



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

[REDACTED]
Commissioner

September 6, 2007

[REDACTED]
U.S. Army Corps of Engineers, Buffalo District
FUSRAP Public Information Center
1776 Niagara Street
Buffalo, New York 14207-3199

Re: Proposed Plan for the Tonawanda Landfill Vicinity Property Site

Dear [REDACTED]

Thank you for the opportunity to provide comments on the Proposed Plan for the Tonawanda Landfill Vicinity Property. Our comments are listed below:

1. The No Action Alternative presented in the PRAP concludes that soils contaminated with MED materials may "remain safely in place in their current condition". Given the locations of the MED contamination near the border of landfill, it is very likely the material will be disturbed during landfill closure activities such as grading or cap construction. Therefore, it is unlikely that the contaminated areas will remain in place or in their current condition.
2. The recreational user scenario used in the Baseline Risk Assessment (BRA) to arrive at the No Action Alternative is not appropriate for this situation. The BRA relied upon USEPA guidance, *Presumptive Remedy for CERCLA Municipal Landfill Sites*. As the title implies, this guidance is intended for municipal landfills and is not intended for radioactive waste disposal. While it may be reasonable to rely upon institutional controls to preclude residential use of a municipal landfill during the relatively short time frame necessary to isolate municipal trash, it is not appropriate for radioactive waste. Both state and federal radioactive waste disposal regulations (6NYCRR 382 and 10CFR61) prohibit the reliance of institutional controls beyond 100 years after closure and require an assessment of the inadvertent intrusion pathway. Given the long half-lives of the MED materials, residential development at some point in the future cannot be ruled out. An on-site resident scenario is a reasonable approach and should be developed to model potential future human health risks.

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3. We disagree with the Corps statements that there is no evidence of federal government responsibility for any of the radioactive material on the site, and that the site does not fall under FUSRAP authority. The absence of an explanation of how the MED materials got to the landfill does not change their origin or nature. The landfill was added as a Vicinity Property due to the potential for MED material from the Linde Site having been placed there, the potential is realized with MED material having been found in the landfill. The MED materials associated with the Linde Site are distinctive; there is no source other than federal government activities for the MED materials found in the landfill. Dismissive reference to the radioactive contamination as merely "MED-like" does not relieve the federal government of responsibility.

If you have any questions, please contact Robert Snyder or my staff at 518-402-7550.

Sincerely,

[REDACTED]
[REDACTED]
Bureau of Environmental
Radiation Protection

Cc: [REDACTED] Alfie, DOH DEHI
[REDACTED] DOH, WRO
[REDACTED] DEC