

November 22, 2002

Tomiann McDaniel
U.S. Army Corps of Engineers HQ
Attn: CEMP-RI
441 G Street, NW
Washington, DC 20314

Dear Ms. McDaniel:

During the August 27, 2002 Association of State and Territorial Solid Waste Management Officials (ASTSWMO) Radiation Focus Group meeting, you briefed the Focus Group on the U.S. Army Corps of Engineers (USACE) plan to revise their January 3, 2000 *Off Site Disposal of Materials From The Formerly Utilized Sites Remedial Action Program (FUSRAP) Policy*, which expired December 31, 2001. We agreed to review a draft of the revised guidance once it was made available. However, the Focus Group is providing the following comments on the existing January 3, 2000 guidance. We hope that these comments are helpful in your drafting of the new guidance document.

Generally, we believe that the USACE needs to achieve much greater involvement from the affected States when making off-site disposal determinations. The USACE must work with both the originating and receiving States in obtaining concurrence regarding the characterization of the radioactive materials, and in assuring that all State laws and regulations are being followed regarding the shipment and disposal of these materials. Despite the good intentions reflected in the existing guidance, USACE has not always worked in collaboration with States in the past, resulting in situations where wastes have been shipped from State to State without sufficient characterization of the waste or prior notice to the involved States. In looking at the guidance, one could conclude that this situation could never have happened. Unfortunately it has occurred more than once.

Greater specificity in the guidance is needed in several areas to ensure that radioactive materials from the FUSRAP program are disposed of properly, in compliance with all applicable federal and State statutes, regulations, and guidance. Specific comments on the guidance are listed below:

PURPOSE

The first sentence of the document states "This circular *details* USACE policy for disposal/treatment/reprocessing (disposal) of ..." Although the policy has great value as a general awareness tool, it is not "detailed" enough to assure compliance and working relationships with regulators and stakeholders, in and of itself. The document should



either be qualified that way in the first sentence, or much more detail should be added to the substance of the document.

This paragraph expresses the intent of USACE to comply with all applicable laws and regulations. First, we would suggest adding the phrase “federal and state” to this paragraph, in order to emphasize the importance of knowing and complying with State requirements. Hopefully, this also leads to the inference that the USACE must coordinate closely with the States to gain that knowledge. Second, we believe that “guidance” should be added to the list of things to be complied with. USACE operates the FUSRAP program under CERCLA authority. The federal government has produced a myriad of CERCLA related guidance documents, which everyone is expected to follow. USACE is not exempted from following this same guidance, and needs to commit to following such guidance in the FUSRAP program.

APPLICABILITY

We would suggest removing the phrase “This policy is a matter of discretion”. As this guidance presents the mechanisms needed to properly dispose of radioactive materials, it should not be discretionary for any USACE program, and certainly not in the FUSRAP program for which it was specifically designed.

REFERENCES

We suggest adding the federal Atomic Energy Act and the Uranium Mill Tailings Radiation Control Act in this section, because these laws or the State equivalents do apply to some disposal facilities and the radioactive materials at some FUSRAP sites.

BACKGROUND

Again, under 5.c we would add “guidance” to “..applicable laws and regulations”.

POLICY

This paragraph states that the project manager will “document” a disposal strategy. We believe that this wording gives the impression that the project manager can independently develop this strategy, as long as they document it. The paragraph should be re-written to describe a process where the strategy is formulated in partnership with, and with the concurrence of, the appropriate NRC and/or State authorities. The Focus Group also believes that coordination with State emergency planning staff on transportation issues may be required depending on the nature of the material.

- In paragraph 6a, the characterization of the materials must be performed in coordination with, and with the concurrences of the appropriate NRC and/or State authorities, and the receiving facility.

- In paragraph 6d, we would suggest adding “or the delegated State representative” after the term (ROC) in the second sentence.
- In paragraph 6d(1), we would suggest inserting “and applicable State representative” between ROC and must, in the last sentence.
- In paragraph 6d(3) we would suggest inserting “or delegated State’s” between EPA and finding.
- In paragraph 6e, coordination with regulators prior to shipment is required. We strongly believe that this is far too late in the process for any meaningful input from the regulators. It has great potential to put the USACE and the regulators in an adversarial position, when at the last minute the USACE is ready to process their shipment, and the regulators have many unresolved issues. The guidance needs to emphasize that contact with the regulators needs to be early and often, in order to maximize the success of the project. Regulators in both the originating and receiving States should be involved as early as the initial site characterization, and at every step thereafter.
- In paragraph 6e(1), we suggest deleting the words "seek to" in the second sentence. The USACE should make sure that the facility has obtained written authorization from the appropriate regulators.
- In paragraph 6f(2), the guidance discusses the use of a secondary non-DOT sticker. This discussion needs to be expanded to discuss what information the sticker needs to contain, and how that data will be used to ensure appropriate disposal as stated in the guidance.

Thank you for the opportunity to comment on the guidance, and for your continued efforts to foster the relationship between the USACE and ASTSWMO regarding the FUSRAP program. We hope that the comments can be used constructively in formulating the new Off-Site Disposal Guidance. Please contact either myself (303) 693-2287 or Dania Rodriguez of ASTSWMO (202) 624-5973 with any questions.

Sincerely,



Jeff Deckler, CO
Chair, Radiation Focus Group

cc: ASTSWMO Federal Facilities Subcommittee
Radiation Focus Group
Jim Woolford, EPA
Tom Peake, ORIA