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June 6, 2017

Wayne County Commission

Committee on Health and Human Services

500 Griswold Street, Hearing Room 704

Detroit, Michigan 48226

Re: Resolution 2017-66-018 regarding U.S. Ecology, Inc.

On behalf of the Great Lakes Environmental Law Center, I want to thank you for the opportunity to provide my comments at your meeting on U.S. Ecology. Given the issues presented by U.S. Ecology’s proposed plans to expand their hazardous waste storage and treatment capacity, we have engaged with community residents and the MDEQ about the facility’s application for its Part 111 hazardous waste permit. We have also engaged with community residents and the city of Detroit as it negotiates an amended host community agreement with U.S. Ecology. My comments will detail our concerns with U.S. Ecology’s application for its Part 111 hazardous waste permit and the host community agreement.

1.) Background regarding U.S. Ecology

U.S. Ecology operates a hazardous waste facility at 6520 Georgia Street in Detroit. This facility serves as both a hazardous waste storage and treatment facility. The facility accepts a variety of hazardous wastes from numerous industries, including sludge from the steel industry and contaminated groundwater from hazardous waste spill sites. U.S. Ecology’s current hazardous waste permit allows it to store 76,118 gallons of hazardous waste and allows it to treat 144,000 gallons of hazardous waste per day. In its permit application submitted to the MDEQ, U.S. Ecology proposed to increase its storage capacity at its facility nine fold to 676,939 gallons and to increase its treatment capacity three fold to 432,115 gallons per day.

The treatment process creates three main residual substances: wastewater, nonhazardous solids, and hazardous solids. Hazardous and nonhazardous solids are disposed of off-site. In accordance with an industrial pretreatment permit, wastewater is discharged into the Detroit sewer system where it is conveyed to the Detroit waste water treatment plant. The industrial pretreatment permit limits the concentration of hazardous chemicals in wastewater that is discharged into the Detroit sewer system. While my focus today is on the Part 111 hazardous waste permit, it is important to note that it has recently come to light that the concentration limits contained in the industrial pretreatment permit have been violated several times by wastewater discharges from U.S. Ecology’s facility on Georgia Street.

2.) The shortcomings of U.S. Ecology’s Part 111 permit application

In regards to U.S. Ecology’s application for its Part 111 permit, I have two primary concerns. First, the facility has been granted and is seeking a renewal of a waiver from the requirement for it to operate a groundwater monitoring program and a soil monitoring program. Second, U.S. Ecology’s permit application classifies three in-ground hazardous waste treatment units as “tanks” as opposed to “surface impoundments.”

The general rule for all hazardous waste treatment and storage facilities is that they must have a groundwater monitoring program and a soil monitoring program.[[1]](#footnote-1) These programs serve as safeguards for the public and our environment for any hazardous waste that may migrate from the facility. However, the requirements to institute these important safeguards has been waived by the MDEQ. Pursuant to regulations, a waiver of the groundwater monitoring program is allowable under two circumstances. First, a waiver is allowable if all treatment, storage, and waste handling is conducted indoors or under a structure that protects from precipitation and runoff and complies with Michigan regulations on facility design and operating standards.[[2]](#footnote-2) Second, a waiver is allowable if the MDEQ finds, based on the opinion of a qualified geologist or geotechnical engineer, that there is no potential for migration of liquid to the uppermost aquifer during the active life and post-closure care period.[[3]](#footnote-3) According to our correspondence with the MDEQ, the waiver was initially justified based on a belief that all treatment, storage, and waste handling was to be conducted indoors. Based on our review of U.S. Ecology’s application materials, we determined that was incorrect and alerted the MDEQ. However, based on our correspondence with MDEQ, they are still planning to grant the groundwater monitoring waiver based on there being no potential for migration of liquid to the uppermost aquifer. In addition to its pending groundwater monitoring waiver, regulations state that the requirement for soil monitoring may be waived if the owner or operator demonstrates that it is not required.[[4]](#footnote-4) U.S. Ecology is seeking a renewal of its previously granted soil monitoring waiver in the permit application at issue. Notably, the facility, under previous owners, was required by the MDEQ to conduct both a groundwater monitoring program and a soil monitoring program. The first soil monitoring waiver was granted in 1989 and the application for that waiver stated that any hazardous waste that may be released would be detected by the groundwater monitoring program. However, in 2003, the requirement for a groundwater monitoring program was also waived.

The waiver of groundwater and soil monitoring programs is particularly alarming given some of the specific changes U.S. Ecology is proposing to make to its operations. The facility’s permit application proposes to convert an existing building with three 30,000 gallon in-ground treatment units, which are currently used for non-hazardous waste, to treat hazardous waste. According to federal and state hazardous waste regulations, containment systems for hazardous waste can be classified as, among other things, a tank or a surface impoundment. A tank is defined by Michigan and federal regulations as a “stationary device designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials which provide structural support.”[[5]](#footnote-5) A surface impoundment is defined as a “man-made excavation which is designed to hold an accumulation of liquid wastes.”[[6]](#footnote-6) U.S. Ecology categorized the three 30,000 gallon in-ground units as “tanks.” We believe those units should be classified as surface impoundments since they are not watertight containment units per the EPA’s interpretation of the two definitions.[[7]](#footnote-7) This distinction is important because a surface impoundment, pursuant to federal regulations, is regulated more stringently than a tank and a facility with a surface impoundment must engage in a number of compliance monitoring programs, including groundwater monitoring, which a facility with tanks is not subjected to. They also must conduct soil analyses to determine if the soil composition at the site is suitable for surface impoundments.

3.) Action is needed to protect the neighboring, vulnerable community

Stepping back from the technical details of the facility and the permit application, our concern is that the permit that is set to be issued by the MDEQ does not adequately protect the public health or our environment. According to the U.S. EPA, 10,021 persons live within 1 mile of the facility. Of those people, 65% are people of color, 81% live below the federal poverty line, and 31% are children. Historically, hazardous waste facilities have been disproportionately located in low-income communities of color because these communities have typically been viewed as the path of least resistance in regards to the siting of what is a highly undesirable land use.[[8]](#footnote-8) This gives rise to the concern that a vulnerable community is being subjected to a disproportionate amount of harm and risk because it is a low-income community of color. Because of this reality, it is very important that all relevant decision-makers, be it the EPA, the MDEQ, the city of Detroit, or Wayne county, exercise precaution in considering the expansion of U.S. Ecology’s hazardous waste facility. Community residents are understandably concerned about a dramatic increase in the facility’s hazardous waste treatment and storage capacity and how this will impact their health and the health of their environment. They are also concerned about the localized nuisances created by the facility, including odor, noise, and truck traffic.

4.) Details regarding the host community agreement

Local governments, such as the city of Detroit and Wayne county, are limited as to how they may regulate the operations of a hazardous waste facility. One of the main tools for local control that the city of Detroit has is what is referred to as a host community agreement. This type of agreement is required for all solid waste disposal facilities in Wayne county pursuant to the Wayne county solid waste management plan. While the host community agreement has not been approved by Detroit city council and is still being negotiated, it seeks to prohibit U.S. Ecology from accepting any waste associated with hydraulic fracturing operations, requires U.S. Ecology to make contributions to a jobs training program administered by the city, and requires trucks going to and from the facility to utilize a designated route.

Like many hazardous waste facilities around the country, the U.S. Ecology facility has been located in a socio-politically vulnerable community partially because it was the easiest place to site a facility that no one wants in their backyard. Moving forward, it is important to exercise precaution to ensure that community residents and our environment are adequately protected. Based on U.S. Ecology’s application for its Part 111 permit, and, in particular, the proposed waivers for groundwater monitoring and soil monitoring, there is a legitimate concern that the permit would fail to adequately safeguard the public health and our natural resources, if issued.

Sincerely,

*s/ Nicholas Leonard*

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1. Mich. Admin. Code R. 299.9611(2)(b), (d) (requiring every owner or operator of a hazardous waste treatment, storage, or disposal facility to conduct a groundwater monitoring program in compliance with the requirements of R. 299.9612 and to conduct an annual soil monitoring program in areas subject to spills, such as waste loading and unloading areas, to detect hazardous wastes or hazardous waste constituents) [↑](#footnote-ref-1)
2. Mich. Admin. Code R. 299.9611(3)(a) [↑](#footnote-ref-2)
3. Mich. Admin. Code R. 299.9611(3)(b) [↑](#footnote-ref-3)
4. Mich. Admin. Code R. 299.9611(4) [↑](#footnote-ref-4)
5. Mich. Admin. Code R. 299.9108(a); *see also* 40 C.F.R. § 260.10 [↑](#footnote-ref-5)
6. Mich. Admin Code R. 299.9107(ff); *see also* 40 C.F.R. § 260.10 [↑](#footnote-ref-6)
7. This belief is based on a test utilized by the U.S. EPA to differentiate a “surface impoundment” from a “tank.” According to the U.S. EPA, the definition of a “tank” as compared to the definition of a “surface impoundment” requires a containment unit to meet a “structural support” requirement and a “designed to contain” requirement to be considered a tank. To meet the “structural support” requirement, the containment unit must be designed to have the structural integrity to remain intact if it were placed upright while filled to capacity with the support of the surrounding soil removed. To meet the “design to contain” requirement, the containment unit must be designed to be watertight. *Beazer East, Inc. v. United States EPA,* 1991 U.S. Dist. LEXIS 8565 (E.D. Pa. 1991). [↑](#footnote-ref-7)
8. Saha, Robin and Mohai, Paul, Historical Context and Hazardous Waste Facility Siting: Understanding Temporal Patterns in Michigan (2005) [↑](#footnote-ref-8)