

July 14, 2008

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

**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:

I am submitting comments, concerns, and questions relating to the **Proposed Notice of Intent to Remediate the McIntosh Road** site on behalf of the Stray Wind Area Neighbors (SWAN). We are a coalition of Lower Paxton Township citizens and neighborhoods. The group was formed after the sale of Stray Winds Farm in the fall of 2005. The group's interest in the hazardous waste site that abuts our community dates back to initial discussion with the Department of Environmental Protection ("DEP") and individuals associated with Stray Winds Farm. We are committed to the following core goals:

- SWAN supports sensible development with adequate infrastructure.
- SWAN promotes safe communities through improved design for efficient management of traffic.
- SWAN promotes sound conservation for the Paxton Creek Watershed, surrounding wetlands and wildlife habitats.
- SWAN promotes natural assets to enhance the quality of life and provide environmental safeguards.

We are appreciative of the DEP's oversight as well as the energy and resources being expended to cleanup the McIntosh paving site. Frankly, we are relieved that this hazardous waste site is finally being remediated.

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. We found it curious that the parcel was never purchased by Dorothy and Donald Stabler who owned the Stray Winds Farm and the 300 acres surrounding the site.

SWAN was able to talk to folks associated and familiar with the site that CMX was either unwilling or unable to pursue. Moreover, many of our members who have lived in close proximity to the site for decades have a reservoir of knowledge and memory that would suggest soil contamination, migration and plume pathways, and soil and erosion challenges may be evident beyond the limited footprint and scoping venue developed by the Russell Standard Corporation ("RSR") and their consultant CMX.

For example, residents reported earth moving activities at 4010 McIntosh to Lower Paxton Township 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 narrative information and calculations describing modifications to the existing surface run-off be provided.

Obviously, this type of behavior is not a confidence building exercise. SWAN has concerns about the positive environmental footprint sketched by CMX and RSR based on "available information."

In fact, CMX stated: “With the exception of 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.

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.

We encourage the DEP and CMX to interview former employees from the site, former employees of Stray Winds, 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.

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.

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.

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

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.

The Report 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, bezo(a)pyrene exceeds it’s residential MSC at sampling locations: UST-1, B-14, B-15, and TP -4. (“Narrative”)

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 MPC, and be an example of *de facto* spot zoning.

Based on the parameters of the Report, the relative mobility of petroleum constituents *appears to* be limited. But questions remains 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 or 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.

In light of the Environmental Protection Agency's recent mandate to reduce phosphate runoff into the Paxton Creek by 89%, SWAN believes it is prudent to make sure that the site's owner and DEP cast a wide remediation net. 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.

As part of the analysis, investigators will take soil samples from approximately 88 locations and soil gas samples from approximately another 24 locations... The mobile lab has the capability to analyze air, water, soil, as well as other substances for both organic and inorganic contaminants. Its unique analytical capabilities can be used to obtain a complete site profile. (DEP New Release, June 12, 2008)

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,

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