

US EPA ARCHIVE DOCUMENT

**STATEMENT OF
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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE**

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INTRODUCTION

Good morning, Mr. Chairman and Members of the Committee. I am pleased to have this opportunity to appear before you today to discuss the low activity radioactive wastes from Formerly Utilized Sites Remedial Action Program (FUSRAP) sites. My testimony will address the authorities that EPA has over the off-site disposal of wastes from FUSRAP sites and particularly the material referred to as 11e.(2) byproduct material. I will be dealing with EPA's authorities under the Uranium Mill Tailings Radiation Control Act (UMTRCA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), the regulations and policies that we provide that pertain to the off-site disposal of FUSRAP waste, and the Resource Conservation and Recovery Act (RCRA).

The Formerly Utilized Sites Remedial Action Program (FUSRAP) was established in 1974 to identify, evaluate, and remediate sites that were contaminated as a result of the nation's early atomic energy program under the auspices of the Manhattan Engineer District and the Atomic Energy Commission. In the FY 1998 Energy and Water Appropriations Act, Congress transferred management of the FUSRAP program from the U.S. Department of Energy to the U.S. Army Corps of Engineers.

**11e.(2) BY-PRODUCT MATERIAL AND THE URANIUM MILL TAILINGS
RADIATION CONTROL ACT**

According to the US Army Corps of Engineers, most of the material at FUSRAP sites is residual radioactive material from the processing of ores for source material content. This material was first defined in the Uranium Mill Tailings and Radiation Control Act of 1978. UMTRCA's purposes were:

- (1) to provide a program of assessment and remedial action at inactive uranium mill tailings sites, and
- (2) to regulate mill tailings during uranium or thorium ore processing at active mill operations

and after active operations to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

UMTRCA amended Section 11e. of the Atomic Energy Act in, so that

Ae. The term Aproduct material@ means

(1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.@

UMTRCA also delineated regulatory responsibility for 11e.(2) material. EPA was given the responsibility to establish standards for the protection of public health, safety, and the environment from radiological and non-radiological hazards associated with the processing, possession, transfer, and disposal of 11e.(2) byproduct material. These regulations appear in 40 CFR Part 192. UMTRCA gave the responsibility for implementing and enforcing EPA's regulations to the Nuclear Regulatory Commission. NRC has issued regulations in 10 CFR 40 that implement our standards and set forth criteria for licensing and operation of uranium processing facilities.

We understand that NRC has interpreted its UMTRCA jurisdiction as being limited to regulating 11e.(2) material generated only at a site licensed by NRC. Because FUSRAP sites were not licensed during their operations, NRC does not believe it has jurisdiction to apply its regulations, or implement ours, for disposal of 11e.(2) material resulting from FUSRAP cleanups. NRC also has said that they A believe that USACE FUSRAP activities are governed by CERCLA requirements in a manner which protects health and safety, and we do not see a need to ask Congress to provide regulatory authority to the NRC [over CERCLA on-site response actions.]@¹

SUPERFUND AUTHORITIES OVER THE FUSRAP PROGRAM

Of the 23 remaining FUSRAP sites requiring clean up, 7 are on the Superfund National Priorities List.² For these sites, EPA and the Corps must approve the Record of Decision, which specifies the final remedy selected for a site. For the other (non-NPL) FUSRAP sites, the Corps does not have to receive EPA approval of the Record of Decision. The Superfund National Oil and Hazardous Substance Pollution Contingency Plan (NCP) provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants and contaminants. It establishes the procedures for undertaking response actions under CERCLA. Section 611 of the Energy and Water Development Appropriations Act of 2000 states that the Corps shall undertake cleanup of these sites under CERCLA, including the NCP. EPA has been involved in the review of some non-NPL sites at the request of the Regions or USACE.

The Off-Site Rule

Part of the NCP is the Off-Site Rule (40 CFR 300.440). This rule implements the requirements of CERCLA 121(d)(3). CERCLA 121(d)(3) requires that waste removed under Superfund only go to a facility that is in compliance with Federal and applicable state disposal requirements, and be disposed of at a unit that is not releasing any hazardous waste, or constituents thereof, into the groundwater or surface water or soil. This rule has three main requirements for facilities receiving Superfund waste.

- 1) The receiving facility must be in compliance with RCRA or other applicable Federal or State requirements.
- 2) At hazardous management facilities, the waste management unit receiving these wastes must not currently and should not be expected to release contaminants into the environment. Any releases from other units at the facility must be controlled.
- 3) At other than hazardous waste management facilities, environmentally significant releases must be controlled.

To ensure that the waste removed under the NCP goes to a disposal facility that meets these requirements, the party performing the cleanup should contact the EPA regional office for the region where the disposal facility is located, and request a determination under the Off-Site Rule. When EPA receives a request for a determination under the Off-Site Rule, the Regional Office must determine whether the facility meets the requirements of the rule. If there is no standard, such as a regulation or a permit condition for a particular waste, then the facility is not in violation if it accepts that waste. If a facility is found in violation of a standard, then EPA notifies the facility, and the State, of the unacceptability. Once a facility has removed the cause of this unacceptability, EPA can make a determination that it can accept Superfund waste. If a facility has a violation that cannot be undone, such as an unpermitted air emissions release, then for the facility to again become acceptable, it must complete all actions that EPA determines are necessary to rectify the violation, e.g. paying all penalties, and prevent recurrences.

RESOURCE CONSERVATION AND RECOVERY ACT APPLICABILITY TO 11e.(2) MATERIAL

Under RCRA, EPA regulates solid and hazardous waste. Hazardous wastes are a subset of solid wastes that may cause or significantly increase illness, or may pose a hazard to human health or the environment when improperly managed. To be regulated as a hazardous waste, a material must first meet the definition of a solid waste, in other words, RCRA only allows EPA to regulate materials that are solid wastes.

The RCRA statutory definition of solid waste excludes source, special nuclear and byproduct material as defined by the Atomic Energy Act. See 42 U.S.C. 6903(27). Therefore, materials meeting the AEA definition of byproduct material (which includes Section 11e.(2) material) are not regulated under RCRA, because those materials are not solid waste. To date, EPA has not distinguished between the kinds of material referred to in Section 11e.(2) generated before 1978 and such material generated after 1978, and EPA does not regulate any of this material under RCRA. EPA can regulate the hazardous waste components of wastes that contain

mixtures of 11e.(2) material and RCRA hazardous wastes.

EPA's regulations do allow the disposal of non-hazardous wastes, in this case, 11e.(2) wastes, at hazardous waste facilities. Unless prohibited by some other regulation or permit condition, wastes that are not hazardous can be disposed of at a hazardous waste landfill. This allows companies to dispose of non-hazardous wastes at hazardous waste facilities with generally more controls than a municipal solid waste landfill, or an industrial non-hazardous waste landfill. Unless otherwise precluded, States authorized to operate the program under RCRA can, however, regulate material that is not regulated as hazardous at the federal level. Their regulations can be broader in scope than EPA's regulations, or they can be more stringent. States can, for example, establish standards for the disposal of specific types of federally unregulated radiological material (i.e., NORM, exempt, or unimportant quantities). In addition, state standards may be more stringent than federal standards. This provides flexibility to the States to fashion a regulatory program that responds to their particular situation so long as it is at least as stringent as the federal program.

CONCLUSION

In its FUSRAP cleanups, the Corps must follow the provisions of the National Oil and Hazardous Substances Pollution Contingency Plan, which includes the Off-Site Rule. Under the Off-Site Rule, 11e.(2) waste cleaned up under CERCLA authorities must be disposed of at a site that meets applicable, if any, standards for this material, as well as the other requirements of the rule. 11e.(2) byproduct material is outside of the scope of the Resource Conservation and Recovery Act, since by statute it is neither a solid nor a hazardous waste.

Mr. Chairman, thank you for this opportunity to address the Committee. I would be

¹Letter from Shirley Ann Jackson, NRC Chairman to Stephen c. Collins, Conference of radiation Control Program Directors, Inc., May 3, 1999.

²Latty Avenue Properties (This one FUSRAP site is listed as two NPL sites: Futura Coatings and Hazelwood Interim Storage Site), Hazelwood, Missouri; Shpack Landfill, Norton, Massachusetts; St. Louis Airport Site, St. Louis, Missouri; St Louis Airport Site Vicinity Properties, St. Louis, Missouri; Maywood Interim Storage Site, Maywood, New Jersey; Wayne Interim Storage Site, Wayne/Pequannock, New Jersey; Middlesex, Sampling Plant, Middlesex, NJ.