. References to "New Paragraphs" are to the 11/16 draft.

- As we have discussed previously, the property interest of BP as well as of Robert Feddeler, LLC need to be resolved.



[Information related to the confidential appraisal of the Feddeler property interest has been redacted because negotiations are ongoing.]



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- New Paragraph 44: Old Paragraph 46 and 47 provided that TSCA material would be placed only into the east cell. ECWMD proposes that all TSCA material be placed into only one cell. While current regulations require the entire site to be treated as a TSCA facility, it is possible that if the TSCA material is limited to only one cell, future regulations may allow for a portion of the site to be regulated under the less onerous RCRA regulations. Because ECWMD and the City of East Chicago will most likely be seeking to redevelop the site, after closure, these efforts will be facilitated by having the TSCA material disposed of into only one cell, rather than into both cells. Furthermore, ECWMD requests that within the cell that is designated to receive the TSCA material, the material be located in a specific area of the cell so that it takes up as small an area as possible.
- New Paragraph 47: We propose the language be modified to state: If USACE discovers more TSCA level sediment in the IHC, it must be disposed of in accordance with the terms of the permit, including paragraphs 45 and 46, above.
- ECWMD requests notification of various submittals and reports, including those set forth in New Paragraphs 48, 49, 58, 66, 74, 79, 80, 81, 83, 86, 87, 88, 94, and 95.
- Old Paragraph 55 provided that there be a water differential between the west and east cells of at least 7 feet. New Paragraph 55 doesn't include this language. Is this no longer a concern? And if not, why not?
- Old Paragraph 57 provided that no equipment of greater than 500 pounds per square foot be used on the crest of the interior dike. The new permit language does not include this prohibition. Is this no longer a concern? And if not, why not?
- Old Paragraph 61 provided for daily checking for leaks from off-loading equipment such as pipelines. The new permit does not include this provision. Is this no longer a concern? And if not, why not?
- New Paragraph 61 references annual inspections if the USACE Dam Safety Program no longer applies. Is there an industry standard for such inspections? There should be more specificity regarding what this inspection will consist of.
- New Paragraph 63: Is there a current Air Registration? If not, will there be one when the TSCA material is being handled? What will the terms of that permit require?
- New Paragraph 63: What will the monitoring for PCBs and particulates entail? Old Paragraphs 64 and 65 were very specific.
- Old Paragraph 69 provided that high site groundwater levels triggered notification. Should this be included in New Paragraph 82 (Notice)?
- Old Paragraph 66 required PID readings near the crane pad. Will this item be included in the Health and Safety Plan during the work with the TSCA material?
- Old Paragraphs 71 and 72 addressed dike crest piezometers and dike toe piezometers. How will these concerns be addressed?
- New Paragraph 77: What records can be disposed of after 20 years? Will any records be maintained for more than 20 years? E.g., documents relating to the location of TSCA material?

- New Paragraph 82: Are these notification provisions consistent with the Emergency Action Plan for the Site?
- New Paragraph 82: Notice should include a generic category for notice in the event of any emergency condition (See Old Paragraph 90.)
- New Paragraph 83: This paragraph should reference the EAP and make sure local emergency responders are notified and are part of the process.
- New Paragraph 86: ECWMD should have input as liaison to the community and as local sponsor, in addition to notice.
- New Paragraph 97: ECWMD should have input into the PCB cleanup standard as it, along with the City of East Chicago, will be making determinations regarding redevelopment of the Site post-closure.
- If you have any questions or would like to discuss further, please feel free to call.

Sincerely,

A handwritten signature in cursive script that reads "Ellen D. Gregory".

Ellen D. Gregory

cc: Fernando M. Treviño
Natalie Mills
Jennifer Miller
Kevin Jerbie
Rick Nagle
Jean Greensley
John Fekete

October 31, 2008 Letter from
Margaret M. Guerriero (U.S. EPA) to
Dave Wethington (USACE)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 31 2008

REPLY TO THE ATTENTION OF:

L-8J

Mr. David M. Wethington
Planning, Programs, and Project Management Division
Project Management Branch
Department of the Army
Chicago District, U.S. Army Corps of Engineers
111 North Canal Street
Chicago, Illinois 60606-7206

Re: TSCA Post-Closure Use and Management of the
Proposed Indiana Harbor Confined Disposal Facility (CDF)

Dear Mr. Wethington:

This letter is in response to your July 31, 2008 request for a determination by the U.S. Environmental Protection Agency, Region 5 regarding post-closure use and care requirements under the Toxic Substances Control Act (TSCA) for the proposed Indiana Harbor Confined Disposal Facility (CDF). This letter also addresses your request that EPA reconsider the requirement for testing the effluent from the oil-water separator for PCBs prior to reintroducing the water back into the ground.

With regards to post-closure use and care requirements under TSCA, the specific requirements for the disposal of PCBs are in the federal PCB regulations, at 40 CFR Part 761, promulgated under the authority of TSCA. We have required caps over all CDFs and landfills approved under the federal PCB regulations for the disposal of PCBs. Under the federal PCB regulations for chemical waste landfills at 40 CFR §761.75(c)(3)(ii) and under the federal PCB regulations for risk-based disposal at 40 CFR §761.61(c), EPA can include in an approval any provision found necessary to ensure the site does not present an unreasonable risk of injury to health or the environment. These provisions of the federal PCB regulations enable EPA to require caps over CDFs and landfills used for the disposal of PCBs.

Examples of specific requirements for caps are under the federal PCB regulations for the self-implementing remediation of PCBs at §761.61(a)(7) and (8). These regulations state that, when caps are required to cover waste, they must be maintained in perpetuity and that they must be strong enough to maintain their effectiveness and integrity during use of the cap surface. In addition, caps must be designed and constructed in accordance with § 264.310(a). Final covers must be designed to function with minimum maintenance and the integrity and effectiveness of the cover must be maintained. Also, owners or operators of the facility must comply with all post-closure requirements at §§ 264.117 through 264.120. Under § 264.117(c), post-closure use

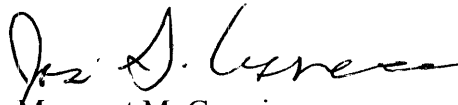
of property must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems. The exception to this requirement is if the EPA finds the disturbance necessary to the proposed use of the property, the disturbance will not increase the potential hazard to human health or the environment, or it is necessary to reduce a threat to human health or the environment.

As part of the closure plan application and review process, you can propose a recreational use or other use of the CDF. Your application will be evaluated on the criterion of whether or not the design and use will protect human health and the environment.

With regard to your request that EPA reconsider the requirement for testing the effluent from the oil-water separator for PCBs prior to reintroducing the water back into the ground; we have reviewed the applicable and related data you provided. Based on this data, at this time, we are no longer requiring you to test the effluent for PCBs before reintroducing the water into the ground.

If you have any questions regarding this letter, please do not hesitate to contact me, or your staff may contact Jean Greensley, of my staff, at 312-353-1171.

Sincerely,



for Margaret M. Guerriero
Director
Land and Chemicals Division

May 21, 2008 Email from
Fernando M. Treviño to
Dave Wethington

From: FMT Consulting fmtconsulting@aol.com
Subject: Fwd: TSCA material concerns from community & ECWMD
Date: March 7, 2017 at 4:30 PM
To: ellengregorylaw@gmail.com



Fernando M. Treviño
FMT Consulting, Inc.

-----Original Message-----

From: Fernando M. Trevino, FMT Consulting Inc. <fmtconsulting@aol.com>
To: David.M.Wethington <David.M.Wethington@usace.army.mil>
Cc: grc736 <grc736@aol.com>; rgomez <rgomez@eastchicago.com>; raylopezsr6441 <raylopezsr6441@yahoo.com>; cfernandez <cfernandez@eastchicago.com>; EJones <EJones@eastchicago.com>; jdfekete <jdfekete@prodigy.net>; James.Flannery <James.Flannery@arcelormittal.com>; badmire <badmire@idem.in.gov>; swest <swest@idem.in.gov>; Nagle.Richard <Nagle.Richard@epamail.epa.gov>; Thomas.John <Thomas.John@icemiller.com>; SHenshaw <SHenshaw@enviroforensics.com>
Sent: Wed, May 21, 2008 5:45 pm
Subject: TSCA material concerns from community & ECWMD

Mr. David Wethington, per your request, the following is a brief summary of the current community and ECWMD Board concerns with a TSCA cell being constructed within the CDF:

There is opposition to dispose of the TSCA dredged materials in the ECWMD CDF because current regulations prohibit any reuse and construction on a TSCA designated landfill. Based on the figures you shared with us at our March 19, 2008 meeting, the anticipated volume of TSCA material is approximately 40,000 cy's. Based on my calculations, this equates to less than 1% of the total volume of the CDF (2nd lift included). In other words, less than 1% of the material to be disposed of in the CDF will render the entire CDF unusable for future use. The competed landfill will be a relatively large parcel of land that may have various beneficial reuses for the City of East Chicago and surrounding community. One reuse option that has been discussed is to reuse the parcel for recreational purposes such a golf course extension or soccer fields.

Everyone agrees that the TSCA contaminated materials should be dredged/removed from the canal to eliminate the adverse environmental and health impact, but do not dispose of it in the ECWMD CDF. If the USACE would find an alternate disposal location for the TSCA materials, the community would be able to reuse the property in the future.

Thanks for working with us on this very important issue for the City of East Chicago and surrounding community.

If you have any questions, or need additional clarifications, please advise.

Fernando M. Treviño
FMT Consulting, Inc.

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