

John McKenna



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

June 4, 2009

By E-Mail and U.S. Mail

Jerome I. Maynard
Dykema Gossett PLLC
10 South Wacker Drive
Suite 2300
Chicago, IL 60606

Re: Garland Road Landfill Site, Miami County, OH

Dear Jerry:

Thank you for your letter dated May 27, 2009, enclosing written comments pertaining to the Unilateral Administrative Order issued by U.S. EPA on May 14, 2009 ("UAO"), to Respondent General Motors Corporation ("GM").

While U.S. EPA must decline GM's request to withdraw the UAO and/or complete negotiations for an Administrative Settlement and Order on Consent ("AOC") to implement the response action at the Site, we would like to provide responses to several comments included in your letter.

First, as your letter notes, U.S. EPA and GM conducted amicable negotiations over a period of months to determine whether the parties could agree on terms for a negotiated settlement to implement the response action at the Site. As noted in my letter to you dated May 26, 2009, these negotiations failed after GM declined to commit to executing an agreed order memorializing a negotiated settlement before June 1, 2009, as had been requested by U.S. EPA.

Second, the Site is an old co-disposal landfill at which both municipal and industrial wastes were disposed. The information in our files indicates that the landfill ceased accepting wastes in or about 1970, and very few records survive pertaining to the nature of the wastes that were disposed at the Site or the parties that arranged for disposal of wastes there. The length of time that has passed and the lack of surviving records make the task of identifying PRPs at the Site difficult. U.S. EPA, however, expects to review in the near future whether additional UAOs should be issued and/or whether attempts should be made to negotiate settlements with additional parties at the Site.

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Third, the paragraphs below respond to allegations in your letter that the UAO contains internal inconsistencies, includes provisions that are beyond U.S. EPA's legal authority to demand, and imposes obligations on GM that GM has no legal authority to take. As discussed in more detail below, none of the allegations in your letter has the effect of undermining the validity of the conclusions and determinations in Section V of the UAO or the legitimacy of the UAO issued to GM.

1. UAO, Paragraph 5.1, definitions. The boundaries of the Site, as defined in the UAO, include all property which has been contaminated as a result of a release from the facility and areas adjacent thereto. We expect that a more accurate estimate of the Site area will be possible following the surveying activities in the Design Investigation.
2. UAO, Paragraph 44. This paragraph requires GM to record notice of and/or a copy of the UAO in the chain of title of the Site property only to the extent that GM holds title to such property. If GM does not own any property at the Site, paragraph 44 does not require GM to do anything.
3. UAO, Paragraphs 66.h and 67. EPA concedes that these paragraphs are duplicative, but not that they are inconsistent. Paragraph 66.h requires Respondent to notify U.S. EPA not less than 28 days in advance of any sample collection activity *unless shorter notice is approved by U.S. EPA*. Paragraph 67 does indeed provide a shorter advance notice (i.e., 14 days before any sample collection activity), as allowed by paragraph 66.h.
4. UAO, Paragraph 71. The required copies are necessary to allow for the timely review of submittals and to make the submittals available to the public through the information repositories.

U.S. EPA has no comment at this time regarding paragraph 5 of your letter.

6. UAO, Paragraph 80. This paragraph only requires GM to grant access and refrain from specified uses for affected property that is owned by GM. If GM does not own affected property, paragraph 80 does not impose any requirements on GM.
7. UAO, Paragraph 81 through 82. U.S. EPA expects to use its authorities at this Site to work with GM and the current Site owner to secure access, use restrictions, and institutional controls at Site property owned by the Site owner in a timely manner. Please note, however, that paragraphs 81 and 82 could also apply to other owners to the extent access and/or use restrictions are necessary at property not owned by the current Site owner.
8. UAO, Paragraphs 92-94. U.S. EPA believes that the UAO provision requiring GM to reimburse U.S. EPA for its response costs in overseeing GM's implementation of the UAO is well within the scope of U.S. EPA's authority under CERCLA Section 106. U.S. EPA declines to waive this provision.

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9. UAO, Paragraph 102, administrative record. As noted in my May 26 letter, U.S. EPA has included your letter of May 11, 2009 in the Administrative Record for the Site. U.S. EPA declines, however, to include materials sent by Michael Tomka by e-mail on May 11, for the reasons expressed in my letter.

10. UAO, Paragraph 103, effective date. U.S. EPA agrees that the effective date of the order is May 27, 2009.

11. SOW, general. U.S. EPA's overall expectations for implementing the response action at the Site have not changed since the Enforcement Action Memorandum was issued. However, while work plans and other submittals approved by U.S. EPA under the UAO may include provisions that are similar in their technical details to positions taken by GM's and U.S. EPA's negotiating teams during the failed negotiations for an AOC, U.S. EPA cannot guarantee that such work plans and other submittals will include specific details as discussed during negotiations. U.S. EPA expects to evaluate GM's proposals for the RD Work Plan and other submittals required by the UAO for, among other things, their effectiveness in implementing the response action under the UAO, and for consistency with CERCLA, the NCP, the Enforcement Action Memorandum, the UAO and SOW, and Agency guidance.

Paragraphs 12 - 17 address certain technical details regarding the implementation of the response action that became subjects of discussion during the negotiations for an agreed order. This letter does not include specific responses to the views expressed by GM in those paragraphs since the details involved in implementing the response action will be addressed in the work plans and other submittals that are required under the UAO. The decision not to include specific responses to those paragraphs, however, should not in any way be interpreted as signaling U.S. EPA's agreement or disagreement with any of the views expressed by GM therein.

18. As noted in my letter of May 26, groundwater performance standards are provided in Exhibit A of the UAO. The MCLs listed in Exhibit A include VOCs and one semi-volatile organic compound ("SVOC"), di (2-ethylhexyl)phthalate. This SVOC has been identified in groundwater at the Site at levels above its MCL, and was included in a discussion on p. 3-30 of the Streamlined Risk Evaluation as a factor that contributes to the significant potential risk posed by the contaminated groundwater at the Site.

19. Attached to your letter is a copy of the Findings of Fact section of the UAO with handwritten comments that represent GM's proposed corrections to the "many factual errors [that] exist in the Findings of Fact section," as alleged on p. 7 of your letter. Since your letter did not cite any sources for the handwritten comments, it is difficult to verify their merit. Most of the comments address minor differences about the representation of specific sampling results compiled for the Site over the past fourteen years. In addition, some of the handwritten comments have the effect of characterizing the contamination at the Site as more severe than as characterized in the UAO, which may serve to emphasize the importance of the UAO. None of the handwritten comments, if verified, identifies

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any issue that would undermine the validity of conclusions and determinations in Section V of the UAO or the legitimacy of the UAO.

Please be advised that we will include your letter in the administrative record for this matter. We look forward to receiving GM's Notice of Intent to Comply, which GM is required to submit under paragraph 105 of the UAO no later than June 10, 2009.

Sincerely,



Terence Branigan
Associate Regional Counsel

cc: J. Walle, General Motors
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