



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APP 16 2010

Mr. Antoine M. Thompson
Senator 60th District
Room 902 Legislative Office Building
Albany, NY 12247

Dear Senator Thompson:

Your letter dated February 19, 2010 to Administrator [REDACTED] has been referred to me for a reply. I also want to acknowledge that you and your staff held a conference call with U.S. Environmental Protection Agency (EPA) staff from our Washington headquarters and the Region 2 Office on Monday March 15, 2010. In your letter and during the teleconference you expressed concern about the Tonawanda Landfill remediation to be performed by the U.S. Army Corps of Engineers Buffalo District (USACE) under the Formerly Utilized Sites Remedial Action Program (FUSRAP).

Not only is this landfill subject to remediation under the FUSRAP program but it is regulated under 6 NYCRR Part 360 of the New York State Code as a solid waste landfill. FUSRAP was enacted by the U.S. Congress to identify and clean up or control sites that were part of the Nation's early atomic energy and weapons programs. The lead Agency for the FUSRAP program as it relates to the Tonawanda Landfill is the USACE, specifically the Buffalo District. In addition, the New York State Department of Environmental Conservation (NYSDEC) is the lead regulatory agency for solid waste landfills in the State, and as such it also has authority over the site. The NYSDEC also has an oversight role in dealing with the USACE on FUSRAP matters. The EPA's role in this matter is to assure that any remedy is protective of public health and the environment, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan as part of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). In that regard, we have been involved with this site in the particular area of radiation protection.

Our focus has been on bringing this and the other FUSRAP sites in the Erie – Niagara County area to a conclusion that is protective of public health and the environment. With regard to the Tonawanda Landfill we provided comments on the USACE's Remedial Investigation (RI) report and we have continued to work with the USACE to address these comments. Currently, the USACE is performing additional site characterization of the landfill to assure that the RI and baseline risk assessment (BRA) are accurate. This is, in part, as a result of citizen requests, as well as NYSDEC and EPA

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input. When this program is completed and the data are analyzed and reported we will review the results and provide our comments to the USACE. According to the USACE the update of the BRA is scheduled for the spring of 2011. It is my understanding that the USACE has also provided you with a schedule for this work.

While the USACE did analyze capping the landfill in the RI and BRA issued in 2005, that agency, as well as EPA and NYSDEC, believes that the characterization program must be completed before a final determination on a remedy for the landfill is made. Further, the NYSDEC has performed additional studies on homeowners' properties adjacent to the landfill where the USACE does not have the statutory authority to do so. All studies completed previously show that there is no current risk from radiation exposure from this site to the surrounding population, and that should continue to be the case while further characterization studies are being conducted. Since the characterization program was designed in part to provide answers to community concerns, we believe this is the correct path forward and will go a long way toward answering citizens' concerns.

We at EPA have also discussed with the USACE the need for public involvement after all additional studies are concluded and analyzed. The USACE has assured us it will have public information sessions and will stand ready to meet with citizens and their elected leaders at such time. EPA will participate in those meetings, as we have done in the past on all FUSRAP site work done under the auspices of the Buffalo District. Therefore, EPA believes that the best time for a public dialogue on this site, such as you request in your letter, would be after the conclusion of the USACE characterization program that is currently underway.

If you have further questions, please let me know or your staff may contact [REDACTED] Chief for Intergovernmental and Community Affairs, at 212-637-3657.

Sincerely,

[REDACTED]

Regional Administrator

cc: [REDACTED], Commissioner DEC
[REDACTED] District Commander, Buffalo District USACE