

137512
M-523

Formerly Utilized Sites Remedial Action Program (FUSRAP)

ADMINISTRATIVE RECORD

for Maywood, New Jersey



U.S. Department of Energy

Dec 12 1 03 PM '95

DEC 7 1995

Mr. Michael Nolan
Concerned Citizens of Maywood
69 Lenox Avenue
Maywood, NJ 07607

Dear Mr. Nolan:

This is in response to your letter of October 15, 1995, to Administrator Browner. Your correspondence questions the legality of the Department of Energy (DOE) conducting a non-time critical removal action (soil removal at vicinity residential and municipal properties) at the Maywood site.

As I have indicated in previous correspondence, under Executive Order 12580, the DOE has unilateral authority to conduct removal actions at DOE sites. As stipulated in the Federal Facilities Agreement (FFA) any removal action undertaken at the site shall be conducted in a manner consistent with the FFA, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Contingency Plan (NCP). The FFA allows for portions of or complete operable units to be addressed through removal actions under the jurisdiction of DOE but ultimately operable units will be addressed through a Record of Decision. EPA believes the action being taken by DOE is consistent with the long term remediation of the site, consistent with the resolution of dispute. Also, the FFA stipulates that DOE shall be solely responsible for the determination of the areas to be addressed through removal actions.

The NCP states that where the lead agency makes the determination that there is a threat to public health or welfare or the environment, the lead agency may take any appropriate removal action to abate, prevent, minimize, stabilize, mitigate, or eliminate the release or the threat of release. As lead agency, DOE determined that the conditions at the site met the criteria for removal actions listed in the NCP and that the timeframe in which an action was required was appropriate for a non-time critical response.

If a non-time critical removal action is to be undertaken, the NCP requires that an engineering evaluation/cost analysis (EE/CA) be prepared. DOE prepared a draft EE/CA for the site in July 1995 and prepared a final version after a thirty-day public comment period. In preparing and submitting a copy of the draft EE/CA to EPA for comment DOE satisfied the FFA requirement of providing EPA with written notification of a proposed removal action sixty days prior to initiating the proposed action.

Pending remedy selection, removal actions undertaken by DOE are within its legal authority and are not precluded by either CERCLA, the NCP or the FFA and result in an expedited response. Please note that in taking this removal action DOE has provided an opportunity for public comment, as is appropriate.

If you have any other questions, please contact Angela Carpenter, EPA Project Manager at (212) 637-4433.

Sincerely,

Kathleen Callahan, Director
Emergency and Remedial Response Division

cc: S. Cange, DOE ✓
N. Marton, NJDEP