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Date: March 27, 2008 5:33:29 PM EDT
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Subject: Clifton HS RI/RAW review

Diane - this note is to follow up on my phone call to you yesterday. As I indicated, concerned citizens recently requested my assistance in the subject matter and I agreed to conduct a file review.

The file review raised the following concerns. I request that the Department clarify and respond to these comments below, as appropriate:

1) **Interpretation of the Madden bill - P.L 2007, c. 1.**

It appears that the Department is misinterpreting the law with respect to the timing of the issuance of the NFA letter, the DHSS certification, and the issuance of local construction permits. The emails in the file I reviewed suggest that the Department will allow local construction permits to be issued upon RAW approval. At some later time, the local CO will be issued after the NFA is issued. However, the law clearly requires that DHSS certification and a site wide NFA be issued prior to local construction permits. The law also distinguishes traditional local construction permits from construction permits required to comply with remediation. The law allows construction permits to issue prior to the NFA, but only for construction directly related to remediation:

Section 2. a. provides:

2. a. (1) No construction permit shall be issued pursuant to section 12 of P.L.1975, c.217 (C.52:27D-130) for the reconstruction, alteration, conversion, or repair of any building or structure to be used for a child care center licensed pursuant to the provisions of P.L.1983, c.492 (C.30:5B-1 et seq.), or for educational purposes, if that building or structure was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or is on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), **except upon the submission of the certification issued by the Department of Health and Senior Services** pursuant to section 1 of P.L.2007, c.1 (C.52:27D-130.4) to the construction official by the applicant, that the building or structure has been evaluated and assessed for contaminants, and that the

building or structure is safe for use as a child care center licensed pursuant to the provisions of P.L.1983, c.492, or for educational purposes.

You advised that DHSS will require additional indoor air sampling. As I suggested, sampling should also include surface wipe samples, and soil samples, as I understand that the slab floor has been disturbed. I assume that the Department and local officials agree that the local construction permit may not be issued until the DHSS issues a certification. The only exception to allow construction permits to be issued prior is found in Section 2.a.(2) which allows for a construction permit required to comply with certification or remedial obligations.

Section 2 b. further provides:

b. (1) No construction permit shall be issued for the construction or alteration of any building or structure to be used as a child care center licensed pursuant to the provisions of P.L.1983, c.492, or for educational purposes, on a site that was previously used for industrial, storage, or high hazard purposes, as a nail salon, dry cleaning facility, or gasoline station, or on a contaminated site, on a site on which there is suspected contamination, or on an industrial site that is subject to the provisions of the "Industrial Site Recovery Act," P.L.1983, c.330 (C.13:1K-6 et al.), except after submission by the applicant to the construction official of documentation sufficient to establish that the Department of Environmental Protection has approved a remedial action workplan for the entire site or that the site has been remediated consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) **and a no further action letter has been issued by the Department of Environmental Protection for the entire site.**

Again, the only exception is for a construction permit required to comply with cleanup obligations. Section 2.b (2), which allows for a permit to be issued only for compliance purposes,

"A construction permit issued pursuant to this paragraph shall be limited to the construction or alterations necessary to develop a remedial action workplan to be submitted to the Department of Environmental Protection for approval or to remediate the site consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) and receive a no further action letter from the Department of Environmental Protection.

This subsection would not be necessary if a local construction permit could be issued after RAW approval. Obviously, the existence of this subsection demonstrates legislative intent that Section 2.b. requires NFA prior to local construction permits.

2. Surface water and sediments - NJAC 7:26E-3.3(b); 4.5(a)

There appears to be a small stream behind the building, located between the railroad tracks and the building (personal visual observation). That stream has not been identified by the applicant. Additional surface water and sediment sampling in this stream should be required prior to approval of the consolidated PA/SI/RI/RAW submission. The BEE should be revised to address this surface water impact potential.

3. Building interiors - NJAC 7:26E-3.5 -

Please see prior comment regarding need for DHSS indoor air, soil, and surface wipe sampling. This sampling should be part of the DEP review requirements, not solely DHSS.

4. Historic fill - NJAC 7:26E-3.3(b)

Reports indicated that several feet of fill were deposited under the building. The 2005 Report soil borings beneath the building should be replicated (i.e. B-2; B-3; B-4; B-5). It is not clear why the Department apparently has required that some aspects of the 2005 soil and groundwater sampling be replicated and expanded, yet the two borings under the building were not repeated. The Department should not rely on any data from the 2005 Report, or the soil borings below the building.

5. Failure to notify the Department of soil and groundwater contamination in excess of applicable criteria

Lab results documenting soil and groundwater contamination were generated on 2/22/05. Yet the applicant (school board and/or consultant) apparently failed to notify the Department until 11/28/07. This failure to notify and report for over 2 years results should be referred to enforcement. There are additional notification deficiencies and compliance obligations pursuant to NJAC 7:26E-6.1(a) that must be remedied.

6. Historic use of the site - Rhone Poulenc manufacturing and lab operations

Based on private certifications that site operation "does not generate hazard waste" and was not in a regulated ECRA/ISRA SIC code, the Department issued ECRA/ISRA non-applicability determinations on 9/1/89; 7/26/91; and 2/26/96.

However, one ECRA filing (7/26/91) stated that hazardous waste was generated and manifested off site for disposal.

Additionally, the 2004 MT site assessment Report (@page 7) refers to an EDR Report (cited in the 2004 Report as Appendix IV). The EDR Report apparently found that the operator of the site was a conditionally exempt RCRA small quantity generator. I say apparently, because there was no Appendix IV in the file version of that 2004 Report.

Similarly, the 2007 MT PA/SI/RI/RAW consolidated Report includes the 2004 Report, but again, there is no Appendix IV EDR Report.

The Department should require the applicant to clarify this issue and provide Appendix IV EDR Report for public review.

The Department should also re-examine the basis for the prior ECRA/ISRA non-applicability determinations at this site.

7. AOC 13 - "reported poor housekeeping practices"

It is not clear how the Department became aware of this AOC, but PAH's were discovered at this location. Neither this contamination or allegations of poor housekeeping practices were reported in the 2004 Report, the 2005 Report, or the applicant's initiation submission. Approximately 1,000 square feet are impacted. Although the contaminant and risk levels are low, as a precautionary measure and due to uncertainty inherent in history of the site and the sampling methodology (false positives), the Department should require excavation of these soils and not allow a cap.

8. Pesticide sampling -

It appears that sampling was limited to the pesticide chlordane at locations B-7A; 7B; 7C; 7D; 7E; 7F and PL. The rationale is not clear for this single parameter.

9. Due diligence prior to siting decisions and land purchase

A 11/15/07 email by DEP employee Joe Karpa states:

"The BOE attorney said that no environmental documentation existed confirming to the residents that NO due diligence work was conducted prior to their having purchased the property. This facility is obviously subject to the Madden legislation and an ESR is required buy the DOE regulations."

I ask that the Department confirm this statement and determine if the DOE ESR regulations were complied with.

We have argued that a major flaw in the school siting, land acquisition, construction, and DEP site remediation process is failure to do adequate due diligence. AS a result, as per Inspector General Cooper's report on the SCC, over \$330 million has been spent on sites "patently unsuitable" for schools. Millions more will be spent on remediation - costs and

health risks to children that could have been avoided with better planning, siting and due diligence practices.

10. Compliance with Department of Education ESR requirements

(see #9 above)

Thank you for your prompt and favorable consideration of these comments.

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