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Formerly Utilized Sites Remedial Action Program (FUSRAP)

ADMINISTRATIVE RECORD

for Maywood, New Jersey



U.S. Department of Energy



Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831-8723

February 1, 1996

Mr. Nicholas Marton
Bureau of Federal Case Management
New Jersey Department of Environmental Protection
Division of Hazardous Waste Management
CN 028
Trenton, New Jersey 08625-0028

Dear Mr. Marton:

NEW JERSEY SITES - CLEANUP CRITERIA - APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS

As you know, the Department of Energy (DOE), through its Formerly Utilized Sites Remedial Action Program (FUSRAP), is making substantial progress through interim actions at sites in New Jersey, such as the ongoing residential cleanups in Maywood. In looking ahead to continuing successful cleanups, we must identify potential barriers to the efforts and take positive steps to settle them.

An important step is to resolve outstanding issues with NJDEP relative to cleanup standards and Applicable or Relevant and Appropriate Requirements (ARARs) for FUSRAP sites in New Jersey.

When DOE reviewed New Jersey Senate Bill S-1070 to determine its status as an ARAR for the sites, S-1070 was presented as one law, termed the Industrial Sites Recovery Act (ISRA). At that time, DOE determined that ISRA was not an ARAR for a number of reasons that are outlined in my March 18, 1994, letter to you.

Subsequently, S-1070 was finalized by the state of New Jersey as two separate acts, ISRA and the Hazardous Discharge Site Remediation Act. When reviewed as two separate acts, DOE maintains that ISRA is not an ARAR. However, the Hazardous Discharge Site Remediation Act appears to provide a framework for developing remedial standards applicable to all of New Jersey's environmental laws. Thus, DOE views it as a potentially relevant and appropriate requirement.

In your January 25, 1995, letter to me regarding this issue, NJDEP provided site-specific residential and non-residential cleanup criteria that were purportedly established in accordance with the requirements of the Hazardous Discharge Site Remediation Act. After careful review of the information provided, DOE does not believe that the cleanup criteria established by NJDEP conform with this act and believes that the proposed site-specific standards may place an unnecessary burden on many New Jersey residents whose property is subject to cleanup under FUSRAP.

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Section 58:10B-12 of the Hazardous Discharge Site Remediation Act defers the state's adaptation of minimum standards for soil "until recommendations are made by the Environment Advisory Task Force." Meanwhile, NJDEP must set case-by-case standards "in accordance with the guidance and regulations of the U.S. Environmental Protection Agency (EPA) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act." These case-by-case standards must be based on:

- generally accepted and peer reviewed scientific evidence or methodologies, and
- reasonable assumptions of exposure scenarios as to amounts of contaminants to which human or other receptors will be exposed, when and where those exposures will occur, and the amount of the exposure.

The act also disallows the use of redundant conservative assumptions in setting standards.

Further, according to the act, "upon the approval by the department of a remedial action work plan, or similar plan that describes the extent of contamination at a site and the remedial action to be implemented to address that contamination, the department may not subsequently require a change to that work plan or similar plan in order to compel a different remediation standard due to the fact that the established remediation standards are changed" unless the difference between the new and old standards "differs by an order of magnitude."

As you know, DOE and EPA spent a year developing site-specific cleanup criteria for the Maywood site in accordance with EPA guidance and regulations. The cleanup criteria agreed to by EPA and DOE are tied to land use. For subsurface soils (below six inches) the criterion is five picocuries per gram (pCi/g) for radium and thorium for residential properties and 15 pCi/g for non-residential properties, with an as low as reasonably achievable goal of five pCi/g. For surficial soils (top six inches) the criterion is five pCi/g, regardless of land use.

DOE and EPA have determined through rigorous analyses that these criteria are protective of human health and the environment; cleanup to the levels specified will fall within EPA's risk range of 10^{-4} to 10^{-6} and will result in exposures that are well below national guidelines. These criteria are also consistent with DOE's work plans for the site, which NJDEP approved, with the exception of the criteria being more stringent than originally proposed for residential subsurface soils.

In light of the requirements of Section 58:10B-12 and the results of the detailed analyses, DOE believes that NJDEP has more than ample basis for concurrence with the site specific cleanup criteria described above. We urge you to do so.

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We look forward to resolving this issue and maintaining a steady, positive course in our cleanup efforts in New Jersey. If I can be of further assistance, please call me at (423) 576-5724.

Sincerely,



Susan M. Cange, Site Manager
Former Sites Restoration Division

cc: Bruce Venner, NJDEP
Angela Carpenter, EPA Region II