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Formerly Utilized Sites Remedial Action Program (FUSRAP)

ADMINISTRATIVE RECORD

for Maywood, New Jersey



U.S. Department of Energy

Interagency Agreements
between
United States Environmental Protection Agency
and
United States Department of Energy
relating to CERCLA response actions at the
Wayne and Maywood Interim Storage Sites

RESPONSIVENESS SUMMARY

The United States Environmental Protection Agency (EPA) and the United States Department of Energy (DOE) have reviewed the comments received from members of the public concerning the Interagency Agreements dated September 17, 1990 (the Agreements). This Responsiveness Summary has been prepared by EPA and DOE to address certain comments which, EPA and DOE agree, raise issues which should be clarified. In a number of cases, where an issue was raised by several comments, individual questions were combined and a collective response is presented. Among the comments received was a "cancer cluster" study which is currently being reviewed by the Agency for Toxic Substances and Disease Registry.

In accordance with the terms of the Agreements, EPA has determined that the comments do not require a modification of the Agreements and that the Agreements should be declared effective.

1. Compliance with CERCLA requirements.

Several comments questioned whether the Agreements complied with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA). Section 120 of CERCLA defines the responsibility of Federal Agencies for Superfund cleanups. The statute provides that for any site on the National Priorities List (NPL) which is either owned, operated, or within the jurisdiction of a Federal Agency, EPA is to evaluate the agency's proposed remedial action. The statute requires EPA and the Federal Agency to enter into an Interagency Agreement following the completion of the Remedial Investigation/Feasibility Study (RI/FS). Such an agreement must provide for the selection and implementation of the Remedial Action and is required to include a schedule for remedial activities. However, since the remedial action must be selected on the basis of an RI/FS which is to comply with EPA's regulations, policies and guidance, it was determined that a more effective approach would be to involve EPA at an earlier point in the process and to utilize the agreement, as a mechanism for EPA to oversee the planning and implementation of the RI/FS as well.

Because these Agreements were negotiated at an earlier phase of the process, a schedule for the Remedial Action could not be

incorporated into the Agreements. Instead, a method for establishing the schedule was specified. Compliance with the schedule, once agreed to by EPA and DOE, becomes enforceable with financial penalties under the Agreements. DOE will submit a project schedule for EPA to review. If, following an exchange of comments, agreement cannot be reached, the matter will be settled through the Dispute Resolution process outlined in the Agreement. The Agreements provide for three levels of dispute resolution with the ultimate decision to be made by the EPA Administrator. Therefore, EPA retains the final authority to establish the project schedule. The Agreements commit DOE to seek Congressional appropriation for the tasks scheduled under the Agreements and only if Congress fails to provide the needed funding are schedules to be revised.

The Agreements include all of the other provisions mandated by Section 120 of CERCLA e.g. evaluation of alternatives, public involvement, selection of remedial action, implementation of action, including a commitment for all required operation and maintenance associated with the selected remedial action.

Under Section 120, RI/FS activities at Wayne and Maywood were to have been initiated by October 17, 1987. Because site characterization activities under DOE's Formerly Utilized Sites Remedial Action Program (FUSRAP) began at both Wayne and Maywood in 1984, DOE has satisfied that requirement. DOE notified EPA that this requirement of CERCLA was met prior to October 17, 1987.

2. Relationship of DOE's Five Year Plan to the Agreements.

The Agreements recognize that DOE has established a Five Year Plan for coordination of its environmental response obligations, but the Agreements specify that, subject to Congressional appropriations, the schedules established under the Agreement, and not the Five Year Plan are controlling. It should be clearly understood that assumptions used for planning and budgeting purposes in the development of the Five Year Plan are not adopted by the Agreements.

3. Utah Proposal

A number of comments asserted that DOE should promptly remove the contaminated soil to a facility in Utah. The Agreements establish a mechanism for joint decision making; they do not prejudge remedial alternatives. There are still outstanding questions concerning the scope of the Utah facility's permit to accept certain materials which need to be resolved. The parties recognize that the identification of a properly permitted off-site disposal facility is essential to implementation of a remedy and have agreed in Section XIII of the Agreements to explore disposal options during the pendency of the RI/FS.

However, while the selection of a remedial action is covered by the Agreements, the siting or selection of a specific disposal facility is not typically covered in these or most other IAGs. As noted by one commentor, the siting of a permanent disposal facility involves considerations which extend beyond EPA's jurisdiction. Accordingly the matter is not addressed in the Agreement.

4. DOE's role and other responsible parties at the Sites

The cleanup of the Maywood and Wayne sites was assigned to DOE by Congress in late 1983 via the fiscal year (FY) 84 Energy and Water Appropriations Act. Under this Act, DOE was authorized to undertake a decontamination research and development project at both sites. The intent of this project was clarified in subsequent exchanges between DOE and Congress. On the basis of these discussions, DOE understood that Congress had specifically charged DOE with the cleanup of these sites because of its existing Formerly Utilized Sites Remedial Action Program (FUSRAP) which had been operational since 1974. Under this program, DOE had amassed considerable expertise related to the cleanup of radioactively contaminated soils. Congress used "research and development project" funding for the effort to provide DOE with the authority needed to address the sites.

When Congress assigned the Wayne and Maywood sites to DOE in late 1983, it indicated that remedial action on the privately owned properties should begin as soon as possible. This desire for prompt action, in conjunction with the fact that DOE had an operating clean up program, was the primary reason that DOE was tasked with site cleanup. DOE recognized the inherent problems with siting long term disposal facilities to deal with these wastes. Therefore, to meet the congressional imperative for prompt action, DOE started cleanup in 1984 and stored the collected radioactively contaminated soils in interim storage cells located on the properties where the waste originated. To facilitate this approach, DOE acquired the W. R. Grace property in Wayne, and a portion of the Maywood Chemical Works property in Maywood. This course of action has been supported via continued congressional appropriations. The acquisition of the two pieces of property by DOE does not relieve either former owner of their responsibilities under current environmental laws. DOE'S agreements with the private parties reflect its efforts to undertake a prompt response to contamination on residential and commercial properties where exposure was greatest. In the absence of a disposal facility, the interim storage option provided the best available approach. The Agreements acknowledge the function of interim storage, while recognizing its limitations. The Agreements with DOE do not preclude EPA enforcement action against other responsible parties.

5. Comparison with Montclair/West Orange/Glen Ridge

Several comments questioned why the excavation and off-site disposal of soil from the Montclair/West Orange/Glen Ridge sites (MWG) is progressing ahead of the Maywood cleanup when Maywood is ranked higher on the NPL than MWG. Comparing progress at the MWG sites with Maywood (or Wayne) is somewhat beyond the scope of the Agreements; however it should be noted that Maywood's higher ranking on the NPL was based on an evaluation of data available at the time of the sites' proposal and reflects risks which were known to be present prior to any action being undertaken. Substantial initial response action has been conducted, both at Wayne and Maywood to address contamination of a number of vicinity properties in order to significantly reduce exposure.

In comparing the status of cleanup activities at these sites, one of the most important differences between MWG and Maywood (or Wayne) is the nature of the radiological contamination. Unlike the radium contamination in MWG, the radiological contamination in Maywood (or Wayne) originated with thorium processing and the disposal is therefore potentially subject to regulation by the Nuclear Regulatory Commission. The ability of the facility in Utah, which is currently accepting the MWG soil, to accept the Maywood (or Wayne) material depends on the legal classification of the material. When the data from the Remedial Investigation are available, DOE, EPA, and NJDEP will complete the classification of the material and will subsequently evaluate all facilities authorized to accept the waste under their licenses.

6. DOE Cost Recovery

It was suggested that the recovery of DOE's cleanup costs from private parties who had operated the facility was mandated by a document which was produced by DOE's Oak Ridge Operations Office in September, 1980 (ORO 777). In addition to describing the status of FUSRAP, ORO 777, which was prepared prior to CERCLA, also outlined the process by which sites were considered for inclusion in the program, how the sites progressed through characterization and remedial action, and how they were released for use with no radiological restriction once they were cleaned up. Although the document discussed several issues pertinent to the continuation of FUSRAP circa 1980; it did not set policy for the program. This document is now considered by DOE to be dated, but has value as a reference since it contains historical descriptions of many of the current FUSRAP sites. The language in ORO-777 concerning DOE's ability to recover costs from viable former property owners remains accurate. However, to date, DOE has not exercised this authority.

7. Chemical Contamination

Questions were raised concerning the presence of chemical as well as radiological contamination at the sites which suggested that attention had focused on radiological contamination while ignoring issues related to chemical contamination. Although the sites were listed on the NPL on the basis of radiological contamination, there is no reason to believe that the Congressional decision to involve DOE at the sites was based on the absence of chemical contamination. Much of the effort to date has focused on radiological contamination; however the planned remedial investigation will include an evaluation of the nature and extent of chemical contamination as well. Both radiological and chemical contamination will be considered in selecting a remedial action for the sites although responsibility for some chemical contamination may rest with parties other than DOE.

8. RI Field Work

A number of comments questioned why RI field activities had begun prior to receipt of public comments on the Workplan. In effort to keep the RI/FS process moving, DOE elected to proceed with RI field work prior to the public review of the work plans. Prior to commencing field work, DOE committed to EPA and NJDEP to perform additional field work if, as a result of the public review, additional site investigation was determined to be necessary. EPA and NJDEP approved DOE's approach based on that commitment prior to the actual start of DOE's field work.

9. Stepan Company RI/FS

Questions were raised concerning the progress of the RI/FS to evaluate chemical contamination being undertaken by the Stepan Company. Issues relating to the work plan are being resolved and it expected that field work will begin in the Spring/Summer of 1991.



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Lester K. Price, Director
Technical Services Division
Oak Ridge Operations Office
Department of Energy
P.O. Box B
Oak Ridge, Tennessee 37831

Re: Wayne and Maywood Superfund Sites
Interagency Agreements/Federal Facilities Agreements

Dear Mr. Price:

This is to advise you that, in accordance with Section XXXVI of each of the above Interagency Agreements, the Environmental Protection Agency (EPA) has reviewed all public comments received with respect to the agreements and has determined that such comments do not necessitate any change to these agreements. Accordingly, EPA is declaring the agreements to be effective in the form signed by the parties. In accordance with Section(s) XXXVI, these agreements will become effective upon your receipt of this notice.

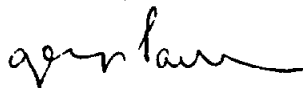
Please note that, as required by the agreements, within forty five (45) days of said effective date, the Department of Energy (DOE) is to propose schedules for the submittal of the deliverables which are specified in Section XVI of the agreements. As you know, EPA has voiced its concern with the protracted schedules which DOE has proposed in the past, e.g. in the Wayne and Maywood draft workplans. However, EPA understands certain efficiencies to the internal DOE review process are under consideration, and we anticipate that the schedules which DOE will formally propose under the agreements will be greatly improved.

Enclosed is a copy of the Responsiveness Summary (to public comments) which has been developed jointly by DOE and EPA staff. We appreciate the cooperation of your office and anticipate that the Responsiveness Summary will be issued by EPA to the public shortly. We ask that DOE place copies of this letter declaring

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the agreements effective, together with the agreements themselves and the Responsiveness Summary, on file at the information repositories which DOE is maintaining for these sites.

Sincerely yours,



for Kathleen C. Callahan, Director
Emergency & Remedial Response Division

Enclosure

cc: W. Seay, DOE
J. Wagoner, DOE
L. Miller, NJDEP