

RESPONSE TO COMMENTS

HAZARDOUS WASTE MANAGEMENT FACILITY RENEWAL OPERATING LICENSE FOR REPUBLIC INDUSTRIAL AND ENERGY SOLUTIONS, LLC (RIES); MIR 000 016 055

SEPTEMBER 19, 2023

On February 1, 2023, the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Materials Management Division (MMD), conducted a public hearing on a draft hazardous waste management facility renewal operating license for RIES, located at 28470 Citrin Drive in Romulus, Michigan. The draft license is for the aboveground hazardous waste storage and treatment operations. The public comment period associated with the draft license ended on February 16, 2023. The MMD received four comments on the draft license during this public comment period.

The public comment period was subsequently reopened. The second public comment period ran from April 3, 2023, to May 3, 2023. The purpose of the reopened period was to receive comments regarding the technical or compliance elements of the proposed license and the facility. The MMD received comments from 25 parties during the second public comment period, including 3 governmental entities and United States (U.S.) Congresswoman Rashida Tlaib.

A summary of the comments received, by public comment period, and the MMD's responses are provided below. The comments are in regular font, while the MMD's responses are in italicized font.

Comments unrelated to the aboveground hazardous waste operations associated with the draft license are outside the scope of the public comment periods, and responses to those comments are not provided.

FIRST PUBLIC COMMENT PERIOD:

1. The license mistakenly refers to the facility as Republic Industrial and Energy Services, LLC, in several locations. The correct name of the facility is Republic Industrial and Energy Solutions, LLC.

The draft license has been updated to reflect the facility's correct name.

2. The closure cost estimate in the draft license, \$1,001,624, is not consistent with the estimate noted in the MMD's January 18, 2023, financial record review letter.

Condition II.K has been updated to reflect the correct closure cost estimate, \$1,101,624.

3. The table on page 20 of the closure plan is missing part of the name referenced on the previous page, specifically the identifier "Table A11.C".

The reference to Table A11.C has been added to the table title.

4. Table B5.C.1 in Attachment 13, Environmental Monitoring Programs, identifies SW 846-8270 as the method used to analyze soil for 2-nitropropane. The correct method is SW 846-8260.

Table B5.C.1 has been updated to reflect use of method SW 846-8260.

SECOND PUBLIC COMMENT PERIOD:

EGLE noted in its communications regarding reopening of the public comment period, that the agency does not have the authority under the law to approve or deny the relicensing based on support or opposition alone, nor to decide based on lack of need. As such, the agency will not be responding to comments relating to these issues.

1. The facility violated the law by taking waste from train derailment activities in Ohio.

The facility is lawfully licensed to accept the referenced waste and did not violate Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 111), and the administrative rules promulgated pursuant to Part 111 (Part 111 Rules), the laws and regulations governing hazardous waste management in Michigan.

2. EGLE failed to notify the public that waste from the Ohio train derailment was being shipped to the facility.

There is no requirement to notify the public regarding waste shipments to the facility. Rather, the facility's existing license that was issued under Part 111 and its rules specifies the following: the hazardous wastes that may be accepted by the facility; establishes the extensively detailed protocols and requirements for profiling waste to determine if it may be accepted at the facility; and the fingerprinting of the waste upon arrival at the facility, to ensure the waste is consistent with the approved waste profile that may be accepted and subsequently stored and treated at the facility.

3. Michigan should not be taking waste from out-of-state.

Hazardous wastes are generated from a myriad of operations across a variety of sectors, including, in part, the manufacturing, agricultural, chemical, and pharmaceutical sectors. While waste minimization is one of the requirements of the Hazardous Waste Management Program, hazardous wastes are still generated.

These wastes are regulated from cradle-to-grave to ensure protection of human health and the environment. Legal precedent has established that hazardous waste

is a commodity. As such, states are prohibited from banning out-of-state wastes under the Commerce Clause, Article I, Section 8, of the U.S. Constitution.

4. Will a traffic study be conducted in order to understand the effects the site will have on our local roads? How many hazardous waste tanker trucks could visit the site each day?

Traffic issues were raised and addressed when the facility was sited and constructed. The facility has been in existence for approximately 20 years. The draft license continues to specify the approved route for use by hazardous waste transporters, prohibit the staging of hazardous waste trucks on Citrin Drive, limit the number of hazardous waste trucks delivering waste to the facility on a daily basis, and limit the staging of hazardous waste trucks on-site. Condition II.S. includes truck traffic restrictions. Specifically, over-the-road hazardous waste deliveries are limited to 26 per day, all over-the-road transporters are directed to follow the approved route. The on-site staging and parking of hazardous waste over-the-road delivery vehicles is limited to 16 at any given time, and the staging of hazardous waste trucks on Citrin Drive is expressly prohibited.

5. Will there be a geological study to determine how local land may change over time?

An extensive study of the facility's geology and hydrogeology was required as part of the construction permit application process under the state's Hazardous Waste Management Program. The validity of the application information and the ability of the facility to manage hazardous waste was certified by an independent professional engineer licensed in the state of Michigan. Impacts to the air, surface water, soil, and groundwater are monitored and assessed via the ongoing environmental monitoring programs.

6. Do community members have access to testing and inspection reports?

Yes, all environmental data and inspection reports submitted to EGLE are subject to Michigan's Freedom of Information Act.

7. Why is the siting of such a facility allowed in our community?

The criteria and requirements associated with siting a hazardous waste management facility are specified in Part 111 and the Part 111 Rules. If the criteria and requirements are met, EGLE does not have the authority to deny an application for a new, enlarged, altered, or expanded facility.

8. A full inspection of the site and testing should be required before renewal of the license, with additional oversight and monitoring from all involved.

Part 111 and the Part 111 Rules specify requirements regarding inspections and testing conducted by the facility. These requirements are enumerated in the draft

license. The inspection requirements range from security measures; preparedness and emergency equipment; tanks, containers, ancillary equipment, and secondary containment; to recordkeeping and reporting. Testing requirements range from waste profiling, waste fingerprinting, operational bench-scale testing, and treatment systems, to environmental monitoring programs. Oversight is conducted by EGLE via information requests, license application processing inspections, and a minimum of quarterly unannounced, on-site facility compliance inspections. The Romulus Fire Department has been offered on-site tours of the facility and made recommendations regarding state fire prevention related laws, and those recommendations have been implemented as required. Additionally, entities that may be called upon in the event of an emergency have been provided with copies of the approved contingency plan that is included in the draft license. These entities include the City of Romulus Police and Fire Departments, local medical facilities, and hazardous waste vendors.

All testing data is required to be maintained in an operating record at the facility. EGLE has the ability to observe environmental monitoring activities and collect split samples or independent samples, as warranted. Additionally, the facility is required to submit certain reports on waste management and environmental monitoring data to EGLE. Such information is publicly available.

9. EGLE did not inform the public about the public hearing associated with the draft license for the facility.

In conducting public participation on the draft license, EGLE conducted a supplemental in-person public informational meeting and the required public hearing. Notice regarding these two events was made in compliance with the applicable public participation requirements and included electronic mailings to the facility mailing list, electronic notifications to parties subscribed to various hazardous waste-related GovDelivery lists, a newspaper public notice, notice in the EGLE calendar, notice on the facility's web page on the EGLE's website, and direct mailings or phone calls to state legislators and U.S congressional representatives.

10. Environmental injustice systematically impacts communities of color and low-income communities in the U.S. and is a factor regarding the placement of toxic waste facilities.

Upon receipt of hazardous waste management facility operating license application, EGLE's procedures require that the agency conducts an environmental justice assessment using the U.S. Environmental Protection Agency's (U.S. EPA) EJScreen tool. The assessment indicated that the facility did not meet the criteria to be considered an environmental justice site.

11. What about the need for an improved hazardous waste response plan?

Part 111 and the Part 111 Rules contain specific requirements regarding security measures, preparedness and prevention, and emergency response. The security measures are designed to help mitigate hazardous waste releases. The facility is required to have trained personnel and the requisite emergency equipment on-site in the event that there is a threat or actual release of hazardous waste. Additionally, the facility is required to have agreements in place with local responders, in the event of such a release or threat of a release, and provide verification of such arrangements to EGLE. The facility has a contingency plan that addresses the actions to be taken in the event of a possible or actual release of hazardous waste from the facility. The contingency plan is part of the draft license. The contingency plan is required to be shared with identified respondents and reviewed and updated on a continual basis, especially after implementation.

12. There is no public accounting or publishing of the various chemicals delivered to facility.

The draft license establishes a list of approved hazardous waste numbers that a facility may accept. These numbers are established at the state and federal level and have specific definitions by characteristic(s), concentration(s), chemical-type, or generating industry or process. Hazardous waste shipments are required to have shipping documents (if small enough in size) or manifests (for larger quantities) and comply with applicable Department of Transportation requirements. These documents accompany the waste shipments from cradle-to-grave. This information is input into a federal e-manifest system. Summaries of this type of data are provided in the form of required biennial reports and quarterly or monthly operating reports, both of which are available to the public.

13. A question was raised about issuing a license to a facility that had previous or existing violations under Part 111 and the Part 111 Rules.

As part of compliance inspections, potential violations may be identified. Violations, although not desirable, do happen. The manner in which violations are investigated, identified, classified, communicated, documented, and resolved (enforceable document, penalty calculation, etc.) is spelled out in the compliance and enforcement strategies and protocols associated with Michigan's federal program delegation and annual grant work plan with the U.S. EPA. Facilities are able to provide evidence documenting compliance and correct identified violations. In the case of this facility, past violations have been corrected. More recently, to fully return the facility to compliance, it was necessary to execute a consent order with stipulated penalties. That order was executed, penalties paid, and the order subsequently terminated.

14. The city of Romulus was told that the facility would never accept hazardous waste. Prior to the transfer of the existing license, the city of Romulus was advised that the

new owner would only use the facility for management of landfill leachate from landfills it owned.

From its inception, the facility has been identified as a hazardous waste management facility. These representations were made during the construction permit, initial operating license, and subsequent renewal operating license processes and the associated public participation activities.

The current facility owner/operator indicated that one of the factors considered in purchasing the facility was its desire to manage leachate generated from its in-state solid waste landfills. However, EGLE made it very clear that the facility's ability to also continue to manage approved hazardous wastes under the transferred license would be maintained. At no time, did EGLE or the MMD suggest the facility would be unable to manage hazardous waste upon transfer of the license.

15. There are risks associated with hazardous waste transportation to the facility whether by rail or train.

It is acknowledged that are risks associated with all transportation, whether it involves products or wastes, which is precisely why there are strict federal and state requirements regarding such transportation, whether by road, rail, water, or air. EGLE does not have the authority to disallow rail form of hazardous waste transportation to the facility, if the applicable requirements are met, nor can the agency impose restrictions on the facility due to an unfortunate but unrelated rail transportation incident in another state. It is noted that the facility has not accepted any hazardous waste shipments by rail, since beginning operations at this site.

16. There should be a faster turnaround on reporting on activities and hazardous materials. Using current methods could take as long as 90 days to report out. A timeline of up to 90 days given today's advance technology seems excessive and appears to be less transparent.

First, it is important to note that hazardous materials are not hazardous wastes, and this response is limited to hazardous waste. The U.S. EPA has established an electronic manifest system. States are no longer direct recipients of manifest data. Regulations specify who has to initiate a manifest, who has to sign off on the manifest, and who needs to input manifest data into the system, and the time periods in which such entries and associated notifications must be made. Generators sign the manifest when offering waste for shipment. Transporters sign the manifest upon accepting the load. The designated facility signs the manifest upon receipt. The designated facility is responsible for providing the generator with documentation of hazardous waste receipt. If the generator does not receive such documentation within 35 days of the date the waste was accepted by the initial transporter, it is required to contact the facility. If it does not receive confirmation of receipt within 45 days of the date the waste was accepted by the initial transporter, it must submit an exception report to EGLE and the U.S. EPA. Thus, it can be at least

45 days before the waste gets from generator to designated facility. The manifest data then needs to be put into the e-manifest system and made available to the public. The U.S. EPA, not EGLE, controls the time period associated with data entry.

17. Remove the words “the process outlined in Part 111 of Act 451 and” from Condition VI.A.1.

Condition VI.A.1 has been updated to remove the wording “the process outlined in Part 111 of Act 451 and”.

18. Incorporate conditions specific to any truck washing activities in Part II.T.

Conditions 4 and 5 were added to Part II.T to provide requirements for the truck wash activities as part of the hazardous waste processing.

19. Include a compliance schedule in Section II for repairing the trenches in the unloading area and a new facility certification of capacity.

Condition V.1 was added to require the submittal of a report on the repaired trenches in the unloading area. The report will include certification statements. Condition V.2 was added to require the submittal of a new facility certification of capacity.