

August 15, 2008

Department of Environmental Protection
Kathleen G. Horvath
Chief, Special Projects Section
Environmental Cleanup Program
909 Elmerton Avenue
Harrisburg, PA 17110-8200

**SWAN's Reply DEP's Correspondence and Responses
Dated July 28, 2008**

**RE: SWAN's Comments, Concerns & Questions Relating on the
Proposed Notice of Intent to Remediate the McIntosh Road
owned by the Russell Standard Corporation,
eFACTS PF No. 678402, remediation No. 37723**

Dear Ms. Horvath:

Thank you for your prompt Response to the concerns we raised in our July 14, 2008 correspondence. As you know, Stray Wind Area Neighbor's ("SWAN") interest in the hazardous waste site that abuts our community dates back to the initial discussion with the Department of Environmental Protection ("DEP") in 2006, and individuals associated with Stray Winds Farm.

While we are appreciative of the DEP's oversight, as well as the energy and resources being expended to cleanup the McIntosh paving site, SWAN remains concerned that the DEP has yet to fully address several issues we raised.

Many of us who have lived in this area for decades have harbored concerns about the McIntosh Paving site ("Site"), and believe that there are a number of outstanding issues that need to be addressed. Many of our neighbors have lived in close proximity to the site for decades, and possess insights and memories that would suggest soil contamination, migration and plume pathways, and soil and erosion challenges that may be evident beyond the limited footprint and scoping venue developed by the Russell Standard Corporation ("RSR") and their consultant, CMX.

Enclosed please refer to SWAN's Replies to DEP's correspondence of July 28, 2008.

1) SWAN:

In fact, CMX stated: "With the exception of the Stall Area, the site characterization data shows that the other investigated Site areas attain a combination of residential and nonresidential Statewide health standards." This statement suggests a composite compliance level, rather than a concerted effort to remediate below residential safety levels.

DEP's Response:

DEP's noted that "onsite soil meets a residential Statewide health Standard for all investigated compounds with the exception of benzo(a)pyrene in several borings, which meet the a Non-Residential Statewide Health Standards.

SWAN's Reply: Obviously we're concerned for what was being tested for and what many may have been missed by a private contractor, and that's why we suggested that:

This is an opportune time to deploy DEP's mobile analytical laboratory van to conduct soil tests similar to those recently completed in the Muhlenberg School District. DEP's mobile lab conducted soil sampling in addition to testing from 2002 through 2007 in that area.

We're hopeful DEP can understand nobody wants to be unlucky enough to occupy or purchase a home (**without full-disclosure or even prior notification**) down field from the areas in the site that only comply with " Non-Residential Statewide Health Standards."

This area is already operating under a non-conforming, zoning protocol. To convert it (or even maintain the site as is) would constitute an industrial or commercial island in the middle of a residential development. This would seem to violate the spirit and intent of the Municipal Planning Code, and be an example of *de facto* spot zoning. Certainly, DEP can consider and coordinate with the MPC . (1)

¹ Pa MPC, Article II, Planning Agencies, 212, Intergovernmental Cooperation, 2000-68: "Gives authorization for the governing body to engage in intergovernmental cooperation and to enter in joint.")

2) SWAN:

CMX has been conducting site characterizations since 2004, but remains content to restrict water chemistry testing to on site “available information.” CMX concluded “that groundwater at the property is not a media for concern, and therefore a release of liability was not pursued.” (Summary & 4.3)

But CMX and RSR can’t have it both ways. “The site soils and shale bedrock characteristically have low hydraulic conductivity values, and would preclude or retard the vertical integration of petroleum compound.” (p. 12) If this is the case, and the site slopes west into the Paxton Creek, than it’s only logical to conclude that after decades of dumping, precipitation and aggressive land use and disturbance, these petroleum constituents migrated into the Paxton Creek.

DEP’s Response:

DEP stated that “No evidence has been provided to the Department that would indicate illegal dumping activities have taken place at the site. Additionally, current site conditions do not indicate any negative impact to Paxton Creek is occurring from the site. (2)

SWAN’s Reply:

We are asking DEP to make sure that all our neighbors and children playing at the park are provided an equal level of comfort and safety by conditioning the approval of the cleanup on a universal level that **meets or exceeds the Residential Statewide Health Standard.**

Neither CMX or DEP has taken samples of the Creek bed to make definitive statements on the impact to the Creek as a result of past tar operations and the current non-conforming soil and sedimentation practices. (3)

2 Documented illegal dumping of garbage, waste, and litter continues on the Stray Winds Farm, despite the owner’s best efforts to police the area. SWAN has worked with Triple crown to discourage and report illegal dumping.

3 Residents reported earth moving activities at the Site in mid-May of this year. The Township responded swiftly and contacted the Dauphin County Conservation District on or around May 16, 2008. The County responded immediately and issued an inspection report that indicated aggressive earth moving activities at the site: 1) Failed to implement and maintain Best Management Practices; and, 2) Site conditions presented a potential for pollution to the waters of the Commonwealth. The County required that compliance be obtained; that the E&S plan be revised to address the requirements of the PA Code; and that narrative information and calculations describing modifications to the existing surface run-off be provided.

3) SWAN:

We encourage the DEP and CMX to interview former employees from the site, former employees of Stray Winds Farm, neighbors and current public officials who had contact or experiences with the site in question. In addition, a town meeting would be a good way to get the community involved, and to cull the individual memories of Township residents.

DEP's Response:

Ms. Horvath, Chief of Special Projects encouraged folks to contact her.

SWAN's Reply:

Not to belabor the obvious, but SWAN is asking the DEP to talk to people who have eyewitness accounts of the history of the facility.

Initially, Ms. Horvath adopted an adversarial approach to SWAN's concerns during telephonic and electronic communications. Finally, Ms. Horvath told Mr. Epstein: "It is generally not the Department's policy to involve citizens in all interactions the Department may have with regulated entities. We will inform you, however, of opportunities as they arise for the public to comment on proposed actions begin considered by the Department." (4)

SWAN respectfully requests a public affairs specialist from DEP to visit the community, and speak to folks regarding the history and present status of the hazardous waste site.

4) SWAN:

There are tracts outside of the "official site" that were used as paving tar fields that slope into a wetland area. Additionally, there is a planned passive park and recreational area immediately south of the site that would be well served by sedimentation and sampling of the creek beds and riparian buffers."

DEP's Response:

"Current site conditions outlined on the Final Report do not indicate any negative impact to Paxton Creek is occurring or has occurred in the past from the site.

4 DEP Letter to Mr. Epstein, March 20, 2006.

Representatives of SWAN have volunteered their time and reviewed records and data at the agency's office on Elmerton Avenue on at least two separate visits.

SWAN's Reply:

As we stated before, SWAN thinks DEP needs to investigate outside of the narrow band of the site and **actually take samples from the Creek's bed and environs.**

Institutional memory does not need to be codified in order to exist. It would be a harmful precedent to allow the owners of this property not to make an effort to locate manifests, contractors, subcontractors, and eye witnesses in order to complete a comprehensive due diligence. Environmentally challenged scenes require a composite picture that includes a forensic investigation and the harvesting of memory fields. It is difficult to imagine that decades worth of hazardous waste activity on a site that slopes into the Paxton Creek would not infect the watershed.

Is DEP legally precluded from taking sediment and other samples from Paxton Creek or asking the site's owner or subcontractor to extract samples?

5) SWAN:

The report fails to address the disposition of the soil immediately below the extensive macadam surface if indeed the macadam is moved or penetrated.

DEP's Response:

Soil below the macadam surface has been evaluated and is less than the medium specific concentrations (MSCs) for identified constituents. Since due diligence showed a release of a regulated substance, any soil that is removed must follow Department's Management Fill policy.

SWAN's Reply:

Of specific concern are some of the results contained in the NIR Report; which, clearly states the Residential Direct Contact MSC was not attained for benzene. The residential soil vapor MSC was not attained either.

The Report's Summary states, "However, for a residential scenario, a single benzene exceedance of its' Soil Gas MSC indicates that further vapor intrusion assessment and/or mitigation would be needed to demonstrate acceptable intrusion risk in the vicinity of SG 4 in accordance with the vapor Intrusion Guidance." Additionally, benzo(a)pyrene exceeds its residential MSC at sampling locations: UST-1, B-14, B-15, and TP -4. ("Narrative")

6) SWAN:

Apparently, the Deed Acknowledgment will restrict the property to nonresidential use (currently its zoned non-conforming), but the surrounding property is scheduled to be developed high-density, age restricted residential housing.

DEP's Response:

An environmental covenant will be required that will restrict the site to non-residential use until such time as a demonstration of the Residential Standard health Standard for all compounds of concern at the site can be demonstrated.”

SWAN's Reply:

As we noted on pages of this document, “This area is already operating under a non-conforming, zoning protocol. To convert it (or even maintain the site as is) would constitute an industrial or commercial island in the middle of a residential development.” Moreover, how will neighbors be alerted to a “residential release”, how will the site be monitored, and what about the compounds of concern that may have eluded detection?

Based on the parameters of the Report, the relative mobility of petroleum constituents *appears to* be limited. But questions remain outside of the ring of fire, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides for federal authority to respond directly to releases or threatened releases of hazardous substances into the environment that have created actual and potential environmental hazards. CERCLA allows the federal government to address such releases with strict liability attached to current and former owners. Liability under CERCLA is not dependent on the intentional release of hazardous substances, and it can be activated by unintentional and non-negligent actions. The regulation can be extended to damages involving publicly owned natural resources, e.g. Paxton Creek.

If DEP can request additional monitoring along Grandview Avenue in South Hanover to confirm that there is no residual, underground contamination from the former Unimart, why can't the DEP ask the current owner of the site to do the same for the residents of Lower Paxton Township?

We look forward to your responses, and SWAN supports your continued vigilance in this most important issue. In addition, we welcome a dialogue between any and all parties. Please accept this letter as an open and rolling invitation to attend a SWAN general meeting. We meet once a month on Monday evenings at the Epiphany Lutheran Church, 1100 Colonial Road.

Respectfully submitted,

Eric Epstein, Chairman, SWAN
4100 Hillsdale Road
Harrisburg, Pa 17112
(717)-541-1101

William J. Kosmer, Pennsylvania Department of Environmental Protection
Lower Paxton Township Board of Supervisors
Lower Paxton Township Planning Commission
Dauphin County Conservation District