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Fate of 'Easterly's pile' at ArcelorMittal remains unknown

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BURNS HARBOR -- They call it "Easterly's pile."

The heaping mounds of metallic-gray, lumpy steelmaking waste and rusty metal pieces tower up to 35 feet in the air, spread across a 33-acre sandy area in the northeast corner of ArcelorMittal's Burns Harbor property.

Parts of the massive, dirty heaps have sat directly on the ground for up to 24 years, exposed to the elements with no protection of air, soil or the groundwater that flows north to Lake Michigan just a foot below. The waste contains toxics like lead, chromium, cadmium, silver and nickel in concentrations high enough to require disposal in a landfill.

Hidden behind a row of trees 200 feet from the Indiana Dunes National Lakeshore and the waters of Lake Michigan, the waste doesn't attract much attention. Even at the Indiana Department of Environmental Management, managers have turned a blind eye -- perhaps because ArcelorMittal representatives say the piles have a connection to the man in charge of IDEM.

"They said, 'We call this "Easterly's pile" because he's the one who started it.' And it's never stopped growing," said a confidential source within IDEM.

The name of the piles refers to IDEM Commissioner Tom Easterly, the state's highest environmental official. From 1994 to 2000, he was the top environmental manager at one of ArcelorMittal's predecessors, Bethlehem Steel Corp.

The company recycled various kinds of waste in the plant in the mid-1980s. But under Easterly's watch, Bethlehem reported to the U.S. Environmental Protection Agency in 1999 that although it had stopped recycling 14 years earlier, it still had treatment plant sludge and other waste sitting around in the open.

In 2005, Gov. Mitch Daniels appointed Easterly head of IDEM. As IDEM commissioner, he's now the top official in charge of enforcing against his former employer for open dumping, which is illegal under state and federal law.

But nothing has happened.

No enforcement from IDEM

An IDEM inspector visited the facility twice in 2008. The second time, he referred the company to IDEM enforcement. That's IDEM's way to force the company to comply with the law. Records show managers ignored the referral.

"They (ArcelorMittal) went through two inspections. They should have been referred... Anybody else would have been referred," the IDEM source said.

The source said IDEM managers never explained why the agency didn't enforce against the company for open dumping.

"They never said the reason," the source said. "We're handling this differently because Easterly used to work there. That's the assumption."

IDEM spokesman Barry Sneed said in an e-mail, "the enforcement resolution is the construction of the landfill to properly dispose of the waste."

Sources allege coverup

Records related to the case are hard to come by. Records on the waste piles don't make it into IDEM's searchable online database unless specifically requested. Once they do, they are filed differently than documents for other area steel mills and virtually impossible for outsiders to find.

The Post-Tribune requested internal e-mails between the inspector and his managers after his inspection and referral to enforcement. The e-mails concern how the case should be handled. IDEM refused to release them.

Kim Ferraro, an environmental attorney for the Legal Environmental Aid Foundation in Valparaiso, reviewed documents related to the case. She said significant pieces of the information are missing.

"Those significant pieces point to a concerted, intentional effort on behalf of IDEM to cover up Easterly's pile to the public," she said. "The head of the agency that has the responsibility to regulate waste in Indiana is the person that, by all the evidence I've looked at, is the person that created this waste pile. So

it all kind of makes sense that they're engaging in this coverup, if you will, to protect him."First, the company submitted an informal "draft" permit application for a landfill to dispose of the waste. As a draft, it would not be subject to public notice or review or scrutiny, she noted. For a year, top officials at IDEM gave ArcelorMittal special treatment in the form of "free consulting" help on the draft, the IDEM source said. To the source's knowledge, no other facility has ever been allowed to submit a full "draft" application for a landfill permit.

Then, when ArcelorMittal finally submitted an official permit application, the company disclosed contents and location of other stored waste to be landfilled, but disregarded

requirements to disclose what pollutants are in the northeast pile. The application never explicitly mentions that the waste exists.

To landfill or not to landfill

The Post-Tribune asked ArcelorMittal whether it intends to landfill the piles.

"There are multiple uses for the materials in this area, including recycling, slag handling, processing and landfilling," ArcelorMittal spokesman Adam Warrington replied in an e-mail.

Asked where in the application the waste is mentioned and whether the company submitted tests of the waste to IDEM, Warrington referred to a general section that mentions all sources of waste to be landfilled.

IDEM, on the other hand, is not under the impression that ArcelorMittal is planning to landfill the material in the northeast area.

"ArcelorMittal did not indicate in their restricted waste landfill application that the area ... would be part of the waste stream going into the landfill," Sneed said in an e-mail.

Critics question why the company voluntarily applied for the most restrictive type of landfill when none of the toxics in the waste the company said it intends to landfill are concentrated enough to require that much protection. However, sampling results on Easterly's pile from 10 years ago obtained by the Post-Tribune show levels of lead were high enough to require the most restrictive landfill type.

No involvement from EPA

Without enforcement, IDEM appears to have accepted that some of the waste may not be removed until two to three years from now when the landfill is operational and other waste has been disposed of.

Meanwhile, the U.S. Environmental Protection Agency is staying out of the case. One manager said it's her impression that the company is recycling the waste.

"The ... area ... is what we are considering a staging area, not a waste pile," said Margaret Guerriero, director of the land and chemical division at EPA Region 5. "This area is currently used to stage material for reuse in the operation of the blast furnace. The pile that is currently in this area is being reused."

Under federal law, a facility does not need a permit to stockpile waste for recycling.

Bethlehem Steel's 1999 report to the EPA under Easterly's watch stated that the company did, indeed, recycle material from the piles in the early to mid-1980s. But the report also stated some waste remained in the area in 1999, 14 years after the company stopped recycling it.

Ferraro said solid waste stockpiled on open ground longer than six months is presumed to be open dumped under Indiana law unless IDEM gives permission to stockpile it longer. The report said some waste was still there in 1999 -- five years into Easterly's tenure as environmental manager.

ArcelorMittal employee and Save the Dunes member Larry Davis said the company recycles less than half the waste it generates because the zinc content eventually gets too high.

"If they'd been recycling it, we'd have shrinking piles of it. The evidence of it is apparent to the naked eye. You go (to) Google Earth and you can see it's not being recycled. It's gone from one to four places where they've done dumping of multiple million pounds of stuff."

Guerriero said she does not consider the waste piles open dumped. She said because contaminants in the waste don't reach hazardous levels, EPA does not have jurisdiction in the case, only IDEM.

Ferraro disagreed, pointing to provisions of federal law that specifically prohibit open dumping of hazardous or solid waste. The law also states EPA can take action to enforce the law if the state doesn't.

"The public shouldn't be very happy that the environmental chief regulator of the state of Indiana caused an open dump and has continued to allow it to exist, without cleanup, without repercussions, with impunity," she said. "That should not be tolerated."

The Post-Tribune requested an interview with Commissioner Easterly to give him an opportunity to respond, but IDEM spokeswoman Amy Hartsock said he "isn't available." The Post-Tribune asked for a statement, but IDEM declined to submit one.

BOXES:

About this story

This two-day package is a result of a several-month investigation by the Post-Tribune.

Reporter Gitte Laasby examined the 3,000-page landfill permit application from ArcelorMittal and hundreds of pages of historical records about Bethlehem Steel.

She also requested public records from the Indiana Department of Environmental Management and the U.S. Environmental Protection Agency, including e-mails between managers, inspection reports, hazardous waste investigation reports, maps and correspondence between ArcelorMittal and IDEM.

A confidential source at IDEM also provided information.

Coming Monday

Post-Tribune reporter Gitte Laasby follows up with reporting about what is in the waste, its potential impact on the environment and the difficulty in finding ArcelorMittal environmental records inside of IDEM.

If you go

Public meeting

What: ArcelorMittal public meeting on its proposed landfill to provide information about what's in the landfill application.

When: 3 p.m. Wednesday, Nov. 18

Where: Burns Harbor Town Hall, 1240 N. Boo Road.

Public hearing

What: The Indiana Department of Environmental Management public hearing on ArcelorMittal's proposed landfill.

When: 6 to 9 p.m. Wednesday, Dec. 2.

Where: Northwestern Indiana Regional Planning Commission auditorium, 6100 South Port Road, Portage.

View the permit

To read ArcelorMittal's 3,000-page landfill permit application, visit the Westchester Public Library, Indiana Avenue in Chesterton. You can also visit IDEM's virtual file cabinet online <http://bit.ly/19tbT4>. Under "facility," search for "Deerfield Storage Facility." Look at the first four documents.

Timeline

August 1982-June 1985: Bethlehem Steel uses the northeast corner of its property to dry and store secondary wastewater treatment plant sludge before it's recycled at the sinter plant.

1983 and 1986: Basic oxygen furnace sludge and blast furnace filter cake are temporarily stockpiled in the area. Stockpiled blast furnace waste and flue dust is removed and recycled at the sinter plant, but small remnants remain in 1999.

1990: Most of the stockpiled sewage treatment plant sludge is removed from the northeast corner along with mill scale. Some materials are recycled, but a small mixture of secondary wastewater treatment plant sludge and mill scale are still in the area in 1999.

1991: A small volume of basic oxygen furnace and blast furnace waste are deposited in the northeast corner. The material is mixed with basic oxygen furnace sludge and recycled in the sinter plant.

September 1994 - April 2000: Tom Easterly is superintendent of the environmental services department at Bethlehem Steel in Burns Harbor. The position makes him responsible for environmental issues at the plant.

November 1999: Bethlehem Steel reports to the U.S. Environmental Protection Agency that some waste remains in the area, including secondary wastewater treatment plant sludge, mill scale and blast furnace filter waste.

October 2001: Bethlehem Steel Corp. files for bankruptcy.

May 2003: International Steel Group acquires bankrupt Bethlehem Steel.

April 2005: Mittal Steel acquires International Steel Group.

August 2006: ArcelorMittal acquires Mittal Steel.

Feb. 5 and 6, 2008: IDEM inspector visits ArcelorMittal and finds violations. He points out the company "has exhausted all economical avenues to recycle" wastewater treatment plant sludge and is still dumping and storing material openly. The inspector says it's his understanding the problem will be addressed through a landfill permit application.

July 3, 2008: ArcelorMittal submits an unofficial draft landfill permit application to IDEM, asking to landfill 1.5 million to 1.8 million tons of stockpiled secondary wastewater treatment plant sludge plus 150,000 to 400,000 tons of sludge from ongoing operations from seven sources. ArcelorMittal does not mention Easterly's pile. Because the application is referred to as a draft, it does not trigger public notice requirements.

Nov. 5 and 6, 2008: IDEM inspector visits ArcelorMittal again and finds waste dumped openly. He cites the facility for operating a landfill without a permit. This time, he reports the violations so the law can be enforced, but managers overlook his referral.

June 17, 2009: ArcelorMittal submits an official landfill permit application. It mentions 11 kinds of waste to be landfilled, including 700,000 tons of stockpiled blast furnace waste that's been stored directly on the ground less than 500 feet from Lake Michigan for years. The company continues to communicate with IDEM, where staff points out that the company has not submitted test results for every type of waste the company wants to landfill.

Source: U.S. Environmental Protection Agency, Indiana Department of Environmental Management