



Pennsylvania Department of Environmental Protection

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August 24, 2001

Bureau of Radiation Protection

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Mr. Raymond L. Pilon
Buffalo District Office
U. S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

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Re: FUSRAP Waste Disposal in Pennsylvania

Dear Mr. Pilon:

Thank you for your letter of April 25, 2001, regarding disposal of FUSRAP site remediation waste in Pennsylvania. As noted in my original letter to you on March 13, 2001, the PA Department of Environmental Protection (Department) was concerned about the lack of information provided to the Lakeview Landfill in Erie, PA with respect to the September 1998 "Building 30" demolition waste from the FUSRAP site in Tonawanda, New York. In particular, our concerns related to data provided to Lakeview Landfill after the disposal, where only 5% of the surfaces being "free released" were surveyed, with many of the results having meaningless large negative values. In your response on April 25, you agreed with our concerns and the need to perform some extensive surveys. As a followup, we hereby request a detailed summary report of all solid or liquid waste from a FUSRAP site at any time previously disposed of in Pennsylvania, noting the site shipped from, waste volume/mass, radiological and hazmat sample/survey data, location shipped to, and disposal dates.

You may be aware that the Army Corps of Engineers' (ACoE) contractor, IT Corporation of Tonawanda, New York, has discussed the disposal of waste from the Linde FUSRAP site with Mill Service, Inc. of Yukon, Pennsylvania. Mill Service/Yukon recently submitted to the Department a Form U Request to dispose of this material. Although this request for disposal authorization has been withdrawn, the Department was prepared to deny the requested authorization.

Our denial of the Mill Service/Yukon request would have been based, in part, upon our ongoing assessment of the FUSRAP program under the ACoE, which has raised numerous concerns related to your cleanup criteria and characterization of waste generated. Specifically, it is our conclusion through extensive document review and discussions with the U.S. Department of Energy, Nuclear Regulatory Commission and Environmental Protection Agency – that the radiologically contaminated waste resulting from any FUSRAP remediation should be subject to the environmental, health and safety safeguards established by the federal Atomic Energy Act (as amended), and/or equivalent state statute. Regardless of the transfer of programmatic responsibility and funding for the onsite FUSRAP cleanups



to the ACoE, the legal authority and responsibility to protect the public and environment from offsite waste disposal has not been established. The DOE clearly had such authority and responsibility when it had management control over the FUSRAP sites, and in 1983, then DOE Secretary Hodel advised the National Governors' Association that FUSRAP solid waste "qualifies as byproduct material."

Thus, given the above DOE statement regarding waste classification, and other documents related to FUSRAP site cleanups (e.g., Linde Record of Decision), it is our conclusion that any radiologically contaminated soils, building debris, etc., generated during a FUSRAP site cleanup is prohibited from disposal in the Commonwealth under the Department's regulations in Title 25 Chapters 271 through 297. These regulations generally prohibit the disposal of all byproduct material and low-level radioactive waste at Pennsylvania solid waste disposal facilities.

In addition, please be advised that the Department's regulations in Title 25 Chapter 217 do not state an exempt concentration for radium-226. Therefore, Pennsylvania law authorizes the Department to require any person who intends to possess more than 0.1 microcuries of radium-226 (including Mill Service/Yukon, or any other potential recipient of ACoE's FUSRAP material) to first apply for and obtain a site-specific radioactive materials license. However, even should a possession license be granted, in-state disposal of such waste would be prohibited as either byproduct material or low level waste, under the Department's regulations in Title 25 Chapters 271 through 297, our Low Level Waste Act, and our Appalachian Compact. In this regard, please inform all ACoE contractors and potential contractors that violations of Pennsylvania's Radiation Protection Act, Low Level Waste Act, and Solid Waste Management Act, or the regulations promulgated thereunder, may subject the violator to civil penalties of up to \$25,000 per violation, per day.

Should the ACoE wish to dispose of "free released" FUSRAP site waste in this State, we require detailed sampling plans and rigorous analyses for all the waste streams. Additionally, arrangements are required by our Radiation Protection Act to reimburse the Department for its expenses in reviewing plans, procedures and data. Further, the waste would have to meet recognized criteria for "free release," i.e., NRC Reg Guide 1.86 for surface contamination, and related published NRC "screening values" for volume contaminated waste. In this regard, to date, the ACoE's and its contractors have not demonstrated to us the basic technical rigor we would expect for the "free release" of waste to an unlicensed Pennsylvania solid waste disposal facility. For example, in addition to the above noted Lakeview Landfill data, the recent Mill Service/Yukon request included analysis of 18 samples for 30,000,000 pounds of waste, and a similar request in 1999 to dispose of 31,000 cubic yards of soil from the Middlesex, New Jersey site included only 20 sample results. Even from the limited radiological samples and data provided to the Department for these requests, it is clear that radium-226 concentrations well exceed normal background and the EPA's 5 picocurie per gram cleanup criteria.

In summary, no radiologically contaminated waste from FUSRAP sites may be possessed, disposed of or processed at a Pennsylvania solid waste facility without specific approval by the Department. Transfer of such waste for "possession only" might be permitted under a specific radioactive materials license, upon application to the Department. "Free released" waste materials from a FUSRAP site would be permitted for disposal if recognized radiological contamination limits and non-radiological (e.g., TCLP) waste acceptance criteria are demonstrated, and verified by the Department.

In closing, on a related matter, the ACoE approach to FUSRAP site cleanup concerns us greatly with respect to the Shallow Land Disposal Area (SLDA) site in Parks Township, Pennsylvania. We will monitor closely the NRC's actions regarding the BWX Technology license, and any proposed site cleanup criteria and waste disposal options of the ACoE. Given the potential for long-term exposure to the public and geohydrology of this site, our expectations for the radiological cleanup of this site are high.

Should you wish to discuss any of these matters, please contact our Decommissioning Section Chief, Mr. Robert Maiers, to coordinate a conference call or meeting.

Sincerely,



David J. Allard, CHP
Director
Bureau of Radiation Protection

cc: R. Maiers (DEP)
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