

a wetland inventory has been completed and is on file with the agricultural extension office, register of deeds, and county clerk, and that property owners may be subject to regulation under this part.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.

324.30323 Legal rights or authority not abrogated; action to determine if property taken without just compensation; court order; limitation on value of property.

Sec. 30323. (1) This part shall not be construed to abrogate rights or authority otherwise provided by law.

(2) For the purposes of determining if there has been a taking of property without just compensation under state law, an owner of property who has sought and been denied a permit from the state or from a local unit of government that adopts an ordinance pursuant to section 30307(4), who has been made subject to modifications or conditions in the permit under this part, or who has been made subject to the action or inaction of the department pursuant to this part or the action or inaction of a local unit of government that adopts an ordinance pursuant to section 30307(4) may file an action in a court of competent jurisdiction.

(3) If the court determines that an action of the department or a local unit of government pursuant to this part or an ordinance authorized pursuant to section 30307(4) constitutes a taking of the property of a person, then the court shall order the department or the local unit of government, at the department's or the local unit of government's option, as applicable, to do 1 or more of the following:

(a) Compensate the property owner for the full amount of the lost value.

(b) Purchase the property in the public interest as determined before its value was affected by this part or the local ordinance authorized under section 30307(4) or the action or inaction of the department pursuant to this part or the local unit of government pursuant to its ordinance.

(c) Modify its action or inaction with respect to the property so as to minimize the detrimental affect to the property's value.

(4) For the purposes of this section, the value of the property may not exceed that share of the state equalized valuation of the total parcel that the area in dispute occupies of the total parcel of land, multiplied by 2, as determined by an inspection of the most recent assessment roll of the township or city in which the parcel is located.

History: Add. 1995, Act 59, Imd. Eff. May 24, 1995.



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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 26, 2002

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AUG 02 2002

MDNR
Office of Property Mgmt.

Ms. Kelli Sobel
Deputy Director for Administration
Michigan Department of Natural Resources
530 West Allegan Street
Lansing, MI 48933

SUBJECT: EVALUATION OF MICHIGAN DEPARTMENT OF NATURAL RESOURCES'
BAY COUNTY TOBICO MARSH LAND AS STATE GAME AREA FOR
DECOMMISSIONING AND RELATED PURPOSES

Dear Ms. Sobel:

On April 9, 2002, the U.S. Nuclear Regulatory Commission (NRC) staff met with the representatives of the Michigan Department of Natural Resources (MDNR) at the request of the MDNR staff to discuss radiological dose modeling scenario(s) and related issues in connection with the preparation of the decommissioning plan (DP) for the MDNR Site Decommissioning Management Plan (SDMP) site in Bay County, MI. Ms. Denise Gruben, MDNR's Project Manager, participated in the meeting via teleconference. We issued a meeting report on May 6, 2002. We have also reviewed Ms. Denise Gruben's letter of June 27, 2002, addressing the meeting report and other issues.

The purpose of this letter is to obtain further information to establish the basis for dose modeling at the Tobico Marsh SDMP site which is part of the State Game Area (SGA). Given that radiological dose assessments for contaminated sites should be performed utilizing realistic scenarios within the first 1000-year period after decommissioning (10 CFR 20.1401(d)), the resident farmer scenario is often chosen as the default land use. However, the MDNR has indicated that it plans to limit the dose assessment using a recreational, e.g., hunter/fisher/naturalist, scenario for its Tobico Marsh SGA site and plans on requesting unrestricted release. As indicated in its letter of June 27, 2002, MDNR has limited the site to recreational use based on a suite of arguments, including governmental restrictions on the land use and natural impediments to development.

Based on the clarifications in Ms. Gruben's June 27, 2002, letter, it appears that MDNR's position for limiting the scenarios to hunter/fisher/naturalist is based in part on "the current and foreseeable physical conditions existing in and around the site." Specifically, MDNR's position is that the proposed scenario "does not rely on the longevity of any one institutional control or restriction, but rather is bolstered by a suite of in place, multi-agency impediments and physical site characteristics - both of which are impediments to future development." There remains a question as to the nature of these impediments and physical characteristics which MDNR is relying on to support its position that the "reasonable potential future uses of this site consist of recreational uses."

Given the information provided to date, MDNR's choice of scenario appears realistic; however, unrestricted use scenarios are normally based solely on the physical characteristics such as natural impediments of the land that may constrain its use for future development. Therefore, to better understand the bases for the scenario and the potential for future use of this land given its nature, please address the following issues:

- 1) Is it realistically credible that the land in the absence of any of the "multiple agency impediments," given its physical characteristics, would not be used for residential use or farming for the foreseeable future? In providing this portion of your response, consider past uses of the land, suitability of the land for different uses and, what the land could be used for, considering all adjacent uses and expected population growth with the potential for filling in wet lands, draining swamps, etc. that may affect the use of site in the future.
- 2) As to the "multi agency impediments," i.e., institutional controls, to the extent they form part of the basis to support your recreational scenario, do they have an objective of lasting over a thousand year period and are they reasonably expected to be effective into the foreseeable future to preserve the basis for the dose scenario? In providing this portion of your response, you should address the specific "multiple layers" which will assist in limiting future uses of the land. For each layer, please:
 - (1) Describe the nature of the restriction;
 - (2) Provide a copy of the documentation or a reference to the documentation that forms the basis for the restriction, e.g., regulation or statute;
 - (3) If the restriction provides state officials with the discretion to impose the restriction, what is the basis for exercising that discretion? How can the restriction be modified? Does it require approval of the state legislature or does a state official have the right to modify the restriction and if so under what circumstances?

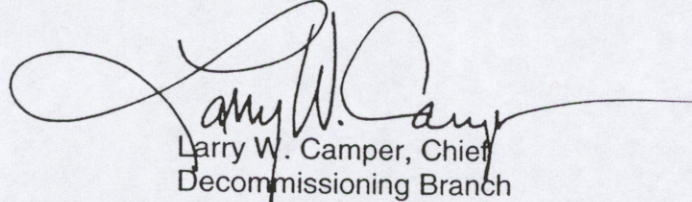
Please provide any other information that you believe is relevant to your position that the proposed scenario will remain applicable for the foreseeable future. In addition, ~~please explain why you believe this release should be based on 10 CFR 20.1402 and not 20.1403.~~ In preparing your response you should consider the guidance in the NRC's publication NMSS Decommissioning Standard Review Plan (NUREG-1727).

There is no precedent that involves an unrestricted release site that depends in part on restrictions. If you desire, we are prepared to discuss this matter further with you before you submit your response.

Other items related to Ms. Gruben's June 27, 2002, letter pertaining to groundwater and pathway related issues, RESRAD dose modeling, use of site-specific data and exposure assumptions, integrity of the slurry wall, and related technical and non-technical issues will be dealt with in a separate letter to Ms. Denise Gruben, MDNR Project Manager, or as part of the request for additional information during the DP review. We also thank Ms. Gruben for providing information on some items to further our understanding of MDNR's position.

If you have any questions regarding this information, please contact Sam Nalluswami, of my staff, at (301) 415-6694.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry W. Camper". The signature is fluid and cursive, with a large loop on the left side and a long horizontal stroke extending to the right.

Larry W. Camper, Chief
Decommissioning Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

cc: MDNR Distribution List
Denise Gruben, MDNR