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Illinois Dunesland Preservation Society
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Attention: Mr. Paul A. Kakuris, President

Subject: **State Park in Apparent Violation of Environmental Protection Act**
Regulated Asbestos Special Waste Dumped and Stored at State Park
Lack of Enforcement Allows Asbestos-Containing Sand to Pollute

Dear Mr. Kakuris,

As you requested, I have researched the Illinois regulations regarding the dredged sand currently stored, treated, and/or land filled at Illinois Beach State Park northern unit. The IEPA ruled that dredged sand from the Waukegan Harbor Approach Channel and near the Midwest Generation discharge channel containing asbestos debris was regulated as a special waste. These materials have been deposited at Illinois Beach State Park for over 5 years and have been land filled and/or stored at the park in apparent violation of the Illinois Environmental Protection Act. The Act states under 808.544 – Enforcement, “Any person may bring an action pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103 to seek enforcement of the provisions of this Part. Penalties may be assessed upon a finding of violation, as provided in Title XII of the Act”. The State of Illinois’ lack of enforcement on the improper storage and treatment of this regulated special waste in unsecured public areas of Illinois Beach State Park pose a potential increase in health risks to employees and the general public using these areas. This lack of enforcement may require the Illinois Dunesland Preservation Society to consider bringing forth an action to remedy this troubling situation.

Background

The IDNR is in possession of regulated special wastes at the Northern Unit of Illinois Beach State Park. According to former park superintendent Bob Grosso, hundreds of thousands of cubic yards of asbestos-contaminated dredged material was placed on Illinois Beach State Park during the 1980’s and 1990’s. This waste was classified as a regulated special waste in 1999 when the owner (INDR) inquired about the waste to the IEPA. Permits for storage, transportation, treatment and disposal are required for this waste material. The regulated special waste originated from the Waukegan Harbor Approach Channel and at the ComEd/Midwest Generation discharge channel near the south end of the State Park. The offshore dredging activities by Midwest Generation and the U.S. Army Corps of Engineers in the Waukegan Harbor approach channel disturbs and generates regulated asbestos-containing special wastes which require permitting, proper transportation, storage, treatment, and/or disposal.

The NPDES discharge from the JM Superfund Site at the south end of the park has been found recently to contribute nearly 2 trillion asbestos fibers a day into the approach channel and shoreline contributing asbestos contamination to the sediments on the lake bottom of these areas. Materials dredged in the area have been found to contain visible and microscopic asbestos and have been classified as a regulated special waste by the Illinois EPA. The trillions of asbestos fibers discharged only counts fibers larger

than 10 microns in length. Asbestos fibers less than ten microns in the discharge are not counted yet can contribute to human health risks once dumped on shore. Recent preliminary testing in 2004 of the sediments in the Waukegan Harbor by the IDNR indicated significantly elevated asbestos fibers in the sand on the lake bottom. The NPDES permit should be modified to prevent additional Lake Michigan shoreline sediments from becoming contamination with asbestos fibers that are harmful to human health.

According to state and federal documents, the warm water discharge channel from the Midwest Generation coal fired power plant (just south of the Johns-Manville Superfund site) has been lined with asbestos tailings from the JM manufacturing facility. The asbestos debris in the channel has been carried into the lake over the years and also causes dredged sands and sediments to be classified as a regulated asbestos-containing special waste. The Midwest Generation warm water discharge channel should have all asbestos debris removed. These materials should be regulated under NESHAP since it appears that regulated asbestos tailings from a manufacturer (Johns-Manville) were deposited in the channel and are now causing pollution of the Lake Michigan lake bottom.

Just this week the USEPA has taken legal actions against the management of a former asbestos manufacturer W.R. Grace for concealing knowledge of health hazards associated with low level asbestos (tremolite) contamination. Illinois Beach State Park has been documented to contain microscopic asbestos contamination including tremolite asbestos (Waukegan Park District study by Dr. Berman 2002). State and federal officials have proclaimed the existence of this asbestos contamination poses no increased health risk to the public. Yet these same agencies have knowledge that no defensible human health risk assessments have been performed to support this claim. The sources contributing to the current visible and microscopic asbestos contamination of Illinois Beach State Park, Lake Michigan, and the Lake Michigan shoreline must be significantly reduced or eliminated. This first step necessary to accomplish this reduction is through the enforcement of existing state and federal regulations. Those public officials that fail to protect the public or enforce environmental regulations should also be held accountable for their actions and/or inactions.

Industrial Process and Pollution Control Special Wastes

Illinois regulates many different types of waste, including special waste. Special waste needs to be managed and disposed of properly to protect our environment. Special waste includes hazardous waste, potentially infectious medical waste (PIMW), industrial process waste, and pollution control waste. The Illinois EPA ruled in 1999 that the dredged sand from the Waukegan Harbor Approach Channel and Midwest Generation discharge channel are either a pollution control waste or industrial process waste. Both are considered a regulated special waste.

What is an Industrial Process Waste?

An industrial process waste is any liquid, solid, semisolid, or gaseous waste generated when manufacturing a product or performing a service. Examples include cutting oils, paint sludges, equipment cleanings, metallic dust sweepings, used solvents from parts cleaners, and off-specification, contaminated, or recalled wholesale or retail products. The following wastes are not industrial process wastes:

- Uncontaminated packaging materials
- Uncontaminated machinery components
- General household waste
- Landscape waste
- Construction or demolition debris

What is a Pollution Control Waste?

A pollution control waste is generated directly or indirectly when businesses remove contaminants from air, soil, or water.

- *A liquid waste*
- *An asbestos waste regulated under the Clean Air Act*
- *A regulated polychlorinated biphenyl (PCB) waste*
- *A delisted hazardous waste*
- *A characteristic hazardous waste treated or stabilized to be nonhazardous*
- *A waste material generated by shredding recyclable metals*

Asbestos waste regulated under the Clean Air Act is (1) any waste that contains commercial asbestos and (2) any asbestos waste generated during demolition or renovation. Examples include insulation, fireproofing materials, and packaging contaminated with commercial asbestos.

Lack of Enforcement by the State of Illinois

Special wastes are regulated by the Illinois Environmental Protection Agency under the Illinois Environmental Protection Act. Some of the more pertinent requirements for special wastes include:

Section 809.103 Definitions

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste or special waste into or on any land or water so that such waste or special waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. [415 ILCS 5/3.08

Section 808.541 Request for Modification

If the application is a request for modification of a previous final wastestream determination, the applicant shall continue to manage waste pursuant to the old determination until it receives a final disposition of its request for a new determination.

Section 808.544 Enforcement

Any person may bring an action pursuant to Title VIII of the Act and 35 Ill. Adm. Code 103 to seek enforcement of the provisions of this Part. Penalties may be assessed upon a finding of violation, as provided in Title XII of the Act. Sanctions may include revocation of a wastestream classification determination.

Section 809.201 Nonhazardous Special Waste Hauling Permits-General

No person may haul or otherwise transport any nonhazardous special waste generated within Illinois or any nonhazardous special waste to be disposed of, stored, or treated within Illinois without a current, valid nonhazardous special waste hauling permit issued by the Agency in accordance with the requirements of this Subpart unless the transporter participates in the Uniform Program or is exempt from the nonhazardous special waste hauling permit requirements under this Subpart.

Section 809.301 Requirements for Delivery of Nonhazardous Special Waste to Transporters

No person may deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste transporter who holds a current nonhazardous special waste hauling permit or Uniform Program Registration and Permit issued by the Agency under Subpart B or C of this Part.

Section 807.312 Air Pollution

No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under the Act.

Section 807.313 Water Pollution

No person shall cause or allow operation of a sanitary landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under the Act.

Section 807.314 Standard Requirements

Except as otherwise authorized in writing by the Agency, no person shall cause or allow the development or operation of a sanitary landfill which does not provide:

- a) Adequate shelter, sanitary facilities and emergency communications for employees;
- b) Roads adequate to allow orderly operations within the site;
- c) Fencing, gates, or other measures to control access to site;
- d) Adequate measures for fire protection as approved by the Agency;
- e) Adequate measures to monitor and control leachate;
- f) Adequate measures to control dust and vectors;
- g) An operational safety program approved by the Agency;
- h) With respect to sanitary landfill sites for which permits are applied for following the effective date of these regulations, provision for concealing sanitary landfill operations from public view.

Section 807.315 Protection of Waters of the State

No person shall cause or allow the development or operation of a sanitary landfill unless the applicant proves to the satisfaction of the Agency that no damage or hazard will result to waters of the State because of the development and operation of the sanitary landfill.

Conclusion

The dredged sand that is stored or land filled at the Northern Unit of Illinois Beach State Park appears to have been transported, placed, stored, treated, and/or land filled in accessible areas of the state park land in violation of the Illinois Environmental Protection Act. The IDNR and IEPA have had knowledge of these violations since at least 1999 and have not appeared to undertake any required compliance activities. The transportation and placement of asbestos contaminated sand on the public beaches of Illinois Beach State Park is an apparent violation of the Illinois Environmental Protection Act and presents a potential health risk to the public and park staff.

The State of Illinois should act on the knowledge that it has regarding asbestos contamination on Illinois Beach State Park. New knowledge exists about the presence of microscopic asbestos contamination on land and off shore at Illinois Beach State Park. New information regarding the potential human health risks associated to low level microscopic asbestos contamination should compel the State of Illinois to re-evaluate their position on the safety of the beaches. Existing knowledge regarding the originating source of much of the visible and microscopic asbestos found in the State Dedicated Nature Preserve, Federally Protected Critical Habitat, and the 6.5 miles of public beaches at Illinois Beach State Park should initiate an expansion in the Superfund financing available for future evaluation and clean-up.

Taxpayers of Illinois should not be burdened with the financial responsibility for continually cleaning up the illegal dumping of regulated asbestos contaminated special wastes on our public beaches. Illinois taxpayers should not have to pay \$200,000+ for testing to determine if offshore sand is safe for beach replenishment. Illinois taxpayers should not have to purchase hundreds of thousands of dollars of "clean" replenishment sand for our beaches because our shoreline is found to be too polluted to dredge and reuse. Polluters should be held financially responsible for cleaning up their own pollution. Public officials should be held accountable for their use and misuse of knowledge regarding the asbestos contamination at Illinois Beach State Park. The Illinois Dunesland Preservation Society may consider taking its own actions to seek enforcement on asbestos contamination issues and the regulated asbestos-containing special waste currently placed on public land.

Please contact me if you have any questions.

Cordially,

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