



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20542-0001

September 24, 1999

William J. Sinclair, Director
Division of Radiation Control
Department of Environmental Quality
169 North 11950 West, P. O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Sinclair:

I am responding to your August 9, 1988 letter concerning the potential management of pre-1978 11e.(2) byproduct material (FUSFAP materials) in the low-level waste disposal cell at the Envirocare of Utah, Inc. facility.

In your letter, you stated that it is not clear whether the Nuclear Regulatory Commission (NRC) would allow pre-1978 11e.(2) byproduct material to be disposed of in a licensed 11e.(2) facility, and if it would, under what conditions the NRC would consider it appropriate. You further stated that you would be interested in the NRC's opinion concerning the disposal of pre-1978 waste in a licensed low-level waste disposal cell as requested by Envirocare.

Under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), which added a new Section 83 to the Atomic Energy Act of 1954, as amended, the NRC does not have authority to regulate pre-1978 11e.(2) byproduct material if the material was not generated by an activity licensed by the NRC on the effective date of UMTRCA (November 8, 1978), or thereafter.

The NRC has not determined that pre-1978 11e.(2) byproduct material may be sent to sites regulated under the Resource Conservation and Recovery Act (RCRA) rather than to disposal sites regulated by the NRC; rather, the NRC has stated only that there are no NRC rules or regulations that preclude disposal of the material at a RCRA facility, and that disposal of the material is subject to the jurisdiction of other Federal and State agencies. There are NRC licensed facilities authorized to accept 11e.(2) byproduct material for direct disposal or to accept or for processing as alternative feed and disposal in their mill tailings impoundments. Envirocare of Utah, Inc. currently holds both an NRC license that allows it to accept some forms of this material directly for disposal in its mill tailings impoundment and a State license that allows it to accept RCRA material. If pre-1978 11e.(2) byproduct material is presented as such to the NRC-licensed Envirocare facility for disposal, Envirocare might comply with all the requirements applicable to disposal of 11e.(2) byproduct material.

The low-level waste disposal cell, licensed by the State of Utah, is covered by regulations compatible with 10 CFR Part 61. Specifically, 10 CFR 61.1 (b) provides that uranium and thorium tailings and waste in quantities "greater than 10,000 kilograms containing more than five (5) millicuries of radium-226" would not be permitted for disposal.

William J. Sinclair

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In the past, the staff has interpreted this quantity to be on a yearly basis and not an absolute amount.

I trust that we have satisfactorily addressed your concerns. Please contact me, should you have any further questions.

Sincerely,



Paul H. Lohaus, Director
Office of State Programs

cc: Charles A. Judd, Envirocare

**DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS**

**COMPLETE STATEMENT
OF
BRIGADIER GENERAL HANS A. VAN WINKLE
DEPUTY COMMANDER FOR CIVIL WORKS**

**BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**ON
H.R. 910, THE SAN GABRIEL BASIN WATER QUALITY INITIATIVE, AND THE
ROLE OF THE CORPS OF ENGINEERS IN THE FORMERLY UTILIZED SITES
REMEDIAL ACTION PROGRAM (FUSRAP)**

**SEPTEMBER 29, 1999
WASHINGTON, D.C.**

INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am General Hans Van Winkle, Deputy Commander for Civil Works, Army Corps of Engineers. I am testifying on behalf of the Honorable Dr. Joseph W. Westphal, Assistant Secretary of the Army for Civil Works. Thank you for this opportunity to discuss the Army Corps of Engineers activities in the area of hazardous, toxic and radioactive waste (HTRW) remediation. My statement will consist of a discussion of the basis for the Corps involvement in the Formerly Utilized Sites Remedial Action Program (FUSRAP) and the status of our efforts there, some words on the future role of the Corps in the HTRW remediation arena, and Department of the Army views on H.R. 910, the San Gabriel Basin Water Quality Initiative.

FUSRAP

The Corps role in the Formerly Utilized Sites Remedial Action Program (FUSRAP) was initially defined in the Fiscal Year (FY) 1998 Energy and Water Development Appropriations Act (Act) where responsibility for executing FUSRAP was transferred to the Corps from the Department of Energy (DOE). In the guidance that accompanied this Act, Congress indicated that it expected the Corps to assume this responsibility with the smallest possible impact on schedules and overall performance and to efficiently complete the projects that remained.

Subsequently, the House and Senate Energy and Water Subcommittee Chairmen provided additional guidance regarding the Corps role in a letter to the Secretaries of Defense and Energy dated November 6, 1997. In this letter, Chairman Domenici and Chairman McDade indicated that the Act was not intended to change the underlying authorities for FUSRAP which

were to remain the responsibility of DOE. Rather, the Act was intended to make the Corps responsible for execution of remediation at the currently eligible sites. In addition, the Chairmen directed that the Corps and DOE enter into a Memorandum of Understanding (MOU) to define the relationships necessary for the underlying program authorities to be extended to the Corps for program execution and to allocate roles and responsibilities for FUSRAP between the two agencies.

In accordance with this direction, the Corps and DOE executed an MOU in March 1999 that defines the roles of the Corps and DOE with regard to FUSRAP. Briefly, this MOU assigns to DOE responsibility for previously completed sites, for real estate interests previously acquired to execute FUSRAP, for long term operation and maintenance, and certain responsibilities regarding the designation of any potential additional sites. The Corps, on the other hand, is responsible for completing remediation at sites which were not completed as of October 13, 1997, for operation and maintenance during the first two years following completion of remediation, for the evaluation of potential additional sites to determine whether cleanup is warranted, and for programming all FUSRAP funding requirements.

The Corps is executing FUSRAP in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). The application of CERCLA was implicit in the FY 1998 Energy and Water Development Appropriations Act, which transferred lead agency responsibility for FUSRAP cleanups to the Corps, and was made explicit in the FY 1999 Energy and Water Development Appropriations Act.

As the lead agency under CERCLA, the Corps is responsible for the following:

- defining the problem,
- determining the applicable or relevant and appropriate regulations governing cleanup, evaluating cleanup strategies, and
- coordinating proposed cleanup plans with the U.S. Environmental Protection Agency (EPA) on National Priority List sites, as well as with state and local regulatory agencies and the general public on all FUSRAP sites.

Under CERCLA the Federal lead agency is exempt from licensing and permitting requirements for work done on site, but not from the substantive requirements of such regulations. The Corps works with all applicable Federal regulatory agencies including EPA and the Nuclear Regulatory Commission (NRC), and all applicable state and local regulatory agencies to ensure that the intent of all applicable regulations are fully met. While CERCLA exempts the Corps from license and permit requirements on site, it does not provide such an exemption for sites where the Corps disposes of FUSRAP material. Furthermore, unlike DOE, the Corps is not self-regulating under the Atomic Energy Act (AEA) and cannot establish its own disposal sites. As a result, the Corps utilizes disposal sites licensed by the NRC or permitted under the Resource Conservation Recovery Act. In addition, the Corps must coordinate disposals with the applicable regulatory authorities of the state where the disposal site is located, with the EPA offsite coordinator, and with the NRC as appropriate.

Program Execution Status

There are currently 19 sites in 8 states where remediation has not been completed, plus two potential additional sites which DOE recently identified for possible inclusion in the FUSRAP program. Four sites are in the St. Louis metropolitan area; five sites are in the Buffalo metropolitan area; three sites are in northern New Jersey; four sites, including the two potential additional sites in Ohio, and the remaining sites are scattered in Connecticut, Massachusetts, Maryland, and elsewhere in New York and New Jersey. During FY 1999 the Corps completed remedial action at two sites. Other achievements in FY 1999 include the awarding of a multi-year, multi-site disposal contract that will realize cost savings over current disposal contracts, principally due to the competition for FUSRAP disposal sites that the competitive bidding produced. In addition, it should be noted that the General Accounting Office reported, in February 1999, that for most FUSRAP sites Corps milestones were achieved, that the Corps realized reductions in costs of disposing of contaminated materials, and finally that the Corps completed a smooth and rapid transition from DOE.

FUTURE ROLE OF CORPS IN HTRW REMEDIATION

The Corps is proud of its accomplishments to date under the FUSRAP authority. We will continue our support of Department of Defense (DOD) programs that involve HTRW remediation. For DOD, the Corps manages on an annual basis, \$225 million in Formerly Used Defense Sites work, \$421 million in Installation Restoration Program work, and \$197 million in remediation work associated with Base Closures. The Corps is also assisting other Federal agencies doing important cleanup and reuse of formerly contaminated areas. This year, we performed construction management for \$300 million of EPA's total \$550 million Superfund construction program. This is out of a total of \$1.488 billion for the overall EPA FY 1999 Superfund program. Where there is an overlap with traditional Corps civil works and regulatory responsibilities, the support has been especially successful. An illustration of this intersection between our traditional responsibilities and these newer HTRW challenges is the Corps dredging and disposing of contaminated material in a harbor or channel and where urban cleanup is occurring at sites located adjacent to waterways maintained for navigation. While there appears to be a growing need to develop comprehensive solutions to HTRW problems, and we anticipate that the Corps HTRW remediation expertise will continue to be available for supporting other members of the Federal family at their request, we do not support making HTRW a primary mission of the Corps of Engineers.

H.R. 910

We appreciate this opportunity to provide the views of the Department of the Army on H.R. 910, the San Gabriel Basin Water Quality Initiative. The San Gabriel Groundwater Basin lies within the San Gabriel Valley in eastern Los Angeles County, California. Over one million people call the San Gabriel Valley home and, in any given year, as much as 80-85 percent of their water needs are met with groundwater sources. In 1984, the EPA identified four large areas of groundwater contamination in the San Gabriel Valley; each area is a separate Superfund site. More recently, there are major concerns regarding the impacts to the San Gabriel Groundwater Basin from contamination by perchlorate, a highly water soluble anion discovered there in 1997,

and the potential for its movement into the Central Basin groundwater supply, which supplies water to another 1.5 million people. Perchlorate is a chemical used in the manufacturing of solid rocket fuel and other explosives, and in extremely high doses has been linked to thyroid disorders.

H.R. 910 would authorize the Secretary of the Army to assist in implementing water quality projects providing a balanced, long term solution to the San Gabriel groundwater contamination problem. The bill would establish a restoration fund administered jointly by the Secretary of the Army and the San Gabriel Valley Water Quality Authority. The principal and interest accumulated in that restoration fund would be used to construct, operate and maintain water treatment facilities in the cleanup and reduction of the spread of chemical contaminants in the groundwater. H.R. 910 would also authorize \$25 million for the Secretary to participate in studies and in planning and design of projects to offer a long-term solution to the problem of ground water contamination caused by perchlorate, without specifying whether these studies or projects should be limited to, or focused upon, the San Gabriel Basin groundwater problem.

While we appreciate the serious nature of the problems of groundwater contamination, water supply, and water reliability affecting the San Gabriel groundwater basin in California, the Department of the Army opposes H.R. 910. The San Gabriel Valley area has been listed on the Superfund National Priorities List since 1984. While the Corps of Engineers has certain responsibilities under the FUSRAP program and provides technical assistance to other Federal agencies both within and outside DOD at their request, we do not believe that the Corps is the appropriate Federal agency to implement the objectives of H.R. 910. We also have concerns about the basic approach proposed in this bill. If there is a need to revise or expand upon existing Federal authorities, it would seem preferable to do so programmatically rather than approach the issue one basin at a time.

In addition, we object to the establishment of a separate Treasury account to address a groundwater pollution problem facing this one community, which would involve additional administrative burdens and could lead to a proliferation of such accounts covering a multiplicity of communities. We also oppose the provision that would allow interest to accumulate on any unexpended balances in that account. The Federal Government should not have to pay interest on an unexpended appropriation of taxpayer money. Finally, while we oppose H.R. 910, we would recommend that Congress include language in any such legislation to ensure that it does not relieve potentially responsible parties from their underlying responsibility under CERCLA.

CONCLUSION

The Corps has been increasingly involved in recent years with efforts to protect and restore the environment. We approach the challenges created by the need to clean up contaminated systems with the same high degree of enthusiasm that we apply to everything we do. Mr. Chairman, this concludes my testimony. I would be pleased to answer any questions you or the Subcommittee may have.