DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

Environmental Division

31 January 2002

Mr. Larry Camper
Chief, Decommissioning Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Camper:

At a meeting between Nuclear Regulatory Commission (NRC) and U.S. Army Corps of Engineers (Corps) staff on December 19, 2001, the following matters were clarified regarding application of Comprehensive Environmental Response Compensation and Liability Act (CERCLA) response actions to Formerly Utilized Sites Remedial Action Program (FUSRAP) site cleanups.

a. A CERCLA response action commences at a FUSRAP site following acceptance of a Department of Energy FUSRAP eligibility determination. A CERCLA response action includes removal and remedial actions.

b. As the lead federal agency for a FUSRAP site cleanup, the Corps is the agency responsible for protection of the public health and safety from radiological and chemical hazards associated with FUSRAP materials at a FUSRAP site, consistent with the requirements of CERCLA. Depending on the nature of the Corps' involvement in a particular response action, the Corps may perform the work or the Corps may oversee a private responsible party performing the work. For a privately-owned site, if the Corps has not begun physical cleanup work on site, or if the private party is not subject to an enforceable consent decree, and the party fails to respond to Corps health and safety recommendations, the Corps will act through an agency, such as the Occupational Safety and Health Administration or an appropriate state agency, to enforce health and safety requirements.

c. The permit waiver provision of CERCLA Section 121(e) (42 U.S.C. § 9621(e)) applies to Corps FUSRAP site response actions or response actions conducted by a private party subject to an enforceable consent decree signed by the Attorney General or designee, starting with commencement of a CERCLA response action and continuing through completion of the response action. Thus, on-site activities related to the Corps' FUSRAP responsibility to clean up Atomic Energy Act materials do not require NRC regulation.

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d. In carrying out its radioactive material cleanup responsibilities under FUSRAP, the Corps uses established health and safety standards which are at least as stringent as NRC's requirements.

Please call Tomiann McDaniel at (202) 761-4363, if you have additional questions on these matters.

Sincerely,

Patricia A. Rivers

Patricia A. Rivers, P.E.
Chief, Environmental Division
Directorate of Military Programs

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