

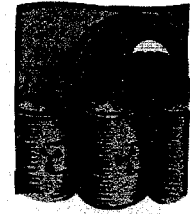
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NRC Failure at Early Nuclear Sites

Nuclear Waste Illegally Dumped in Cheektowaga, NY

4/25/01

By James Rauch, analyst, F.A.C.T.S. (For A Clean Tonawanda Site), Inc.



For over two decades, the U.S. Nuclear Regulatory Commission (NRC) has failed to take action to protect people from the damaging effects of the millions of tons of radioactive uranium mill tailings that were generated prior to 1978, predominantly as a result of the Manhattan Project and subsequent early atomic bomb production activities. NRC's lack of action at these early radioactive sites is in direct violation of federal law and NRC's own regulations.

In WNY, there are a number of these sites including Simonds Saw and Steel facility (now owned by Guterl Steel) in Lockport, Electro Metallurgical Company/ Union Carbide (now US Vanadium and others) in Niagara Falls, the large Lake Ontario Ordnance Works toxic/radioactive waste dump near Lewiston and the adjacent Niagara Falls Storage Site where some of the tailings contain so much radium that the National Academy of Science has determined them to be no different in hazard than high level radioactive waste. Erie County has the five properties of the Tonawanda Site including the former Linde Air Products' Manhattan Project uranium refinery (now Praxair). Many of these dangerous nuclear waste sites have been listed in the federal Energy Department's Formerly Used Sites Remedial Action Program (FUSRAP) which is now run by the controversial Army Corps of Engineers (Corps), the very agency originally responsible for much of the mess.

Failure of Nuclear Regulatory Commission

The fundamental problem at these and other FUSRAP sites nationally is that NRC has ignored certain responsibilities set in the Atomic Energy Act. In 1978, Congress specifically directed NRC to regulate these wastes by enacting the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978, which amended the Atomic Energy Act. Uranium mill tailings were placed in a new regulatory category called 11e.(2) byproduct material. Section 84 of the act states: "(t)he Commission shall insure that the management of any byproduct material, as defined in section 11e.(2), is carried out in such manner as ... the Commission deems appropriate to protect the public health and safety."

The legislative history of UMTRCA is clear: Congress intended that the management of all 11e.(2) byproduct materials, including those wastes generated prior to 1978, be carefully regulated by NRC.

NRC's own regulations, in place since the enactment of UMTRCA at 10 CFR Part 40.2b, state: "(t)he Commission will regulate byproduct material as defined in this part that is located at a site where milling operations are no longer active, if such site is not covered by the remedial action program of title I of the Uranium Mill Tailings Radiation Control Act of 1978. The criteria in appendix A of this part will be applied to such sites."

In 1990, ten years ago, a U.S. Court of Appeals found that Congress intended no exceptions and NRC should regulate all 11e.(2) byproduct material (Kerr-McGee Chemical Corporation v. U.S. Nuclear Regulatory Commission, 903 F.2d 1, 284 U.S.App.D.C. 184). Judge Buckley concluded: "(t)he UMTRCA was intended to bring previously unregulated radioactive end products of the source material extraction process within the scope of NRC regulation and to provide a comprehensive remedial program for the safe stabilization and disposal of uranium and thorium mill tailings. The NRC's interpretation of section 11(e)(2), however, places a portion of the thorium tailings from Kerr-McGee's West Chicago facility outside of the regulatory regime even though they are in all relevant ways identical to tailings found by the NRC to be byproduct material and thus subject to the UMTRCA's remedial program. The NRC's construction thus frustrates the purposes of the UMTRCA by rendering it inapplicable to waste material that it was clearly intended to reach and recreating a jurisdictional gap it was intended to close."

Following this ruling, NRC still failed to license or otherwise to regulate the huge amounts of these pre-1978 11e.(2) materials present in New York and at FUSRAP sites around the country.

Current NRC Chairman's Involvement

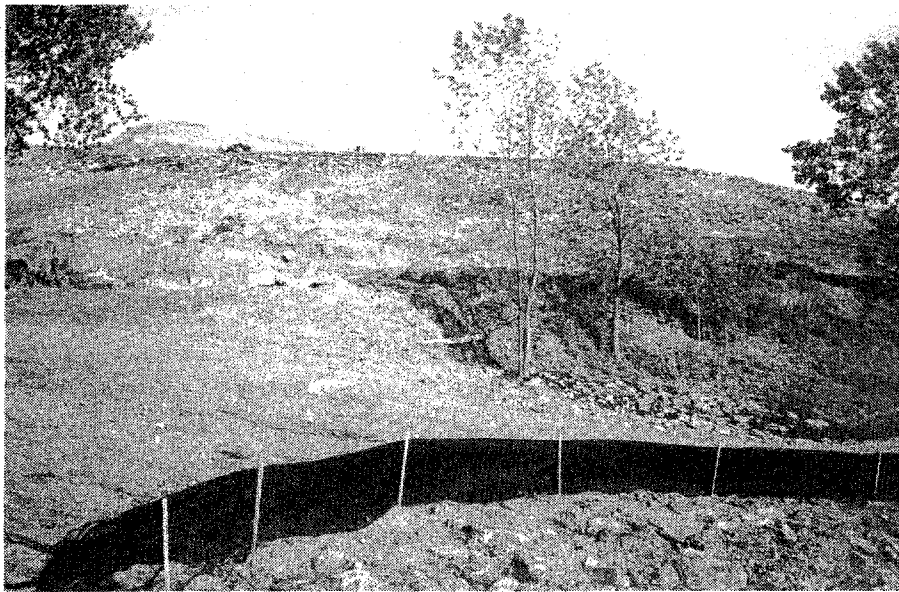
It is interesting that the current Chairman of the NRC, Richard Meserve, was the lead attorney for

Kerr-McGee in this case. F.A.C.T.S. (For A Clean Tonawanda Site), Inc.'s 1998 suit, requesting the U.S. District Court for the Western District of N.Y. to issue a declaration that NRC has jurisdiction to regulate Tonawanda's FUSRAP wastes, was dismissed this past June under the discretion of Judge Elfvin over a venue technicality. Also in 1998, the Natural Resource Defense Council filed a petition asking NRC to regulate FUSRAP 11e.(2) wastes. The petition was dismissed by NRC.

Last February, Idaho's Snake River Alliance and EnviroCare of Utah each brought additional petitions requesting NRC assume its responsibilities under UMTRCA to license these wastes. Under the serious circumstances, an expedited hearing was requested. On December 13, 2000, NRC again rendered the decision that it will not assume its legal obligation to regulate the FUSRAP materials. This past spring, in a March letter to Utah's Senator Bennett, Chairman Meserve had indicated that NRC would need more money from Congress before NRC would assume this responsibility.

Army Corps of Engineers Fouls Up

Today, two years after Congress transferred funding for the FUSRAP from the Energy Department to the U.S. Army Corps of Engineers and one year after Congress directed that the program be implemented under CERCLA (Superfund law), the Corps is heavily involved in improper waste disposal to reduce program costs. The Corps defends its implementation of CERCLA remediations at FUSRAP sites -- whereby



NUCLEAR WASTE ILLEGALLY DUMPED in Cheektowaga, NY Solid Waste Landfill. Courtesy of Donna Hosmer.

applicable NRC, EPA and state regulations and policies are ignored -- as being justified by these two Congressional budget directives.

As a result the Corps is mired in controversy. Community and environmental groups and agency officials are protesting its flawed "cleanups". Last summer, California's Senator Barbara Boxer protested the illegal disposal of thousands of tons of 11e.(2) material from Tonawanda's Linde Building 30 at a Safety-Kleen facility in Buttonwillow, California. A Washington Post expose of the Congressmen involved in the transfer of the FUSRAP program from the Energy Department to the Army Corps resulted in a scheduled, then delayed, Congressional hearing into the Corps' improper dumping. The much-needed investigative hearing has still not been held.

Meanwhile, the Corps continues to ship tens of thousands of cubic yards of contaminated soils and debris from the Tonawanda site properties for disposal at the already problematic International Uranium Corporation mill site in Blanding, Utah under a sham "alternative feed material" scheme.

Corps Illegally Dumps Nuke Waste in NY

Late this summer a NYS official told F.A.C.T.S. that 25 tons of radioactive debris from Linde's Bldg. 30 were illegally dumped in IWS's Schultz Landfill in Cheektowaga, NY, a facility located just east of Buffalo. This was apparently done without the approval of NY State. The NYS Department of Environmental Conservation (DEC) had previously entered into a Memorandum of Understanding with the Corps con-

taining provisions for cooperation with the Corps in its actions at the NYS FUSRAP sites, including remuneration for specified DEC services provided.


This previously undisclosed action by the Corps belatedly prompted DEC's Director of the Bureau of Radiation & Hazardous Sites Management, Paul Merges, to establish an emergency regulation. The regulation temporarily amended the state's Part 380 radioactive discharge regulations in an attempt to stave off more illegal disposal of FUSRAP wastes by the Corps in NYS landfills. This emergency regulation was effective July 31, 2000 for a period of 90 days. Dr. Merges has told F.A.C.T.S. that no action is contemplated to correct

the illegal dumping by the Corps at Schultz Landfill as "The regulation is not retroactive."

And yet, for over two years both the DEC and the independently elected NYS Attorney General have rejected F.A.C.T.S.' repeated requests that the state take legal action to force proper federal regulation of these wastes by the NRC. Is such ineffective behavior by state government acceptable?

Lacking a decision by NRC in the aforementioned petitions before the emergency regulation expired, DEC extended the emergency regulation and simultaneously gave notice of intent to promulgate a permanent amendment which it hopes will prevent additional improper dumping within NYS. Through all of this,

Congressman John LaFalce and CANiT (LaFalce's ex-officio group of local politicians which has supported the Army Corps' mismanagement of remediation activities at Tonawanda) have been silent. There has been no call from the politicians for the clearly necessary and legally mandated NRC oversight. Why? Is this the kind of representation that we want?

For more information, please see an excellent series of articles examining the severe impacts of government and corporate mismanagement at these early nuclear sites. The series is available in the USA Today archives at: www.usatoday.com/news/poison/cover.htm 

Tragic Cancer Increase in Kodak Community: America's Largest Releaser of Cancer-Causing Chemicals

Kodak is the country's largest emitter of cancer-causing chemicals. For years, its dioxin-spewing incinerators have polluted Rochester's air.

■ The Agency for Toxic Substances and Disease Registry (ATSDR) reported an "excess of thyroid cancers in young girls in Monroe County" where Kodak is located. (1998).

■ In one year, 33 cases of childhood brain and spinal cord cancer were found in the five mile radius around Kodak Park (1997).

■ The NYS Department of Health (DOH) found 446 Monroe County children had cancer over a twelve year period (1983 to 1995).

■ The DOH determined that "women living near Kodak Park had approximately an 80% greater risk of developing pancreatic cancer" and it increases to 96% for women living near Kodak more than 20 years. (1995)

■ Monroe County is in the highest 10% for mortality rates for 13 types of cancer. (1950-1994).

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involved in a Kodak incinerator permit hearing to advocate major dioxin reduction at their polluting incinerators. (See article on page 13).

Vietnam veterans exposed to dioxin in Agent Orange, farmers exposed to dioxin in pesticides, mothers concerned about dioxin in their breast milk, and community groups fighting to halt dioxin pollution from incinerators, gave compelling testimony to EPA's Science Advisory Board. One of the Board representatives was Nancy Kim of the NYS Dept. of Health.

At the hearing, "Belly Brigade" and "Conflict of Interest" educational actions were held by the national Dioxin Network, including CEC and the national Center for Health, Environment & Justice, which did a great job organizing the events. The "Belly Brigade" started early in the morning, when twelve women walked into the hotel carrying white paper mache pregnant bellies with signs that read "**HEALTH WARNING: Dioxin is hazardous to this baby's health**

— as hazardous as chemical industry funding of scientists on the EPA's Dioxin reassessment review panel." The women lined both sides of the hallway where the meeting was held and passed out a press release listing all the dioxin-polluting industries that fund members of the EPA's Science Advisory Board to highlight their financial conflict of interest. Board members, EPA officials and industry representatives all had to walk past this solemn group of women.

When the hearing started, the first agenda item was "Conflict of Interest Statements." This is where each Board member discloses whether or not they have any conflicts that would bias their review of the dioxin hazard report. The process is flawed since it only considers it a "conflict" if someone has monetary investments in a company — taking money from a dioxin producing company does not count.

Since we disagreed with this, we staged our own "Conflict of Interest" action and wrote signs with the names of the dioxin producing companies that funded