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"PUTTING THE PIECES TOGETHER"

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Buffalo District, US Army Corps of Engineers
1776 Niagara Street
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Subject: F.A.C.T.S.' comments on Proposed Plan for the Tonawanda Landfill Vicinity Property Site

1) This "no action" proposal is based on an assumption that current and future uses of this property will be very limited both as to the annual hours and the routes of exposure to the radioactive materials present on the site. This is clearly inappropriate for this intensively used residential area. Given the highly favorable characteristics of this locale for intensive uses (including farming) and the long-term hazardous nature of the materials (hundreds of thousands of years), the suitable exposure scenario for this property is "resident farmer."

2) Army Corps selection of such a limited exposure scenario for this location is a misapplication of the CERCLA (Superfund) risk assessment process that supports F.A.C.T.S.' assertion that Congress took FUSRAP away from the DOE and directed Army Corps to utilize CERCLA processes at the remaining FUSRAP sites with the intent of limiting cleanup costs rather than of performing the long overdue, protective cleanups required by the applicable cleanup guidelines (see comment No. 6 below).

3) This site has been designated as a "vicinity property" of the FUSRAP Linde property. In reality, all the other Tonawanda Site properties - Ashland 1, Ashland 2, and Seaway - are vicinity properties of Linde in that they were contaminated by materials sourced from Linde. As such this property and the other Tonawanda FUSRAP Site properties properly fall under the legal framework and associated cleanup guidelines that pertain to the Linde property.

4) In 1978 Linde was issued a radioactive materials license for the purported purpose of controlling exposures to the MED/AEC radioactive materials (the proper purpose of such a license) previously illegally abandoned on the site. However, its practical purpose was to enable the Department of Energy (DOE) to

avoid Linde being placed in Title I of the soon-to-be-enacted UMTRCA along with the western uranium mill sites, an action that would have required prompt federal cleanup of the site. (See Enclosure 2 of FACTS March 3, 1997 letter to former NYS Department of Labor Commissioner Sweeney. This letter is in the administrative record for the Ashland properties; it is incorporated here by reference and may also be found on the FACTS website at <http://factsofwny.org/sweeney.htm>.) Instead, NY State's placement of this license amendment put Linde under the NRC's UMTRCA Title II regulations. NYS has been an NRC Agreement State (i.e., it was delegated licensing authority) since October 1962. However, NYS did not promulgate the radiation protection regulations required by UMTRCA's Title II, and therefore licensed regulation under UMTRCA should have reverted to the NRC. But NRC failed to exercise any Title II regulatory control over the Linde contamination or, for that matter, the contamination at several other FUSRAP sites around the country where MED/AEC had illegally left behind radioactive materials at levels well above standards. Combined with MED/AEC's initial abandonment of these sites, NRC's post-UMTRCA failure to regulate has resulted in decades of illegal, uncontrolled radiation exposures to persons/workers at all these FUSRAP sites.

5) The Linde license amendment No. 4 of 1978 covering the MED/AEC uranium/thorium/radium materials was illegally terminated by the NYS Department of Labor in 1995: neither decontamination to the requirements of State Code Rule 38 nor any soil cleanup was performed prior to the termination of license amendment No. 4. FACTS' March 3, 1997 letter to former NYS Department of Labor Commissioner Sweeney is in the administrative record for the Ashland properties and is incorporated here by reference; it may also be found on the FACTS website at <http://factsofwny.org/sweeney.htm>.

6) The legitimate soil cleanup requirements for the Tonawanda Landfill property are the same as those for the contaminated soils at the formerly licensed Linde property, namely the criteria contained in Option 1 of NRC's October 23, 1981 Branch Technical Position on Onsite Storage or Disposal of Thorium or Uranium Wastes from Past Operations (BTP). This BTP has previously been applied by NRC at many other formerly used and SDMP sites; it can be found on the FACTS website and is incorporated here by reference. Under Option 1 for residential use purposes, soils containing greater than 10 pCi/g total uranium must be removed; this translates into a cleanup level of 5 pCi/g for each member of the U-238 decay chain, i.e. U-238, U-234, Th-230, and Ra-226. The 5 pCi/g Ra-226 cleanup level is the same as EPA's surface radium criterion contained in the 40 CFR 192 regulations. A summary of all applicable cleanup criteria for the Tonawanda Site properties is located on the FACTS website at <http://factsofwny.org/overview.htm> and is incorporated here by reference.

7) DOE's 1993 (six million dollar) RI/FS-EIS for the Tonawanda Site determined that 15,200 cubic yards of MED/AEC contaminated soils at the Tonawanda

Landfill required removal. This volume -- reported to contain 1.3 Curies Ra-226, 1 Ci Th-230, and 2.3 Ci U-238 -- was calculated using a weak DOE site-specific cleanup criterion for U-238 of 60 pCi per gram of soil, and the EPA's 40 CFR 192.5/15 pCi/g surface/subsurface radium criteria. During the comment period on this review package, DOE was asked how much larger the removed soil volumes would be using the BTP Option 1 criteria, or the even more stringent State TAGM-4003 which calls for cleanup of radioactive contamination in soils to an exposure level no greater than 10 millirems per year above the natural background exposure level of approximately 100 millirems per year. DOE never responded to this request.

8) After Army Corps has concluded its activities, the DOE, as successor agency to MED/AEC, remains legally liable for MED/AEC materials remaining at the Tonawanda Site properties in excess of the more stringent NRC and NYS cleanup guidelines. Decades ago a responsible NRC wisely adopted a prohibition on the use of dilution to achieve site release standards prior to the termination of license (decommissioning). In September 2006, a criminally irresponsible Bush NRC revised the regulations (NUREG-1757, Vol. 1 Rev. 2, page 160) that implement its License Termination Rule to specifically allow such onsite dilution. The Army Corps has publicly stated (correctly) that the LTR is not applicable to FUSRAP sites. That said, the lack of any expressed concern by DOE over USACE's extremely weak soil removal criteria for the Linde and Ashland properties is undoubtedly because DOE has every confidence in Army Corps' proficiency at dilution, i.e. soil mixing using heavy earth moving equipment. Army Corps conveniently won't say how many milliCuries of the MED/AEC radioactivity are being removed and how many are being left onsite at the Linde and Ashland properties. But what does DOE think about this "no action" plan, wherein there will be no possibility for intentional onsite dilution? Answer: since 1997 when Congress first transferred FUSRAP to USACE, the Department of Energy has simply mirrored Congress's irresponsibility on this issue.

Sincerely,


Secretary