

From: Lam, Alvin (DEQ)
Sent: Thursday, December 17, 2009 2:40 PM
To: 'mcsniego@cmsenergy.com'
Cc: 'glketterborn@cmsenergy.com'; Creal, William (DEQ); Dell, Dan (DEQ); Saalfeld, Jerry (DEQ); Wagner, Robert (DEQ); McGarry, Tim (DEQ); Hoffman, Alan (AG); Stifler, Mike (DEQ); Blazic, Ryan (DEQ); Sayles, Brenda (DEQ); Holden, Sarah (DEQ); 'dralley@ci.petoskey.mi.us'; 'Hyde.Tinka@epa.gov'; 'Henry.Timothy@epa.gov'; 'Swenson.Peter@epa.gov'; Chester, Steven (DEQ); Sygo, Jim (DEQ)
Subject: CMS Land Co-Bay Harbor Resort, MI0058712

December 17, 2009

Mr. Michael Sniegowski
CMS Land Company
One Energy Plaza
Jackson, Michigan 49201

Dear Mr. Sniegowski:

SUBJECT: National Pollutant Discharge Elimination System (NPDES)
Permit No. MI0058712
Designated Name: CMS Land Co-Bay Harbor Resort

The Michigan Department of Environmental Quality (MDEQ) received an NPDES permit application from the CMS Land Company (CMSL) on November 20, 2009 to discharge pH adjusted intercepted Bay Harbor Resort-East Park CKD leachate to Little Traverse Bay. MDEQ staff has carefully evaluated the CMSL's permit application and determined it is administratively incomplete due to several deficiencies. These application deficiencies are identified and explained in the remainder of this letter.

As MDEQ staff has communicated on several occasions, the CMSL is not exempt under Rule 323.1098(8) or (9) from submitting a complete Antidegradation Demonstration for the proposed discharge of comingled leachate/upgradient groundwater to Little Traverse Bay. We are disappointed the CMSL submitted an NPDES permit application to the MDEQ which fails to adequately address all feasible alternatives to a direct wastewater discharge to Little Traverse Bay, particularly the alternative of discharging the intercepted leachate to the City of Petoskey's Wastewater Treatment Plant (WWTP). Treatment of the intercepted leachate at the Petoskey WWTP needs to be fully explored as a feasible alternative before a new NPDES permit can be processed and issued to CMSL for a direct discharge of comingled leachate/upgradient groundwater to Little Traverse Bay. It is premature for the CMSL to conclude in its response to Section 1. Item 6 of the NPDES permit application that discharge to available sewerage systems "is not a prudent and feasible alternative to the proposed discharge". Several discussions involving the CMSL, MDEQ and the City of Petoskey (City) representatives have indicated this may prove to be a feasible option. At the meeting held in Petoskey on November 4, 2009, information was presented by the CMSL and the City of Petoskey regarding this option. Preliminary toxicity test data indicate the City may be able to accept a maximum of 300,000 gpd of intercepted leachate, but consultants for the City and CMS recognize the need to further define the desired toxicity threshold. At this meeting, the City agreed to confirm in writing the amount of intercepted leachate that could be discharged to its WWTP by the CMSL based on the toxicity threshold. The City also agreed to confirm its position concerning a dedicated sewer line and equalization basin. On December 14, 2009, the MDEQ received a letter (copy attached) from Mr. Dan Ralley, Petoskey City Manager, identifying a set of

conditions under which the Bay Harbor intercepted leachate may be acceptable for disposal at the Petoskey WWTP. The MDEQ will review the letter and advise CMSL whether the conditions provide it with a feasible alternative to a direct wastewater discharge to Little Traverse Bay. If the proposal is feasible, and if CMSL wants to continue with this path, then CMSL would need to pursue this feasible alternative by submitting a full and complete application to the City that is consistent with the City's confirmatory letter. The City would make the final decision on accepting CMSL's leachate for disposal. If the City fails to accept the CMSL's application to discharge the intercepted leachate to the Petoskey WWTP, the MDEQ would then be prepared to proceed with NPDES permit development. Of course, the CMSL always has the option to pursue other non-NPDES discharge alternatives.

Other deficiencies in the CMSL's permit application are:

1. The map included in the CMSL's permit application fails to identify the exact location of the proposed discharge outfall.
2. The Data Summary spreadsheets enclosed in the CMSL permit application and referenced in the "Project Narrative" section have several issues that need to be addressed: a) the mercury data from the summary table and the maximum values table do not report the same maximum final concentration. The summary table reports a maximum mercury concentration of 6 ng/l and the maximum values table reports a final concentration of 12 ng/l. It is preferable to express mercury concentrations in either ug/l or ng/l to reduce the difficulty in reading the small values when mg/l is used; b) all the data tables have inconsistencies in the units that need to be corrected. For example, the summary table has a page header that states that all of the concentrations are reported in ug/l, the column headings state the units are mg/l, and then several rows state the units for that parameter are ug/l. Also, the arsenic row on the summary page states the units are ug/l, but the data presented are less than 0.01 and appear to actually be reported as mg/l when compared to the data on the maximum values page; and c) the pH, specific conductance, dissolved oxygen, and temperature values reported on the summary table do not appear to be correct (e.g. minimum concentration of dissolved oxygen is reported to be 0.0004 mg/l). These are obvious errors, but all of the data should be reviewed thoroughly to ensure that they are accurate and correct. The CMSL also needs to provide the MDEQ with all of the analytical data that have been generated for samples taken of the upgradient groundwater and contaminated leachate; and explain how parameter results that fell below the analytical detection level were interpreted by the CMSL. Finally, the CMSL needs to provide the expected Average Concentrations of the upgradient groundwater, intercepted leachate, and combined effluent.
3. CMSL's response to Section I. Item 6 of the NPDES permit application states that "alternative or enhanced treatment techniques are unnecessary to meet water quality standards given co-mingling with diversion water and are not expected to provide additional reduction of contaminants of concern, including mercury, given their low concentration at the point of collection and mineral characteristics." This statement is not sufficient to fulfill the requirements set forth in R. 323.1098(4)(b)(ii) of Michigan's water quality standards. This subrule requires the CMSL to identify and evaluate alternative and enhanced treatment techniques which have been adequately demonstrated and which are reasonably available to the CMSL that would eliminate the new or increased loading of mercury to Little Traverse Bay. The results of CMSL's evaluation of alternative and enhanced mercury treatment techniques must be provided

to the MDEQ as part of the NPDES permit application. CMSL has built a pilot scale plant to test the treatability of intercepted leachate at the Bay Harbor site. CMSL must provide actual treatability results for antimony, mercury, selenium, silver, thallium, and vanadium for the East Park CKD leachate using the pilot scale treatment plant to support a determination of best available technology economically achievable (BAT) based upon best professional judgment.

4. CMS did not provide a response to Part III, Item 10 of the NPDES permit application. This item asks the applicant to state whether or not any WET tests have been conducted on any discharges or receiving water(s) in relation to the facility's discharges within the last three years. If yes, the applicant is directed to identify the tests and summarize the results on a separate sheet, unless the tests have been submitted to the MDEQ in the last 3 years. In addition, we request the CMSL also submit any related aquatic toxicity data, such as leachate aquatic toxicity data, to allow a better assessment of potential WET concerns.

In summary, the MDEQ cannot consider the NPDES permit application submitted by the CMSL for the Bay Harbor- East Park CKD to be administratively complete until the deficiencies outlined above are adequately addressed. The MDEQ will place the permit application 'on hold' until sufficient information is provided by the CMSL to support further permit processing activity.

Please contact me should you have any questions.

Sincerely,

Alvin Lam
Lakes Michigan and Superior Permits Unit
Permits Section
Water Bureau
517-335-4132

Attachment: City of Petoskey letter dated December 14, 2009

cc: Mr. Dan Ralley, City Manager, City of Petoskey
Mr. Gary Kelterborn, CMS Land Company
Ms. Tinka G. Hyde, Water Division, USEPA
Mr. William Creal, Water Bureau, DEQ
Mr. Daniel Dell, Permits Section, Water Bureau, DEQ
Mr. Gerald Saalfeld, Permits Section, Water Bureau, DEQ
Mr. Robert Wagner, RRD, DEQ
Mr. Timothy McGarry, Executive Division, DEQ
Mr. Alan Hoffman, AG
Mr. Ryan Blazic, Cadillac District Office, Water Bureau, DEQ
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