

## ATTACHMENT 1

### EPA RESPONSE TO COMMENTS ON EPA'S PROPOSED PLAN FOR THE RALSTON STREET LAGOON SITE, GARY, INDIANA

March 2009

#### Overview

The EPA Proposed Plan for the Ralston Street Lagoon owned and operated by the City of Gary and the Gary Sanitary District (GSD) was made available for public review and comment from November 3 through December 5, 2008. Upon request, the comment period was extended through December 19, 2008.

This Response to Comments documents EPA's response to public comments and their effects, if any, on the selection of the remedy. All comments received by EPA during the public comment period were reviewed by EPA and are contained in the administrative record.

#### Comments Received

Comments were received from the following parties:

Jayson Reeves, Gary, IN  
Lin Kaatz Chary, Indiana Toxics Action, Gary, IN  
Luci L. Horton, Gary Sanitary District, Gary, IN  
Scott Pruitt, U.S. Fish & Wildlife Service, Bloomington, IN  
Charlotte J. Read, Chesterton, IN  
Thomas R. Anderson, Save the Dunes Council, Michigan City, IN  
Lori Bult, NG Land

## Response to Comments

EPA has summarized the comments received on EPA's Proposed Plan for the Ralston Street Lagoon (RSL or lagoon) below. Some comments were made by more than one party, and some comments are similar to other comments made such that only one response is needed. The comment summaries are set forth in italics. EPA's response to the comments follows the individual comment(s) and appear in a regular font.

*Comment: Request an extension to the public comment period and a meeting with EPA.*

The public comment period was extended through December 19, 2008, and a meeting with interested property owners was held on December 11, 2008.

*Comment: The Ralston Street Lagoon may consist of environmental contaminants but the water and water table elevation seems to be at a controlled level.*

The water level in the lagoon appears to be directly influenced by the water levels in the adjacent Grand Calumet River, clearly documenting the hydraulic interconnection of the lagoon and the River. EPA's proposed plan is needed to prevent further releases of contaminants from the lagoon into the Grand Calumet River, to prevent inundation of the lagoon by the Grand Calumet River, and to finally resolve the current RSL PCB contamination consistent with the requirements of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601, *et. seq.*

*Comment: The Grand Calumet River has potential of rising in elevation and is contaminated, but is of only minor concern.*

EPA's Proposed Plan will ensure, by raising the berm of the lagoon, that the Grand Calumet River will not inundate the RSL. The remainder of the project will ensure the Grand Calumet River will be protected from the contents of the RSL.

*Comment: The Little Calumet River and the containment of flooding is out of control during most of the year with severe hazards of all kinds.*

The RSL is adjacent to the Grand Calumet River, not the Little Calumet River. The flooding problems of the Little Calumet River are outside the scope of EPA's Proposed Plan for the RSL.

*Comment: It is incorrect to say that the surface water in the RSL has no PCBs because detection limits for testing are too high.*

The most recent testing that was done on the waters in the lagoon for PCBs has results documenting that the PCBs in the surface waters (approximately the top 6 to 9 feet) of the lagoon were below the detection levels of the EPA Method 608 test for PCBs at the time(s) the most recent testing was done. The testing conducted in 2005 had a detection limit of .4 micrograms of PCBs per liter of water. While there could be PCBs in the surface water of the lagoon, the concentration of such PCBs would be below the .4

micrograms per liter detection limit.

*Comment: Based on waterfowl use of the RSL, and harvesting of these waterfowl for human consumption, clean up of the RSL should be accelerated.*

EPA has worked with the GSD and its consultants to develop a schedule for clean-up which is aggressive in light of the work to be done to implement the plan. This schedule was presented to the public and is part of the administrative record for the site. EPA is interested in completing this project as quickly as possible, and will continue to work with the GSD to reduce time frames for implementation where possible.

*Comment: The RSL is an unsuitable disposal location for GCR sediment.*

EPA is not proposing as part of its proposed plan that the RSL be used for sediment disposal from the Grand Calumet River. EPA is aware there is a parallel process ongoing with the Indiana Department of Environmental Management (IDEM), the Indiana Department of Natural Resources (IDNR) and the U.S. Army Corps of Engineers to evaluate remedies and disposal sites for the sediments in the Grand Calumet River. However, that process has not yet been completed. There are a significant number of issues associated with using the RSL as a sediment disposal site which were not evaluated as part of EPA's proposed planning process. Hence, at this time, EPA will not incorporate sediment disposal from the Grand Calumet River into the RSL as a part of the proposed remedy for the site. If using the lagoon as a sediment disposal site were later shown to be feasible, EPA would prepare a remedy amendment document and hold another public comment period before making a decision to amend the remedy.

*Comment: Off-site disposal is the best option for the site, using remediation technologies such as those used for the Winston-Thomas municipal treatment plant in Bloomington, Indiana.*

Off-site disposal was considered for the site, and developed in detail. EPA has determined that the proposed plan is the best alternative for the lagoon based on the required criteria in the Modified Consent Decree and Judgment – 2002, and the administrative record. The pathways to ecological risk discussed in the comments will be severed once the proposed plan is implemented, just as it would be with the off-site disposal alternative. At a similar site with PCB contamination of lagoon-contained sewage sludge in Madison, Wisconsin, EPA's selected remedy for 12 acres of PCB-contaminated sludge in excess of 50 mg/kg was an in-place vegetative/soil cover, plus institutional controls. At the Winston-Thomas site, EPA cleaned-up two small former sludge storage lagoons as well as a 17 acre tertiary treatment pond. The character of the sludge storage lagoons was substantially different than the character of the Ralston Street Lagoon, in that the sludge there had much higher percent solids with little or no overlying water, and hence volatilization could more readily occur. Removal was able to occur with standard excavation equipment directly to transport vehicles. The 17 acre tertiary treatment pond, while containing water, had less than 2 feet of overlying water and generally less than 6 feet of sludge, also with much higher PCB concentrations. Hence removal of the waste materials was technically simpler at Winston-Thomas.

*Comment: It is obvious that the PCBs have leached through the sand and contaminated the Grand Calumet River and groundwater. PCBs have also migrated into the environment through volatilization.*

There is no recent data showing that PCBs have leached through the sand and contaminated the Grand Calumet River. The recent monitoring data from the wells installed in the lagoon dikes does not show detectable levels of PCBs in the groundwater within the dike. This is not unexpected because PCBs are hydrophobic (that is, repel water) and have an affinity for solid particles which have high carbon content, such as sewage sludge but not the sand or other coarse grained materials in the dike. PCB contamination in the Grand Calumet River in the vicinity of the RSL is more likely predominantly from historical lagoon overflows into the Grand Calumet River. With regard to the assertion that PCBs have also migrated into the environment through volatilization, this is possible. However, due to the affinity of PCBs for solid particles, this seems an insignificant pathway for exposure. During design, the potential for volatilization of PCBs during treatment will be evaluated further.

*Comment: The proposed plan is not acceptable because no liner or leachate collection system is part of the remedy.*

The proposed remedy for the site will isolate the materials in place with a barrier wall, drain off and treat the surface water in the lagoon, solidify the materials in place using additives to form a solid mass, and then cap the solidified materials with a low permeability cap contoured to route surface drainage off-site. As noted in Section 2.4 of the RSL Technical and Cost Assessment (TCA), the RSL is underlain by the Wadsworth Till of the Wedron Formation, which is an impervious gray clay till unit approximately 70 to 80 feet thick. The perimeter barrier wall will be keyed into this low-permeability till to provide vertical and horizontal containment of the sludge. Under this scenario, a liner is not needed. The proposed remedy meets the technical requirements for soils for chemical waste landfills found at 40 C.F. R. §761.75.

With regard to a leachate collection system, some means to drain water from under the cap and prevent an excessive build-up of hydrostatic pressure against the barrier wall will be needed. The details of such a system will be determined during the design phase for the project. The cost for a leachate collection system was included as a cost item in the engineer's cost estimate found at Section 7 of the TCA, and will be included as part of the selected remedy.

*Comment: The cap proposals are inadequate.*

The cap is required to be designed to meet the specifications for hazardous waste landfill closure specified at 40 C.F.R. § 264.310(a). In addition, the soils in the cap must meet the soil specifications for chemical waste landfills found at 40 C.F.R. §§ 761.75(b)(1)(ii) through (v), or a synthetic membrane liner must be constructed pursuant to 40 C.F.R. § 761.75(b)(2). The proposed cap will be designed to these specifications.

*Comment: It is not clear what material will be used to solidify the sludge.*

Initially, the RSL sludge would be mixed with bulking materials to increase the solids content of the sludge. The characteristics of the bulking materials to be used include physical and chemical characteristics capable of being mixed with the RSL sludge; materials which are capable of densification and/or solidification such that the final volume is less than the capacity of the RSL; and material having a solids content of at least 85%. Materials which are available locally and meet these criteria include sands and crushed slag. Once bulking materials are added, approximately 15% cement would be added and mixed into the bulked sludge, which based on the water content of the RSL contents, would then form into a strong, slow-hardening mass. Additive and bulking tests have already been performed during the planning phase and the results were presented in the Supplemental Alternatives Evaluation Study, which is part of the administrative record. Further evaluation of the best method to solidify and stabilize the RSL sludge, including which materials to use, will be evaluated in detail during the design phase.

*Comment: It is not clear how water will be transported to the wastewater treatment plant.*

There is an existing sewer line which was used in the past to transport water from the RSL to the GSD WWTP. This line is plugged. As part of the design investigation, the ability to use this line as part of the project will need to be assessed, because part of the proposed plan is to pipe the water from the lagoon to the GSD WWTP for final treatment prior to discharge to the Grand Calumet River.

*Comment: It is not clear that the wastewater treatment plant can properly treat PCBs.*

The proposed plan is that the water be pre-treated adjacent to the RSL prior to final transport to the GSD WWTP for final treatment. PCBs would be removed as part of the pre-treatment process, not at the GSD. The details of the pre-treatment will be established during the design phase.

*Comment: A waste-oil facility in Westville, Indiana was the subject of an emergency removal action in the late 1980s. Why have the lagoon and the residents of Gary been treated differently?*

The facility in question was the Cam-Or facility located in Westville, Indiana. The facility was under an order which required that it take action to abate imminent threats. Rather than implement the order, the facility was shut down and the company declared bankruptcy. At the time, there were eight lagoons on-site and environmental releases to surface water were ongoing. Rather than allow the releases to go on, EPA stepped in to abate the threat and implemented a removal action. The lagoons were consolidated and closed and materials properly disposed. In the case of the RSL, GSD has implemented interim actions to increase the width and height of the berm, and closed and plugged both the lagoon overflow to the Grand Calumet River as well as the sewer line back to the GSD WWTP. Monitoring wells were also installed to assess off-site impacts.

*Comment: EPA should review all federal programs to see if the remediation of the RSL would qualify for federal money.*

Several programs were mentioned as a source of federal or state funds to assist GSD in implementing various aspects of the RSL clean-up project. EPA had previously consulted with the IDEM and was advised that GSD could potentially qualify for assistance with the project under the Clean Water Act revolving loan program. GSD may be eligible to apply through IDEM for such loans.

Other possible sources of funds mentioned included a Superfund Innovative Technology Evaluation (SITE) grant; a Great Lakes restoration or Legacy Act grant; and funding under brownfield, economic revitalization, clean-up, restoration and environmental justice programs. EPA's SITE program ended about 3 years ago; hence funding under that program is not possible. More recently, EPA has partnered with the Department of Energy and the Department of Defense (DoD) to conduct research on environmental technologies. The next opportunity to apply for funding for fiscal year 2010 is in March 2009, through DoD's Environmental Security Technology Certification Program. A copy of the announcement was added to the administrative record.

Funding under EPA's brownfields program is also not possible because the lagoon is not a "brownfields site" and because of the Potentially Responsible Party (PRP) status of the City of Gary and the GSD.

EPA's project manager has forwarded GSD's comments on to the EPA program manager for EPA's Great Lakes Legacy Act for possible consideration.

*Comment: The City of Gary should not be solely responsible for the financial burden of cleaning the Site.*

*Comment: The citizens of Gary are not responsible for the PCBs contained in the RSL. EPA should identify the PRPs that are responsible for the PCBs in the RSL so that they may be held accountable.*

U.S. EPA long ago identified the City of Gary and the GSD as liable parties and is holding those parties accountable for disposing PCB-contaminated sludge at the RSL. The RSL was formed in the 1950s as fill material was removed in order to construct the Indiana Toll Road. The GSD, which continues to operate the wastewater treatment plant on behalf of the City of Gary, used the RSL as a storage facility for sewage sludge from the wastewater treatment plant from 1962 to 1988. Approximately 100,000,000 gallons of PCB-contaminated sludge are contained in the RSL, with PCB concentrations reaching as high as 1,300 parts per million. The City of Gary and the GSD are responsible for the decision to dispose of the PCB-contaminated sludge in the RSL, for the transportation of the PCB-contaminated sludge to the RSL, and for the operation of the RSL. Through settlement agreements dating back to 1987, the City of Gary and the GSD are jointly and severally liable for remediation of the RSL.

*Comment: EPA should facilitate discussions with IDEM and USACE to explore the suitability of the RSL for placement of Grand Calumet River sediment.*

Discussions have taken place between the City of Gary, the GSD, EPA, the U.S. Army Corps of Engineers and the IDEM about using the RSL as a disposal facility for sediment. Of the comments EPA received regarding the use of the RSL as a disposal facility for Grand Calumet River sediment, more were against the possibility than in favor. EPA is not proposing as part of its proposed plan that the RSL be used for sediment disposal from the Grand Calumet River. EPA is aware there is a parallel process ongoing with the IDEM, the IDNR and the U.S. Army Corps of Engineers to evaluate remedies and disposal sites for the sediments in the Grand Calumet River. However, that process has not yet been completed. There are a significant number of issues associated with using the RSL as a sediment disposal site which were not evaluated as part of EPA's proposed planning process. Hence, at this time, EPA will not incorporate sediment disposal from the Grand Calumet River into the RSL as a part of the proposed remedy for the site. If using the lagoon as a sediment disposal site were later shown to be feasible, EPA would prepare a remedy amendment document and hold another public comment period before making a decision to amend the remedy.

*Comment: The source(s) of the PCBs must be found.*

The source(s) of the PCBs need not be discovered in order for the RSL to be remediated.

*Comment: Northern Indiana Public Service Company is the source of the PCBs.*

No evidence was presented along with this comment such that EPA could evaluate the claim. However, as stated above, the source(s) of the PCBs need not be discovered in order for the RSL to be remediated.

*Comment: The Site should have been remediated through the CERCLA process, meaning PRPs were not otherwise identified, the source of the material was not identified, and the public was not adequately consulted.*

The reality is that the Site was not remediated through the CERCLA process. The decision to file a lawsuit against the City of Gary and the GSD pursuant to the Toxic Substances Control Act is over twenty years old. Furthermore, the lawsuit was settled over twenty years ago. Nothing can or will change that. The two parties with culpability for the presence of PCBs in the Ralston Street Lagoon were identified, were sued, and agreed to remediate the lagoon under the Consent Decree. EPA expects those parties to comply with the Consent Decree.

However, EPA is willing to discuss with interested individuals and groups the role of the public in the ongoing remediation process.

*Comment: Inadequate input was allowed for during the negotiation of the consent decrees.*

As recently as March 8, 2006, the EPA Office for Enforcement and Compliance Assurance has endorsed earlier guidance documents restricting communications with outside parties regarding enforcement.<sup>1</sup> EPA enforcement staff are instructed not to discuss settlement negotiations with outside parties (which includes members of the general public) whether or not a confidentiality agreement exists between the negotiating parties. Barring a change in the guidance, the public will continue to have little input during the negotiation of consent decrees.

The public is, however, accorded the opportunity to comment on proposed settlements in actions to enjoin the discharge of pollutants into the environment. The U.S Department of Justice policy found at 28 C.F.R. § 50.7 provides for not less than a 30 day public comment period before such settlements can be signed by a federal judge. Notices of a 30 day comment period for both the Second Modified Consent Decree and Judgment (1992) and the Modified Consent Decree and Judgment - 2002, were published in the *Federal Register* on November 14, 1991 (56 Fed. Reg. 57901) and June 18, 2002 (67 Fed. Reg. 41448), respectively. Future settlements will also be offered for public comment before being made final.

*Comment: Did the Ralston Street Lagoon score high enough to be placed on the National Priorities List?*

This question was posed at the public meeting on November 18, 2008, at the GSD. At that meeting, an EPA representative stated in response that a Hazardous Ranking System package was prepared for the RSL, but that to his recollection, the RSL did not have a high enough score to be considered for the National Priorities List of contaminated sites. After the public meeting, a review of documentation shows that the response provided at the public meeting was in error. A draft Hazardous Ranking System package was prepared in 1993. Contrary to what was stated at the public meeting, the RSL did score high enough to be considered for listing on the National Priorities List. Despite the score, EPA did not propose that the Ralston Street Lagoon be placed on the National Priorities List. It should be noted that inclusion of a site or release on the National Priorities List does not imply that Superfund money will be expended to remedy the site or releases from the site.

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<sup>1</sup> <http://www.epa.gov/compliance/resources/policies/civil/io/commrestrictions-nakayamamemo030806.pdf>