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January 22, 2008

BY EMAIL and REGULAR MAIL

Ms. Patty Fairweather
R.I. Department of Environmental
Management
235 Promenade Street
Providence, RI 02908

Mr. Terence Tierney
Department of Attorney General
150 South Main Street
Providence, RI 02903

RE: Hartford Park Tenants Association et al. v. R.I.D.E.M. et al., CA 99-3748

Dear Ms. Fairweather and Mr. Tierney:

I am writing again regarding DEM's failure to comply with the April 13, 2006 Order entered in the above referenced action and the April 13, 2006 Agreement for Resolution of Claims. Below, I suggest ways for the DEM to come into compliance with said Order and Agreement without plaintiffs having to resort to further court action.

1. Court Ordered Remedy

The Court Ordered Remedy required DEM to convene a stakeholder group to address five discrete issues. The stakeholder group was to develop proposals for legislation, regulations or policies addressing these five issues "by consensus"—and in the absence of consensus DEM was to use its "best professional judgment" to develop legislation, policies or regulations and explain in writing "the legal or policy reasons why no action should be taken."

DEM convened an Environmental Equity Stakeholder Group (hereafter, "Stakeholder Group") which met approximately eight times, with the last meeting taking place on December 10, 2007. After the sixth meeting on May 8, 2007, DEM issued in July 2007 a "Draft Guidance Policy for Considering Environmental Justice in the Review of Investigation and Remediation of Contaminated Sites (hereafter, "Draft Policy"). Prior to releasing the Draft Policy DEM never sought consensus in the Stakeholder Group on its provisions, nor gave any written explanation of why certain proposals were not put into the Draft Policy.

Plaintiffs understand that DEM views the Draft Policy as a work in progress, and that DEM will finalize the Draft Policy "as lessons are learned during implementation" to

quote from DEM's Environmental Justice Stakeholder Blog entry on July 19, 2007. While Plaintiffs are pleased that DEM developed the Draft Policy and considers it a work in progress, the policy fails to address several of the discrete issues that the Stakeholder Group was charged to address. Plaintiffs communicated this view at a meeting with DEM staff on September 28, 2007; and as agreed at that meeting plaintiffs submitted to DEM on October 12, 2007 a proposed agenda for a future stakeholder group meeting that was designed to get the stakeholder group to address those issues. At the stakeholder group meeting held on December 10, 2007 plaintiffs' counsel again expressed concern that the work of the Stakeholder Group was still not complete, and that the Draft Policy fails to address all five issues. DEM has not scheduled any further meetings of the stakeholder group.

Of the five issues the Stakeholder Group was charged to develop proposals on, the Draft Policy fails to address three of them:

- How DEM takes a "hard look" at environmental equity issues when reviewing clean up plans for contaminated sites;
- The establishment of a Community Involvement Process during the investigation and clean up of contaminated sites at any location in Rhode Island; and
- The standard for DEM's taking jurisdiction over a site when it has knowledge of potential contamination at a site.

In addition to the shortcomings in the Draft Policy, DEM made no effort to involve the Stakeholder Group in the development of legislation or regulations regarding any of the five issues listed in the Court Ordered Remedy.

To bring DEM in compliance with the Court Ordered Remedy plaintiffs suggests that DEM do the following:

1. Within 20 days, reconvene the Stakeholder Group in a meeting that includes items 2 and 3 of the Agenda proposed by Plaintiffs on October 12, 2007 (a copy of that agenda is enclosed for your convenience);
2. Divide the Stakeholder Group into five committees, one committee for each of the five issues listed in the Court Ordered Remedy;
3. Charge the five committees to meet on a bi-weekly basis (or other regular basis) to develop proposals to include in the Draft Policy to address the three issues mentioned above, and to develop proposals for legislation and regulations on all five issues in the Court Ordered Remedy;
4. Set a deadline for each committee to develop consensus on proposed legislation, regulations or policies or to submit proposals on which there is no consensus;
5. Set a deadline by which the entire Stakeholder Group will review the proposals developed by each committee and make recommendations with or without consensus on the proposals;
6. Within ninety days of the Stakeholder Group's developing one or more proposal(s) by consensus, taking steps to enact the same in accordance

with the Court Ordered Remedy; and for proposals on which the Stakeholder Group fails to reach consensus, taking the steps set forth in the Court Ordered Remedy (either promulgating regulations, legislation or policy or giving a written explanation as to why DEM believes no action should be taken).

2. Agreed Upon Resolution of Claims

Paragraph 1

Paragraph 1(C) requires DEM to send a written notice in English and Spanish to a variety of stakeholders about the location of the internet based document repository DEM created about the Springfield Street Schools site. As of our meeting on October 12, 2007 no notice had gone out. We agreed at the October 12, 2007 meeting to try to coordinate the sending of these notices with the City, which was also ordered to send notice about the location of the internet document repository to students and workers at the schools. By letter dated January 15, 2008, plaintiffs requested that the City coordinate with DEM the sending of notices about the location of the internet document repository. Should the City not respond or cooperate with plaintiffs' request, plaintiffs suggest that DEM send the required notice by March 15, 2008.

Paragraph 3

Paragraph 3 required DEM to address the issues and observations in a letter I sent to DEM's attorneys on December 23, 2003 regarding conditions at the Springfield Street Schools. While repairs to the school grounds have finally been made, the City has taken no action to further investigate high levels of carbon dioxide found repeatedly in soil gas samples and air samples taken off the soil gas removal systems during the quarterly monitoring tests. The Remedial Action Work Plan for the Springfield Street Schools states that when the action levels for carbon dioxide are exceeded, "a more thorough assessment will be performed." That thorough assessment is to include the installation of additional soil gas monitoring wells and/or more extensive sampling to further define the extent and degree of the gas impacts. (Remedial Action Work Plan, Appendix C, pp. 7-8). Plaintiffs suggest that DEM order the City to undertake an assessment of carbon dioxide inside the school buildings to determine whether carbon dioxide off-gassing from the dump is impacting on indoor air quality. Such an assessment should include indoor air sampling with a device that can detect lower levels of carbon dioxide than the hand-held Lantec device used by LFR, the City's environmental consultants, which can only detect levels at or exceeding the action level.

Paragraph 4

Paragraph 4 required DEM to undertake a review of the approved remedial action at the School Site "to assure that human health and the environment are being protected by the remedial action being implemented" by August of 2006. This review was to follow a format used by the United States Environmental Protection Agency to evaluate approved remedial actions at Superfund sites under authority provided in Section 121 of

CERCLA and implementing regulations found at 40 CFR §300.430(f)(iv)(2). Moreover, paragraph 4 required DEM to notify various stakeholders of the findings of the five year review. To date, DEM has not conducted the required five year review (and, thus, could not have notified the stakeholders of the review's findings). In prior meetings with DEM plaintiffs stated their willingness to give DEM time to come up with the proper protocol and format for the review; but the lack of action on DEM's part requires plaintiffs to change its approach. Thus, plaintiffs suggest that DEM devise a format for the required review within 30 days time and to complete the review within 90 days time. To assist with developing a format for the five year review DEM may want to consult EPA's Comprehensive Five-Year Review Guidance, OSWER Directive 9355.7-03B-P, June 2001, available on the Internet at:
<http://www.epa.gov/superfund/accomp/5year/guidance.pdf>

Plaintiffs request that DEM respond to this letter in writing within thirty days of the receipt of this letter. If DEM prefers to meet to discuss the points raised in this letter please notify me of this within two weeks of receipt of this letter. Thank you in advance for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Fischbach', with a large, sweeping flourish at the end.

Steven Fischbach
Community Lawyer / Unit Head

Enclosure

CC: Terry Gray (email only)
Kwabena Kyei-Aboagye (email only)

PROPOSED AGENDA FOR
ENVIRONMENTAL EQUITY STAKEHOLDER GROUP
TARGET DATE: NOVEMBER, 2007

1. Update on DEM's Implementation of Environmental Equity Guidance Policy
 - a. Training of DEM Staff
 - b. Forum held for Environmental Consultants
 - c. Feedback received on Guidance Policy

2. Unresolved Issues in Guidance Policy
 - a. How DEM takes a "hard look" at environmental equity issues when reviewing clean up plans for contaminated sites
 - b. Establishing a Community Involvement Process during the investigation and clean up of contaminated sites at any location in RI
 - c. Standard for DEM's taking jurisdiction over a site when it has knowledge of potential contamination at a site

3. Next Steps
 - a. Addressing unresolved issues in Guidance Policy
 - b. Developing Regulations and/or Legislation to regarding the five issues the stakeholder group is required to address
 - c. Planning additional public forums