

From: MacLean, Alex
Sent: Monday, April 09, 2012 3:32 PM
To: Markowitz, Deb
CC: Mears, David; Recchia, Chris
Subject: Re:

Gov is fine with this. Thanks.

Sent from my iPhone

On Apr 9, 2012, at 2:35 PM, "Markowitz, Deb" <Deb.Markowitz@state.vt.us> wrote:

To: Alex Maclean
From: Deb Markowitz
Date: April 9, 2012
RE: Plasan and former JARD site, Bennington

As I mentioned last week, ANR is working with the EPA and PLASAN to see whether redevelopment of the JARD site as a parking lot will be possible. It is complicated by the fact that the site has been contaminated with PCBs which are migrating off of the property and affecting neighbors.

Background on the proposed parking lot site:

- The site is currently contaminated with high levels of PCBs in groundwater and soil.
- Contaminants at the site included solvents, paints, metals, significant quantities of PCBs, and dioctyl-phthalates (DOP; aka DEHP), which replaced PCB use in the 1970s. Despite the dedication of considerable federal and state resources for investigation and cleanup of the site, the full extent of the contamination and the scope and means for remediation has not been determined. The USEPA has conducted three removal actions at the site, and has just completed another round of sampling to address the contamination that has migrated off site and is affecting residences and natural resources.
- The initial EPA Removal actions (1990s) removed drums, tanks and drains with residual contamination, and exterior soil contamination. The

most recent and most comprehensive EPA Removal action (2006/07) razed the building, removed several feet of contaminated soils under a significant part of the original building footprint and capped the site with clean soils and a vegetative cover. Impacts to groundwater and maintenance of the CAP were left to the State of Vermont to manage.

- We requested Joint Fiscal Office approval to raise the statutory limit on expenditures from the Environmental Contingency Fund and appropriate over \$150,000 at the site to investigate the nature and extent of the groundwater contamination migrating off site.
- The PCBs from the site are migrating off of the site and impacting downgradient properties and sensitive receptors (surface water, residential properties and a Class II wetland).

Developing the site:

- If a developer were to purchase this property, the developer would be responsible for the contaminant issues and would be subject to regulation under federal and state jurisdiction. In particular, federal TSCA jurisdiction, rather than state environmental laws, would control the outcome. (TSCA = Toxic Substances Control Act, and this is not delegated to any state.)
- ANR has been engaged in a dialogue with PLASAN and EPA to see if we could work out an arrangement that would be satisfactory to all parties for use of this site as a parking lot. We have let PLASAN know that a Prospective Purchaser's Agreement could be pursued in order to identify responsibilities and resolve liability with both the federal and state governments, and that we would assist in negotiating such an agreement with EPA and the VT Attorney General to specify the level of commitment for the new owner to monitor and maintain a parking lot at the JARD site and resolve outstanding claims.
- Note that EPA has liens on the property (>\$2M) for the work completed, but they were willing to discuss the settlement of those claims for a prospective purchaser. The Town of Bennington has claims for back taxes

(>\$600,000). The biggest remaining hurdle continues to be the unknowns related the potential liabilities and responsibilities of the developer for future work at the site and claims related to the migration of contamination (e.g. potential third party claims, bodily injury, and property damage).

The bottom line is that while construction of a new parking lot could work for this location, it is not without risk for PLASAN since there is no way to determine if the parking lot might be significantly disturbed by future remedial. We are already in conversation with them so that we can help them through the process if they decide to move forward.

Deb Markowitz, Secretary

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<image001.jpg>

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Respect. Protect. Enjoy.

<Plasan and former JARD site status.docx>