



State of Ohio Environmental Protection Agency

Northeast District Office

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Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

August 22, 2005

RE: PROPOSED PLAN COMMENTS
PAINESVILLE FUSRAP
LAKE COUNTY, OHIO

[REDACTED]
U.S. Army Corps of Engineers - Buffalo District
ATTN: CELRB-TD-EE
1776 Niagara Street
Buffalo, NY 14207-3199

Dear [REDACTED]

The Ohio Environmental Protection Agency (Ohio EPA) has reviewed the "Final Proposed Plan for Remediation," (Plan) dated July 2005 submitted by the U.S. Army Corps of Engineers (USACE) for the former Diamond Magnesium Site, located in Painesville, Ohio. The document presents the USACE's preferred alternative for the cleanup of radiological contamination present at the FUSRAP site. The preferred alternative involves the excavation of impacted soil exceeding a construction worker sum of ratio (SOR) of 1, off-site transportation, and disposal of the soil at a commercial facility licensed and/or permitted to accept radiological waste.

Ohio EPA's prepared statement at the July 23, 2005 public meeting for the Plan stands. Ohio EPA opposes the Plan but has publically announced that the path forward that Ohio EPA is taking is to allow the cleanup to proceed pending all comments received on the Plan. Ohio EPA will hold off our final judgement of the success of the cleanup until the post excavation certification results are received. A copy of the statement made by Ohio EPA at the public meeting is included as an enclosure to this document.

Ohio EPA comments regarding the preferred alternative are presented below.

1. Page 4, 4th paragraph: The Plan states that based on the Oak Ridge National Laboratory findings from a 1988 investigation, the site exceeded existing guidelines for unrestricted use (ORNL 1990, 1991 *Directive, Regulations, and Standards* document). Please provide the steps the federal government or its authorized representatives implemented to control and contain the radiological contamination known to be present at the site following the 1988 investigation and answer the following questions. Did the federal government or its representatives inform the subsequent property owners of the presence of the radiological contamination in a manner and time frame that would have prevented or limited the spread of the radiological contamination to surrounding areas? Does the federal government have some responsibility for the assessment and cleanup, if needed, of all radiological contamination associated with the pitchblend ores brought to the site irregardless of how they came to be placed?

2. Page 4, 4th paragraph: Please describe the differences in ORNL's meaning of "unrestricted use" (ORNL 190,1991) versus USACE meaning of "unrestricted release" as stated on page 27, last line.
3. Page 27, last line: Does USACE's definition of "unrestricted release" for this project mean that the FUSRAP area upon completion of clean up activities will be safe for industrial use but not safe enough for anyone to use in all other foreseeable ways? If the answer is yes, then is this not a restriction of future use?
4. In May, 2003, the USACE issued a draft Proposed Plan which was later retracted. The document included a proposed alternative similar to this preferred alternative which was based on an industrial use. The proposed alternative acknowledged that "*following completion of the remedial action, the site would be released for industrial use. Land use controls limiting the site to industrial uses would need to be imposed.*" The preferred alternative is based on an industrial use restriction yet the Plan states that "*following completion of the remedial action, the site would meet the requirements for unrestricted release.*" Please explain why the two alternatives are based on the same future industrial use scenario but the preferred alternative fails to acknowledge the need for land use controls.
5. Please describe the administrative or other mechanism USACE will use to ensure the anticipated future use is adhered to for the duration of the time necessary. Ohio EPA recommends that a "Land Use Control Plan" be developed for managing, maintaining, and ensuring that institutional controls and restrictions for the FUSRAP area are protective for future users, since the site is being restricted to a specific use.
6. Figure 5: The Figure presents the approximate boundary for areas to undergo excavation in accordance with the preferred alternative. The May 2003 Proposed Plan included a figure (Figure 7) which depicted the approximate boundary of areas exceeding a SOR greater than 1 for subsistence farmer and areas exceeding a SOR greater than 1 for an industrial use. USACE's asserts that the cleanup of the areas identified on Figure 5 may result in levels meeting the State of Ohio's "free-release" criteria specified in Ohio Administrative Code 3701:1-38-22. It is not clear if all areas that have contamination with a SOR greater than 1 for a subsistence farmer contain an area within that footprint that will be subject to excavation under the Plan. If an area exceeds the SOR of 1 for a subsistence farmer but does not exceed the SOR of 1 for a construction worker identifier, then the area would not be subject to any type of remedial action under this preferred alternative, thus that area would remain above the State's free release standard. The Plan should include a figure similar to Figure 5, but include the contaminated soil footprint for areas exceeding the SOR of 1 for a subsistence farmer and the soil above the construction worker cleanup levels.
7. The Plan does include a figure showing all areas of radiological contamination above background that is attributable to federal government activities. In order to understand the full nature and extent of the radiological contamination this information should be presented in the Plan since it is not presented in other site documents.

8. Page 12, Section 3.4: The Plan provides an estimated volume of soil to be excavated. Figure 5 references the surficial area of the targeted areas. The Plan states on page 18, 1st paragraph that the risk to the industrial worker was evaluated from exposure to surface soils (i.e., 0 - 2 feet below ground surface.) Does this depth serve as the point of compliance to limit the depth of the excavations? Page 34, Section 9.0 of the Plan states that all on-site soils exceeding the construction worker cleanup goals will be excavated for proper disposal. Does this mean there is no depth restriction for the excavation? The Plan will need to include information on what criteria will be used to determine the point of compliance for the depth of excavation. A construction worker would be exposed to soil much deeper than two feet during routine construction work. How does the Plan account for exposure to soils and depth? If a "not to exceed depth" is to be used and the residual contamination exceeds the construction worker cleanup goal beyond that depth what will be done about the remaining residual contamination? What is the "not to exceed depth" and what is it based on?
9. Page 29, Section 8.1, 3rd paragraph: The Plan should be revised to insert the phrase "of the proposed alternatives" after the phrase "Alternative 3 provides the best protection..." The statement is misleading because the **best** protection of human health and the environment would involve the cleanup of residual radiological contamination to levels than would result in a SOR less than 1 for a subsistence farmer identifier.

If you have any questions concerning this matter, please contact me at [REDACTED].

Sincerely,

[REDACTED]
Site Coordinator
Division of Emergency and Remedial Response

KK/cia

enclosure

cc: [REDACTED], Ohio EPA, OFFO, SWDO
[REDACTED], Ohio EPA, DERR, NEDO
[REDACTED], Ohio Dept. of Health
[REDACTED], Chemtura Corp.
[REDACTED], Twin Rivers Technologies

Good evening,

The Ohio Environmental Protection Agency (Ohio EPA) has been working with the Department of Energy and U.S. Army Corps of Engineers (Army Corps) for more than 10 years to investigate the radiological contamination left behind by the former Diamond Magnesium facility here in Painesville. Through this effort, Ohio EPA believes that the contamination has been adequately investigated and characterized allowing the cleanup to move forward. The extensive characterization of the site was found to be necessary when after a 1998 removal action of a contaminated area was halted because of an unexpected increase in the scope of the work.

Ohio EPA is here to provide our view of the Proposed Plan for finishing the cleanup of this site and to hear input from local stakeholders regarding the Army Corps' proposal for addressing the remaining radiological contamination at the site. At this point, Ohio EPA has major differences of opinion about how the Army Corps is interpreting CERCLA (Superfund law) to develop cleanup levels, risk calculations and institutional controls for the site. Officially, the Army Corps is saying that they **will** clean up the site **but** only to levels safe enough for future industrial use (i.e., restrictive release.) This means that the future use of the now vacant property would be restricted to industrial use only. The Army Corps based their cleanup plan on their self assessment of the foreseeable future use of the area and their determination that the reasonable expected future use of the site is industrial. By restricting the future use to an industrial use only status increases the amount of radiological contamination allowed to remain in-place. Ohio EPA believes this assessment does not reflect local trends in the re-use of former industrial land and that the future use should include a mix of residential and recreational uses.

All of these major issues are resolved if the Army Corps' removal of the contaminated soil achieves "free release levels" (acceptable for any future use) for the contamination at the site when they do the cleanup. This means that based on the assessment of the residual contamination, the site is clean enough for anyone to use in any foreseeable way. The Army Corps is confident that they will reach free release status even though this is not the goal of this proposed cleanup plan. After reviewing their results at other sites, we agree that this is possible. Therefore, the path forward that Ohio EPA is taking is to allow the cleanup to proceed as the Army Corps has proposed and hold off our final judgement of the success of the cleanup until the post excavation certification results are received. As in the past, Ohio EPA would have significant involvement in the oversight of the actual cleanup and in the development and review of the cleanup certification plans. Ohio EPA believes that this is the best option available for all parties by allowing the cleanup to start and avoid delays that could result in the loss of federal funding.

There is also another issue that we are trying to resolve. Two areas within the current property boundary but outside of the official Formerly Utilized Sites Remedial Action Program (FUSRAP) site boundary have elevated radiological contamination present and will not be cleaned up under this proposed plan. Based on available information, the property owner unknowingly moved radiological contaminated construction and demolition debris to other parts of their property and buried it in two landfills. The Army Corps has stated that this material legally cannot be addressed by FUSRAP as they interpret the limitations on their program. This is a more difficult legal issue and I'm not sure there is a quick resolution for this one. We will continue to work on this issue with appropriate parties.

Thank you for your time.