

**Attachment 4**



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Pennsylvania Field Office  
315 South Allen Street, Suite 322  
State College, Pennsylvania 16801-4850

February 14, 2007

Colonel Peter W. Mueller, District Engineer  
(ATTN: Tom Pluto)  
U.S. Army Corps of Engineers  
Baltimore District  
P.O. Box 1715  
Baltimore, MD 21203-1715

Dear Colonel Mueller:

The Fish and Wildlife Service has reviewed Public Notice Number CENAB-OP-RPA-04-02142-8 (PN 07-06), dated January 16, 2007. Resource Recovery, LLC (RRLC), proposes to construct a municipal waste landfill and supporting facilities in Rush Township, Centre County, Pennsylvania. The project would result in impacts to 3.64 acres of federally regulated (jurisdictional) wetlands and 7.01 acres of isolated wetlands (non-jurisdictional pursuant to section 404 of the Clean Water Act). Jurisdictional wetland impacts include fill in 2.89 acres of palustrine forested/palustrine emergent (PFO/PEM) wetlands, 0.69 acre of palustrine scrub-shrub/palustrine emergent (PSS/PEM) wetland, and 0.06 acre of palustrine emergent (PEM) wetland. Additional wetlands may be affected by a proposed highway interchange. As compensatory mitigation, the applicant has proposed creating about 12 acres of wetlands on-site (a 1:1:1 replacement ratio) to offset all wetland impacts (both jurisdictional and non-jurisdictional), 440 linear feet of riparian plantings, and 5.8 acres of upland habitat enhancements.

These comments are prepared in accordance with the requirements of the Fish and Wildlife Coordination Act (16 U.S.C. 661-667e) and the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). They are to be used in your determination of Section 404(b)(1) Guidelines compliance (40 CFR 230) and in your public interest review (33 CFR 320.4) as they relate to protection of fish and wildlife resources. We have previously commented on this project in letters dated October 23, 2006 (to the Pennsylvania Department of Environmental Protection); November 5, 2005 (to the applicant's consultant); June 14, 2005 (joint letter with the Department); and June 9, 2004 (to the applicant's consultant) (copies enclosed). Aside from complying with the procedural requirements of the Endangered Species Act for the landfill site, the applicant has not modified the project to address any of our previous comments, so we are incorporating those comments herein by reference.

We offer the following summary of our previously-stated concerns:

- **Wildlife Habitat Values.** The RRLLC project will permanently affect nearly 11 acres of wetlands (jurisdictional and non-jurisdictional), and destroy and fragment valuable wildlife habitat. Despite past logging and strip mining impacts, the 6,000-acre property supports diverse forest habitat (including mature and early successional red maple, aspen, birch, white oak, pin oak, ash, dogwood, and pine) and a well-developed understory (including northern spicebush, blueberry, greenbriar, fire cherry, sweet fern, and sumac), and is capable of supporting a diverse assemblage of wildlife.
- **Threatened and Endangered Species.** Surveys for four federally listed species (bald eagle, Indiana bat, northeastern bulrush, and small-whorled pogonia) have been conducted on the 533-acre landfill portion of the 6,000-acre property, and we have concluded that the footprint of the proposed landfill will not adversely affect federally listed endangered and threatened species. However, we have further recommended that the applicant conduct surveys for these species within all direct and indirect impact areas for the entire 6,000-acre parcel. To our knowledge, this has not been done.
- **Alternatives Analysis.** We have repeatedly requested that RRLLC explore alternatives that are less environmentally damaging (*e.g.*, alternative site plan configurations, alternative site locations with lower habitat quality and existing highway access, and daylighting and lining former deep mines for landfill pit construction). In addition, RRLLC has focused on lands with highway and rail access, eliminating from further consideration those sites which lacked transportation access. More recently, however, RRLLC has indicated that local roads are acceptable for landfill access. Therefore, the previous alternatives analysis that rejected sites without highway access is no longer valid. To date, RRLLC has not responded to our request for a new alternatives analysis, nor have they attempted to minimize project impacts on-site (project impacts have not changed since the initial pre-application meeting).
- **Single and Complete Project.** We have consistently recommended that all aquatic resources within the entire 6,000-acre parcel be properly identified and mapped. To date, aquatic areas have only been identified within the footprint (533 acres) of the proposed landfill, without regard to likely future plans for developing the remainder of the parcel (*e.g.*, the industrial park, rail spur, landfill expansion, Gorton Road expansion, and a possible highway interchange). RRLLC has not combined these project-related components into a single and complete project proposal for agency review.
- **Compensatory Mitigation.** Proposed compensatory mitigation sites are unlikely to succeed as such because of unsuitable soils, questionable hydrology, and floodplain siting (making them vulnerable to erosion and deposition from overbank flooding); or they would cause additional, unacceptable loss of valuable forest habitat. The applicant has not responded to our recommendations to investigate alternative sites that are likely to achieve long-term success in replacing the wetland functions lost at the proposed development site. Furthermore, our October 23, 2006, letter recommends that wetland replacement ratios correspond to the affected wetland type (*e.g.*, PFO – 2:1, PSS – 1.5:1, or PEM – 1:1). To date, these recommended replacement ratios have not been incorporated into the project plans.

Finally, based on a recent site visit, we note that a stream exists in what would become landfill cells 5 and 6. This stream was not previously documented, and should be properly delineated and included as a project impact. Should the Corps decide to authorize this project, additional compensatory mitigation for impacts on this stream should be required.

Summary

The 404(b)(1) guidelines require that discharging fill into waters of the United States not be permitted if there are practicable alternatives that would result in less environmental damage. Again, we believe that there are practicable alternatives to filling aquatic areas for the landfill and related developments, such as changing the project configuration, alternative siting on degraded (*i.e.*, brownfield or recently surface-mined) properties, or daylighting deep-mined areas to use for the landfill pit. If RRLLC is now considering using local roads to access the proposed landfill property, then the original alternatives analysis no longer applies, and RRLLC must consider other parcels of land that do not have direct highway access. In addition, all project-related actions should be presented as parts of a single and complete project.

The proposed wetland mitigation sites sacrifice forest cover for the construction of PEM wetlands, may be subject to sedimentation and erosion, and rely on uncertain hydrology. Therefore, we recommend that the applicant explore alternative areas to site their compensatory wetland mitigation work, and do so at appropriate replacement ratios. We ask further than any impacts to streams also be compensated in-kind.

Until these deficiencies are resolved, the project should not be authorized as proposed, and we continue to object to permit issuance.

Thank you for the opportunity to comment on the proposed project. Please Jennifer Kagel of my staff at 814-234-4090 if you have any questions or require further assistance regarding this matter.

Sincerely,



David Densmore  
Supervisor

Enclosures

cc:

DEP – Steven Means  
PFBC – David Spotts, Chris Urban  
EPA – Marria O'Malley-Walsh  
PGC – Jeff Kost  
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Readers file  
Project File – Kagel  
ES files, archive – Dombroskie  
ES: PAFO:JKagel/jak:1/23/07  
Filename: Y:\FROFFICE\Drafts\Drafts 2007\snow shoe landfill Corps IP II.doc

Enclosures include:

- 1) FWS letter dated June 9, 2004
- 2) DEP letter dated June 14, 2005
- 3) FWS letter dated November 5, 2005
- 4) FWS letter dated October 23, 2006