



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

March 5, 2004

Mr. Todd M. Fink
REI Brownstown LLC
40900 Woodward Avenue, Suite 130
Bloomfield Hills, Michigan 48304

Dear Mr. Fink:

RE: Cardinal/Veteran's Landfill Redevelopment

Per your request, I am sending you this letter to summarize and confirm the positions of the Department of Environmental Quality (DEQ) regarding REI Brownstown LLC's (REI's) proposed redevelopment of the former Cardinal/Veterans Landfill (Landfill) property (Property). We understand the Property to be comprised of approximately 78 acres located at 2803 West Hamlin Road, Rochester Hills, Michigan, and that the overall project would also include certain adjacent parcels for a total development of approximately 100 acres. As you know, this Landfill has been a serious concern for both the DEQ and City of Rochester Hills for many years, particularly given the lack of a proper cap, a methane collection system, or other appropriate safeguards; and its proximity to the Clinton River watershed.

First, based on the Landfill's history and its cessation of operations before the former Solid Waste Management Act, 1978 PA 641, as amended, took effect, the DEQ's authority regarding the Landfill derives from Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and not from Part 115, Solid Waste Management, of the NREPA (which typically provides the DEQ with regulatory authority over landfills) nor from Part 111, Hazardous Waste Management, of the NREPA. However, REI should understand that the DEQ will look to the requirements of Parts 111 and 115 to help determine your compliance with Section 20118(2)(b) of Part 201 for applicable, relevant, and appropriate requirements. Further, the DEQ does not consider the former Landfill a treatment, storage, or disposal facility regulated by the federal Resource Conservation and Recovery Act, 1976 PL 94-580, 42 USC 6901 *et seq.*

Secondly, based on information currently available to the DEQ's Remediation and Redevelopment Division, REI is not liable pursuant to Section 20126 of the NREPA for the Landfill facility (Facility). To avoid future liability, REI should submit an adequate baseline environmental assessment (BEA) for the Property to the DEQ for review and approval within the statutory time frames.

Additionally, the DEQ is willing to enter into negotiations to enter a Consent Agreement pursuant to Part 201, including, at a minimum, Section 20133, for existing contamination associated with the Facility, under which both REI and the City of Rochester Hills would receive the liability protection offered by the Consent Agreement. The State of Michigan will also consider the option of other entities being party to the Consent Agreement. The execution of such a Consent Agreement will depend largely on REI's submittal of engineering data and designs satisfactory to the DEQ, which demonstrate that the proposed redevelopment will be protective of human health and the environment, and will not exacerbate existing environmental conditions associated with the Facility. Specifically, as we have discussed, data and designs presented by REI will need to include, but are not limited to:

- a) Appropriate control and monitoring of methane associated with the Property during construction and from the portion of the Landfill that will remain post development;
- b) Monitoring of future buildings to be constructed and monitoring of the adjacent subsurface areas to ensure that methane does not pose a threat to the structures;
- c) Establishment of a cap over the portions of the Landfill that will remain that is comparable to a cap that would be consistent with Part 115 and its rules, as well as ensuring that all work undertaken would also be consistent with Part 115 and its rules. Part 115 allows for flexibility so long as the landfill cap attains an equivalent standard;
- d) Proper management of the water removed from waste and the control and management of leachate generated by the remaining Landfill consistent with applicable, relevant, and appropriate requirements within the Property.
- e) Evaluation of, monitoring of, and protection against, potential migration off of the Property of leachate and/or methane associated with the Landfill;
- f) A long-term monitoring and maintenance plan, land use and resource use control, and an associated financial assurance mechanism to ensure long-term protection of human health and the environment (As we discussed, the City of Rochester Hills is committing to be involved in ensuring the long-term continuity of monitoring and maintenance, and would be included as a beneficiary of the covenant not to sue);
- g) Removal of all waste beneath the enclosed structures;
- h) Ambient air monitoring during the performance of response activities to ensure the protection of surrounding receptors; and
- i) A plan to remove waste in a way that will control odors, blowing debris, particulates, disease vectors, and volatile organic compounds.

The DEQ understands that REI's plan is to see the response activities funded through the use of brownfield tax increment financing pursuant to the Brownfield Redevelopment Financing Act, 1996 PA 381, as amended (Act 381), MCL 125.2651 *et seq*; and Brownfield Single Business Tax Credits pursuant to the Single Business Tax Act, 1975 PA 228, MCL 208.38g. If the site is identified in a brownfield plan and the work

plans required under Act 381 are submitted and approved by the DEQ, school taxes may be captured pursuant to MCL125.2665 to fund the remedial project that has been described to us, but of course you must proceed through the review and approval process. As noted above, we believe that all of the work described above which will be included in the consent agreement is consistent with the requirements of Act 381 and may be the subject of tax increment financing, including school tax capture pursuant to Act 381.

Finally, because of our concerns relating to this Property, we will work expeditiously with REI and the City of Rochester Hills to attempt to meet the attached timeline and to permit landfill redevelopment to commence on July 1, 2004. As mentioned in our several meetings, we appreciate REI, a non-labile party, stepping forward with a creative proposal to address the hazards associated with the uncontrolled Part 201-regulated Facility.

Sincerely,

Patricia A. McKay, Chief
Compliance and Enforcement Section
Remediation and Redevelopment Division
517-373-7818

Attachment

cc: Karen Kligman, DEQ
Benjamin Mathews, DEQ