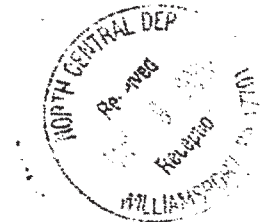


United States Department of the Interior

FISH AND WILDLIFE SERVICE

Pennsylvania Field Office
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850

November 5, 2005



FyI. Jim Miller - WM

Ms. Robin Dingle
Environmental Planning Consultants
Buckingham Green II
4920 York Road, Suite 290
P.O. Box 306
Holicong, PA 18928

Dear Ms. Dingle:

This responds to your letters of December 3, 2004, and March 20, August 29, and September 13, 2005, which provided the Fish and Wildlife Service with information regarding the landfill project proposed by Resource Recovery, LLC (RRLLC), located in Rush Township, Centre County, Pennsylvania. The following comments are provided pursuant to the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of federally listed endangered and threatened species, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) to ensure protection of fish and wildlife resources.

Threatened and Endangered Species

As mentioned in our letter of June 9, 2004 (copy enclosed), the proposed landfill project is located within the range of four federally listed species, the threatened bald eagle (*Haliaeetus leucocephalus*), endangered Indiana bat (*Myotis sodalis*), endangered northeastern bulrush (*Scirpus ancistrochaetus*), and threatened small-whorled pogonia (*Isotria medeoloides*). Surveys for these species, following our recommended survey guidelines, have been conducted on the 500-acre landfill portion of the 6000-acre property.

A field survey for small-whorled pogonia was conducted by David Santillo from July 27 to July 29, 2004. All plant communities considered to be potential habitat were searched; however, no small-whorled pogonia were found.

On March 15, 2005, you conducted an aerial survey for the bald eagle. Suitable nesting and foraging locations, such as stream corridors, open water, and forest interior habitats were searched for individuals and nests. No bald eagles or nests were observed within the 500-acre project area, or within a two-mile buffer around this area.

Mist-net surveys for the Indiana bat were conducted by John Chenger of Bat Conservation and Management, Inc., between June 1 and 6, 2005. Four sites were surveyed using 13 nets for a total of 26 net-nights (minimum recommended level of effort was 16 net-nights). Four species of bats, including northern long-eared (*Myotis septentrionalis*), eastern red (*Lasiurus borealis*), little brown (*Myotis lucifugus*), and big brown (*Eptesicus fuscus*) were captured, totaling 97 individuals; however, no Indiana bats were captured.

Joe Isaac, a botanist qualified to identify northeastern bulrush, conducted field surveys on August 24 and 25, 2005. All 28 delineated wetlands within the landfill portion of the property and potential mitigation areas were surveyed for this species; however, no northeastern bulrush were found.

Based on our review of these four survey reports and their negative results, we conclude that implementation of the proposed 500-acre landfill project will not have a direct adverse effect on the northeastern bulrush, small-whorled pogonia, Indiana bat, or bald eagle. However, if other developments are proposed for this site, surveys should be conducted for the above species within all direct and indirect impact areas, as we previously recommended to you (see enclosed copy of joint comment letter from the Pennsylvania Department Environmental Protection, dated June 14, 2005). For example, we are in receipt of correspondence dated July 1, 2005, from Timothy Falkenstein of Rettew, requesting clearance for impacts to listed species in the area of the proposed Interstate 80 interchange. It is not clear whether surveys for the federally listed species cited above have been conducted in the area to be affected by this interchange. Accordingly, please provide maps and project plans comparing the areas surveyed for each of the above species to the areas that will be affected by all project related features, including the interchange, landfill, and associated facilities. Additional surveys may be necessary if all areas affected by such facilities have not been adequately surveyed.

Other Fish and Wildlife Resources

Since our June 9, 2004, letter, we met with RRLLC and other resource agencies to discuss potential wetland and stream encroachments associated with project construction. We subsequently provided comments to the Pennsylvania Department Environmental Protection, which were also included in their June 14 comment letter. To date, our concerns stated in that letter remain unaddressed. It appears that the RRLLC project will permanently affect nearly 11 acres of wetlands, and will also destroy and fragment valuable wildlife habitat. We offer the following summary of our concerns for your consideration.

Alternatives Analysis. Landfill and industrial park development are not water-dependent activities, and RRLLC has not adequately justified destroying aquatic resources for developing the landfill and related facilities. RRLLC should explore alternatives that are less environmentally damaging, such as alternative site plan configurations that minimize wetland fills and alternative site locations with lower habitat quality. According to the Pennsylvania Department of Environmental Protection, since 1988, the State has authorized only one landfill having impacts to aquatic resources greater than six acres (the Alliance Sanitary Landfill in Lackawanna County; 6.18 acres). Other new landfills and expansions have affected no more than 2.9 acres for any single project (12 landfills affecting a total of 13.69 acres of wetlands).

This can be attributed largely to proper site selection and impact minimization through project reconfiguration.

In early alternatives analyses, RRLLC focused on previously-disturbed lands, in conjunction with highway and rail access, as the main criteria for site consideration. Accordingly, many sites were eliminated or not even considered because of a lack of highway or rail access. Since the resource agency meeting of May 13, 2005, highway access at the Rush Township site via a new interchange has become uncertain due to local highway issues. In fact, in the open letter to the community that appeared in the June 19, 2005, *Centre Daily Times*, RRLLC stated that, should plans for an interchange not be approved, RRLLC “. . . will be compelled to accept access to the development via the existing roadway network.” That said, the previous alternatives analysis that rejected sites due to a lack of highway access cannot be considered valid. RRLLC should conduct a new alternatives analysis, focusing on previously disturbed lands.

Single and Complete Project. The resource agencies have consistently recommended that all aquatic resources within the entire 6000-acre parcel be properly identified and mapped. To date, aquatic resources have only been identified within the direct footprint of the proposed landfill, without any regard to future development plans for the remainder of the parcel. With plans for a future industrial park, rail spur, landfill expansion, and a possible highway interchange, all resources existing on this entire 6000-acre tract should be identified to allow a complete evaluation of site plan configurations that could minimize environmental impacts. For example, we note that RRLLC's June 19 open letter describes the proposed industrial park as being “. . . integral to the overall development.” It appears that the future industrial park would not exist, but for the presence of the proposed landfill. Consistent with the Department and Corps of Engineers regulations, the various development phases of this project should be presented as a single and complete project for agency review.

Summary

The 404(b)(1) guidelines require that discharging fill into waters of the U.S. not be permitted if there are practicable alternatives that would result in less environmental damage. We believe that there are practicable alternatives to filling aquatic resources for landfill and related developments, such as changing the project configuration or alternative siting on degraded (*i.e.*, brownfield or recently surface-mined) properties. If RRLLC is now considering using local roads to access the proposed landfill property, then the alternatives analysis presented at the last meeting no longer applies, and RRLLC must consider other parcels of land that do not have direct highway access. Finally, the full project configuration should be presented for agency review as a single and complete project.

Thank you for the opportunity to comment on this 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:

Corps – Pluto
PFBC – Spotts, Urban
EPA – Walsh
PGC – Kost
DEP - Means

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Rettew
Timothy Falkenstein
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Readers file
Project File – Kagel, Dombroskie
ES: PAFO:JKagel/jak:tp:11/9/05
Filename: 2005-0389 landfill

Enclosures include:

- 1) FWS letter dated June 9, 2004
- 2) DEP letter dated June 14, 2005