



ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

October 12, 2009

James Zakshesky
Zoning Administrator
Presque Isle County Department of Building Inspection
And Zoning Commission
P.O. Box 110
Rogers City, MI 49779

SENT BY EMAIL AND U.S. MAIL

Re: Wolverine Power Supply Cooperative Consistency Determination

Dear Mr. Zakshesky:

This letter is sent to the Presque Isle Board of Commissioners on behalf of the Environmental Law and Policy Center, Sierra Club Michigan Chapter, Great Lakes Environmental Law Center, Michigan Energy Alternatives, Michigan Land Use Institute and Natural Resources Defense Council, following up on an earlier letter to the Board dated September 24, 2009 regarding a consistency determination requested by the Wolverine Power Supply Cooperative for a new solid waste landfill. We strongly urge the Board to give careful consideration to this massive new source of harmful waste. A consistency determination should not be a watered down version of MDEQ's solid waste permit review, as it is the local government's sole opportunity to protect the health and welfare of its residents. This opportunity is reflected in the goal of the Presque Isle Solid Waste Management Plan ("SWMP") to "[p]romote cost effective methods of... disposal... of solid waste in a manner which will protect the health, safety, and welfare of the citizens living in the County." As previously noted, this goal is a background principle of the SWMP against which the landfill must be judged in a consistency determination. The consistency determination also is subject to the Michigan Environmental Protection Act ("MEPA"), as set forth below.

Since submitting our previous letter, we have reviewed the consistency determination application submitted by Wolverine to the Board of Commissioners. This application is incomplete, as it omits information that is required under the SWMP and critical to determining whether the proposed landfill meets the SWMP's goal of protecting health and the environment. The Board cannot make a finding of consistency on this record, but must require Wolverine to submit the necessary information. In addition, there are several legal requirements that it appears

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the proposed landfill cannot meet, based on the thin application. The deficiencies in the application are as follows.

Type III landfill – non-hazardous waste. Wolverine is applying for a consistency determination for a proposed Type III landfill for non-hazardous waste. In its application, Wolverine characterizes coal ash from the proposed coal plant as “non-hazardous.” App. p.1. Wolverine provides no information substantiating its claim that the waste will be non-hazardous. Moreover, this characterization is highly questionable, as concerns about health risks from coal ash have prompted the U.S. EPA to consider formally whether to regulate coal ash as a hazardous waste.¹ U.S. EPA has committed to make this determination by December of this year. It would be highly imprudent to issue a consistency determination for the proposed landfill – one that would be in operation for decades to come – such a short time in advance of this important regulatory decision.

The Board should find the landfill inconsistent with the SWMP given the concerns reflected in the federal agency’s commitment, unless Wolverine can submit information showing that the waste from the Proposed Coal Plant is in fact non-hazardous. To date, Wolverine has not done so, as it has provided no information regarding the composition of the waste to be disposed or risk assessment of potential harms from the landfill.

4(v), Facility design. The siting criteria require Wolverine to submit a description of the facility’s design. Rather than provide any information about the design of the landfill in its application, Wolverine only vaguely states that it will “meet or exceed all applicable regulations.” App. p. 6. The referenced Appendix F includes solely a site plan without any details on the type of landfill to be built. This is an insufficient description of the facility design on which to base a consistency determination, in that it is not a description at all, but a legal conclusion.

Wolverine must submit an actual description of the proposed landfill design, including details of the liner, leachate recovery system, and leak detection and groundwater monitoring. Specifically, Wolverine at minimum should use a composite liner consisting of a clay layer in combination with a synthetic material that provides the greatest protection against leaks.² In addition, Wolverine should install a state-of-the-art leak detection monitoring system to ensure quick and effective response to any leaks that do occur, a leachate collection system with an acceptable plan for disposal of leachate that will protect air and water quality³, and groundwater monitoring to ensure that the residents of Rogers City will not be harmed by the landfill. Without information on these systems, a consistency determination cannot be made.

¹ See Attachment 1, U.S. EPA Press Release, EPA Announces New Action to Prevent Coal Ash Release, March 9, 2009 (noting intent to issue proposed rule regarding management of coal combustion waste by end of 2009).

² It appears from the advisory analysis undertaken by MDEQ that Wolverine is proposing a double composite liner. However, documentation of this liner is not in the current record, outside of the brief mention in MDEQ’s letter of Aug. 27, 2009. Wolverine must submit details of the liner to the Board so that it can be properly a part of the consistency determination.

³ As we noted in our previous letter, Wolverine has represented that it will use the leachate in the proposed coal plant, an action which can present numerous environmental problems of its own depending on the specific use. We encourage the Board of Commissioners to disapprove this plan for use of the leachate, and instead to require an environmentally-responsible plan for leachate disposal.

We also note the following concerns arising from the site plan map provided as Appendix F to the Application:

- It appears that the leachate holding tank is within 10,000 feet of an airport runway, as it is located to the west of the line marked “Setback Location 10,000 Ft From Airport Runway.” As part of the proposed new landfill, the leachate tank cannot be located within the airport setback area. Wolverine must submit a revised application that includes a new location for the leachate holding tank.
- The southeast corner of the landfill is located less than 500 feet from several smaller (man-made) wetlands, as well as only about 500 feet from a larger wetlands area, as determined by a site survey carried out by a private consulting company. Appendix F, note 5. This proximity of a large disposal site for potentially hazardous materials to wetlands is of concern. Wolverine should be required to submit the referenced site survey so that the Board and the public can confirm its conclusion regarding the location of nearby wetlands. In addition, Wolverine should be required to submit hydrological studies showing that leachate and other pollution from the landfill will not harm the nearby wetland, either through surface or groundwater contamination.

4(vi), Facility Operations. Under criterion 4(vi), Wolverine is required to provide the planned annual usage. As we pointed out in our previous letter, there is a huge discrepancy in the annual usage numbers presented by Wolverine to various reviewing bodies. Wolverine’s air quality application includes a figure of 910,000 tons of ash per year, while its consistency determination application states only 480,000 cubic yards (approximately equal to 480,000 tons). A consistency determination cannot be made until this discrepancy is resolved.

Wolverine also must provide a description of the source of the waste under criterion 4(vi). As noted above, it has not done so in any useful detail. The content of ash – a material that contains harmful, carcinogenic heavy metals in concentrated form – can vary significantly depending on the composition of the fuel burned. Wolverine must provide information on the content of the ash so that the Board may determine whether this particular source of ash is indeed “non-hazardous,” especially in light of U.S. EPA’s concerns. A description of “other non-hazardous materials” also fails to sufficiently describe the source of the waste. This is a conclusion and not a description. Wolverine must list the specific non-ash materials that it intends to dispose in the proposed landfill, as well as provide their composition and information on health risks such that the Board can determine whether these materials are in fact non-hazardous.

4(viii), Groundwater Recharge. Under criterion 4(viii), a facility cannot be located in an area of groundwater recharge as defined by the United States Geological Survey (“USGS”). Wolverine claims briefly in its application that the facility is not located in such an area, a claim which it backs with no supporting information. App. at 8. However, it appears from a map of shallow groundwater recharge rates in Michigan, conducted by USGS in conjunction with MDEQ, that the proposed site may be located in an area with a shallow recharge rate of 5.1 to 10 inches.⁴ Wolverine must either propose an alternative site for the landfill or submit information detailing the groundwater recharge potential at the site and the location of the landfill with

⁴ See Attachment 2, S.S. Achiele, “Estimating Shallow Ground-Water Recharge in Michigan.”

respect to these recharge areas that shows the landfill is not proposed for an area of groundwater recharge.

4(xi), Zoning Designation. We reiterate our concern that the landfill is proposed improperly in an area zoned as “Extractive Industrial.” Blasting and other disruptive activities that occur in such a zone can disturb the landfill lining, leading to contamination of land and water resources. Thus, the landfill is inconsistent with the zoning requirement.

MEPA. As set forth in our previous letter, the Board’s decision and Wolverine’s construction of a new landfill are subject to the Michigan Environmental Protection Act. MEPA allows an action to be brought by “any person” against “any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.” MCL § 324.1701(1). Under this broad standard, MEPA suits have been brought against numerous local government bodies and state agencies. Where an action will pollute, impair or destroy the environment, the action is only allowed if, among other things, there is no “feasible and prudent alternative.” *See* MCL § 324.1703(1).

We noted in our previous letter that this standard cannot be met in the present case, as the staff of the Michigan Public Service Commission has found that there is no demonstrated need for a 600 MW coal plant. A cleaner, feasible and prudent alternative to the proposed landfill therefore is no landfill at all. Even if Wolverine had demonstrated the need for some amount of new coal fired generation and the waste and other pollution which it would generate (which it has not), several MEPA alternatives to the proposed landfill would exist – a significantly smaller landfill, one with a full suite of state-of-the-art controls and monitoring systems, and/or one at a location that poses fewer opportunities for disruption and threats to groundwater, wetlands, and surface waters.

For these reasons, the Board cannot issue a consistency determination on this or any record. We ask that the Board protect the health and welfare of its residents by denying Wolverine’s application. Please do not hesitate to contact Meleah Geertsma at 312-795-3713 or mgeertsma@elpc.org if you have any questions.

Sincerely yours,



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