

John Steketee/R5/USEPA/US  
02/22/2006 09:55 AM

To Gerald Phillips/R5/USEPA/US@EPA  
cc Anton Martig/R5/USEPA/US@EPA, David  
Petrovski/R5/USEPA/US@EPA, David  
Pfeifer/R5/USEPA/US@EPA, Gregory bcc  
Subject Re: Fw: EPA Letter on the

Gerry:

I think a meeting is a good idea and I would like to attend. The point of my comment was merely to point out that it might make sense to determine whether the Corps has the authority to accept such non-federal navigation project dredge spoils into the DMDF prior to spending a lot of time discussing the other issues. If it is determined that they do have this authority, then we can move quickly forward to address the State's questions. Thanks.

-John

Gerald Phillips/R5/USEPA/US



Gerald Phillips/R5/USEPA/US  
02/21/2006 08:18 AM

To John Steketee/R5/USEPA/US@EPA  
cc Anton Martig/R5/USEPA/US@EPA, David  
Petrovski/R5/USEPA/US@EPA, David  
Pfeifer/R5/USEPA/US@EPA, Gregory  
Rudtloff/R5/USEPA/US@EPA, Hak  
Cho/R5/USEPA/US@EPA, John  
Dorkin/R5/USEPA/US@EPA, Jose  
Cisneros/R5/USEPA/US@EPA, Kenneth  
Westlake/R5/USEPA/US@EPA, Leverett  
Nelson/R5/USEPA/US@EPA, Margaret  
Guerriero/R5/USEPA/US@EPA, Newton  
Ellens/R5/USEPA/US@EPA, Peter  
Swenson/R5/USEPA/US@EPA, Stephen  
Mendoza/R5/USEPA/US@EPA Subject Re: Fw:  
EPA Letter on the DMDF0

John,

I appreciate the legal analysis; however, I was not asking for one. I was asking for a meeting to discuss the matter.

Dow did not initiate this discussion. The issue was raised by MDEQ based on the loss of the dredging project.

The question being asked is, at this point simple. Could dredged sediments, other than that from the Corps' efforts go into the DMDF. MDEQ has looked into this and feels that the sediments could go into the DMDF. The action level, according to MDEQ, is 1 ppm for dioxin for dredged sediments going to a state licensed facility. We are not talking, at this point about remediation waste.

We have less than a week to determine if the answer is no, maybe or yes. I'm guessing it's maybe, under certain conditions. We have less than a week to get the preliminary answer to MDEQ

The scenario plays as follows: The Corps does not have the money to complete the DMDF as required by

MDEQ. The Corps will not be able to get additional funds because of Katrina and other priorities. The Corps will lose the money for the Saginaw Dredging project to Katrina restoration costs around the middle of May if additional funds are not found to resolve the issue. Dow has been asked for help with the consideration that Dow has an option to place dredge spoil in the DMDF.

MDEQ is contacting the Corps to schedule a meeting to offer the option-that is if there is one. Gerry

Gerald W. Phillips  
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Steketee/R5/USEPA/US



John  
Steketee/R5/USEPA/US  
02/18/200605:11 PM

To Gerald Phillips/R5/USEPA/US@EPA

cc Anton Martig/R5/USEPA/US@EPA, David  
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Swenson/R5/USEPA/US@EPA, John  
Dorkin/R5/USEPA/US@EPA, David  
Pfeifer/R5/USEPA/US@EPA Subject Re: Fw: EPA  
Letter on the DMDFH

Greg & Gerry:

With regard to this proposal, I distinctly remember the Corps stating, during our conference call with the Corps approximately to discuss EPA's issues with the DMDF eventually set forth in the attached letter, that due to certain requirements of the Corps' regulations, the Corps could only accept dredge spoils from its own navigational dredging projects in the DMDF and "it would take an act of Congress" to allow use of the DMDF by a third party. In addition, there are no doubt a whole host of other issues that the Corps would need to address to EPA's satisfaction with regard to third party funding of the DMDF project.

Accordingly, I think there is a threshold issue that needs to be addressed by the Corps prior to EPA spending valuable time and resources weighing in on this proposal, i.e. whether the Corps even has the authority to allow Dow

to use the DMDF. If not, then I'm not sure we need spin our wheels on this exercise. If so, then at the very least, the Corps should provide ERA with a letter: 1) identifying what it and Dow have agreed to with regard to Dow's use of the DMDF, or are proposing to agree to, and 2) setting forth the legal authority that would allow Dow to fund and/or use the DMDF. Second, because it appears that both the Corps and Dow have been negotiating some sort of deal with regard to Dow's use of the DMDF without MDEQ, ERA or the trustees' input, then at the very least, I think the Corps and Dow owe it to the other governmental parties to come clean on what they are proposing; provide some background on what they have been negotiating; and to provide to everyone in writing what it is Dow and the Corps are proposing to agree to with regard to Dow's use of the DMDF. Third, I believe there is ongoing litigation over the DMDF proposal, therefore, it would be prudent for the Corps to provide ERA with the status of this litigation and an analysis of whether such litigation will be impacted by this new proposal or whether this proposal will be impacted by this litigation. Lastly, I have concerns with ERA reviewing and/or approving of a proposal of this significance which appears not to have undergone any public notice or comment.

Please note, I will be out of the office on 2/21 and 2/22. I will be working from home on 2/23.

Thanks, John

Gerald Phillips/R5/USEPA/US



Gerald  
Phillips/R5/USEPA/US  
02/17/2006 03:40 PM

To Gregory Rudloff/R5/USEPA/US@EPA  
IS  
cc John Steketee/R5/USEPA/uS@EPA, David  
Petrovski/R5/USEPA/US@EPA, Anton  
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Westlake/R5/USEPA/US@EPA bcc

Fax to

Subject Fw: EPA Letter on the DMDF

Greg,

We have been asked by Jim Sygo and MDEQ to consider the impacts on the Army Corps of Engineer's

DMDF if its use was expanded to include sediments from the upper Saginaw and the Tittabawassee River. Jim and

I discussed this issue yesterday with Susan Carrington of Dow.

The project is facing financial difficulty because of inadequate cost estimates by the Corps based on preliminary designs. These designs failed to consider all MDEQ disposal permitting requirements. In addition, sand stringers were later identified at the selected disposal site. The Corps has indicated that they will lose appropriated funding for the project if it is not initiated by Mid-May 2006. The Corps has also indicated that no additional funding for the increased construction costs is possible. Dow has been approached (by whom is unclear to me at this point) to provide funding to offset the Corps' financial short-fall with the consideration that the facility may be an optional disposal location for non-navigation dredged sediments. Please set a meeting early the week of February 20 so that we can discuss your review (see attached document below) and how it affects MDEQ's request. I understand that time is of the essence and a preliminary opinion will be needed in the next ten days to two weeks. The time critical nature of the request is based on process time frames and back calculating from Mid-May.

Gerry

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— Forwarded by Gerald Phillips/R5/USEPA/US on 02/17/2006 03:16 PM —



Jim Sygo <sygoj@michigan.gov>

02/17/2006 09:57 AM

To Gerald Phillips/R5/USEPA/US@EPA

cc SSCarrington@dow.com. jbails@pscinc.com

Subject ERA Letter on the DMDF

**\*\* High Priority \*\***

Gerry,

Attached is a PDF of the letter sent to the Army Corp of Engineers concerning the DMDF. Rereading the document, I do not see any concern relative to dredging and disposing of the sediments as a hazardous waste, so I don't believe the higher concentrations above the navigation channel would be precluded from disposal in the DMDF provided that it is properly constructed.

Jim Sygo  
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Department of Environmental Quality  
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