



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

May 3, 1994

Nancy Beardsley
Maine Department of Environmental Protection
State House Station 17
Augusta, ME 04333-0017

RE: Maine Solid Waste Disposal Regulations, chapters 400-401 --
Explanation of Significant Differences for Sites 1 and 3

Dear Nancy:

The EPA, the Navy, and the Maine Department of Environmental Protection are in the process of finalizing the Explanation of Significant Differences for Sites 1 and 3 (ESD). The ESD is being issued to supplement the administrative record for the Sites 1 and 3 Record of Decision (ROD) since the decision to use the material from Sites 5, 6 and 8 as subgrade material under the Sites 1 and 3 cap was made after the issuance of the ROD for Sites 1 and 3.

The ESD contains an analysis of the applicable or relevant and appropriate requirements (ARARs) relating to the action. This analysis discusses the Maine Solid Waste Management Regulations (MSWMR), chapters 400-401.

The purpose of this letter is to set forth the EPA's understanding of the State's interpretation of the MSWMR, chapters 400-401, as they relate to the use of the material from Sites 5, 6 and 8 as subgrade fill at Site 1 and 3. In addition, the letter discusses the EPA's determination concerning the appropriateness of these regulations to the action.

Reference is made to the following letters:

1. Letter, dated January 25, 1993 from Mark R. Hyland, Maine Department of Environmental Protection, to James Schafer, Naval Facilities Engineering Command, Northern Division.
2. Letter, dated December 20, 1993, from you to me.
3. Letter, dated March 31, 1994, from you to me.

Based on these letters and our conversations, it is the EPA's understanding that the State does not consider use of material from Sites 5, 6 and 8 at Sites 1 and 3 to be a horizontal or vertical expansion of Sites 1 and 3 because the material will be used as subgrade material as part of a larger remedial activity.



If the use of this material does not constitute an expansion of Sites 1 and 3, then the requirements of MSWMR chapter 401 relating to expansions (e.g. the bottom-liner requirements set forth in MSWMR § 401.4(C)) are not applicable to this action.

In an ARARs analysis, even if a requirement is not applicable, the EPA must determine if it is relevant and appropriate. The EPA has determined that the MSWMR requirements relating to expansions of landfills are not appropriate in this case because federal ARARs (i.e., RCRA Subtitle C cap requirements) relating to the cap to be constructed are of equal or greater protectiveness. Attachment 1 is the detailed discussion of this issue which will appear in the ESD.

In your December 20, 1993 letter, you state that the State considers the MSWMR to be more protective than the RCRA Subtitle C cap requirements in two respects: frost protection and long-term monitoring.

In connection with both of these matters, it should be noted that neither of them relate to requirements that are changed or affected by the new action which is taking place after the date of the Sites 1 and 3 Record of Decision, i.e. use of material from sites 5, 6 and 8 as subgrade fill under the cap to be constructed at Sites 1 and 3. Since the purpose of the ESD is to address only significant differences that result from the new action, these requirements need not be addressed in the ESD.

In regard to frost protection, you have referred to the cover requirements MSWMR §401.7(C)(4)(a). The cover requirements §401.7(C) have been included as an ARAR in the Sites 1 and 3 Record of Decision, dated June, 1992 (Table D-3, p. D-8). The requirements of §401.7(C) remain an ARAR notwithstanding the new action.

In regard to long-term monitoring, the EPA considers the federal and state requirements to be equally protective. You indicate in your letter that MSWMR require a minimum of 30 years of site monitoring, or longer, if required by the Board of Environmental Protection. Federal requirements at 40 CFR §264.117(a)(1) require monitoring for a period of 30 years after completion of closure. Forty CFR §264.117(a)(2)(ii) provides that the Regional Administrator may extend this period if he/she finds that it is necessary to protect human health and the environment.

If you have any questions or would like to discuss these issues further, please contact me at 617 223-5521.

Sincerely,



Robert Lim, Project Manager
Federal Facilities Superfund Section

cc: Mary Sanderson/EPA
Meghan Cassidy/EPA
Bob DiBiccaro/EPA-ORC
Fred Evans/Navy