



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON, DC 20310-0108

The Honorable Debbie Dingell
United States House of Representatives
102 Cannon House Office Building
Washington, DC 20515

Dear Representative Dingell:

I am writing in response to your August 19, 2024, letter concerning the Formerly Utilized Sites Remedial Action Program (FUSRAP) Niagara Falls Storage Site, NY. Your letter requests answers to questions concerning the safety of the planned disposal of contaminated soils from the Niagara Falls Storage Site at the Republic Services Wayne Disposal, Inc., treatment and disposal facility in Van Buren Township, Michigan (the Facility).

The Army has no greater priority than the protection of public health, safety, and the environment. The identification of the Facility as a properly permitted facility to accept low-activity radioactive waste meeting state of Michigan acceptance criteria is the result of thorough and rigorous technical evaluations and engagements between the U.S. Army Corps of Engineers (Corps), its contractors, and municipal, county, and state officials.

Please find enclosed responses to your specific questions. These responses address areas of the remediation project that are within the Corps responsibility, including the safe excavation, packaging, and transportation of the FUSRAP waste to the Facility. The Corps has coordinated with representatives from the Facility who will be providing a separate response addressing questions specific to the operation of their disposal facility.

The Corps will continue to engage with stakeholders regarding disposal of FUSRAP waste at the disposal facility. The Corps is ready to meet with you in person to discuss this matter and address any additional questions. My point of contact for this subject is Ms. Sharron Harris at sharron.harris4.civ@army.mil or (571) 278-6547.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael L. Connor", is positioned above the typed name.

Michael L. Connor
Assistant Secretary of the Army
(Civil Works)

Enclosure

1. How was the decision made to transport this waste to the Wayne Disposal facility?

The U.S. Army Corps of Engineers (Corps) requires its contractors to safely dispose of waste in properly permitted facilities. The Republic Services – Wayne Disposal, Inc. facility, in Van Buren Township, Michigan (hereinafter referred to as “the facility”) was identified by the Corps’ remedial action contractor because, based on the Corps’ evaluations, the Facility is authorized by the appropriate state and federal agencies to receive the low-activity radioactive waste stream expected to be generated at the Niagara Falls Storage Site (NFSS), a Formerly Utilized Sites Remedial Action Program (FUSRAP) site. Additionally, the federal government has successfully shipped and disposed of similar waste to the Facility over many years.

This low-activity radioactive waste stream primarily consists of soil contaminated with volatile organic compounds and naturally occurring radioactive materials (radium, thorium, and uranium). This material meets the waste acceptance criteria for disposal at the Facility, and the Facility routinely accepts similar material from commercial sites, as well as other FUSRAP sites, for disposal.

As part of the process for identifying facilities capable of safely accepting FUSRAP materials, the Corps has conducted market research of the nation’s 22 commercial hazardous waste disposal facilities for the disposal of waste from the FUSRAP and other environmental programs. Seven of the 22 facilities had permit conditions allowing the acceptance of radioactive waste and only five, including the Facility, historically expressed interest in receiving FUSRAP waste. The Corps’ Radiation Safety Support Team, which consists of health physicists and experts from across the organization, performed a safety audit of the Facility and found it suitable for accepting waste from FUSRAP projects that meet its waste acceptance criteria. This audit included an independent evaluation of the Facility including a rigorous review of past facility performance, its operational safety record for workers and the environment, and its compliance with all applicable regulatory and permit license conditions.

The Corps strives to execute FUSRAP projects in a cost-effective manner by considering disposal rates, shipping distances, and costs in the selection of appropriate disposal facilities. By disposing of much lower-activity radioactive waste at facilities that can legally accept them, the Corps conserves the limited capacity at other facilities permitted to accept much higher-activity radioactive waste.

The Corps’ use of the Facility to dispose of FUSRAP waste is not limited to the NFSS project. The Corps been engaged with municipal, county, and state officials since 2018 and uses this facility to support the disposal needs of FUSRAP projects throughout the national program.

Detailed information on the Corps’ process for identifying disposal facilities is provided in Engineering Manual 1110-35-1, Management Guidelines for Working with Radioactive and Mixed Waste.

2. Why were local officials and the public not notified in advance about the transportation of this waste?

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The Corps transports waste in accordance with U.S. Department of Transportation (DOT) regulations in Title 49 of the Code of Federal Regulations regarding the interstate shipment of waste. The levels of radioactivity in the contaminated soils from the NFSS are sufficiently low to not require transportation notifications to local, state, or federal agencies or Congress. The identification of this Facility as a properly permitted facility to accept low-activity radioactive waste meeting state of Michigan acceptance criteria is the result of thorough and rigorous technical evaluations and engagements between the Corps, its contractors, municipal, county, and state officials. The Corps is not aware of any requirement concerning Congressional or individual Members notification when disposing of hazardous materials in commercial facilities which are properly permitted to accept such materials from private or other sources.

As part of its due diligence approach to approving a disposal facility for radiological waste, the Corps contacted and held meetings with several key local leaders and groups regarding disposal of FUSRAP materials at the Facility. From 2015 through 2022, the Corps engaged the following officials regarding the acceptance of FUSRAP radioactive waste at the Facility:

- City of Romulus (City Administrator Representative)
- Van Buren Township (Supervisor, Public Service Director, Planning and Economic Development Director, Executive Assistant to the Supervisor, Planning and Economic Development Deputy Director, Trustees, Environmental Commissioner)
- Wayne County (County Environmental Specialists, Director of Health, Veterans & Community Wellness, Assistant Wayne County Executive, Division Director of Land Resources, County Geologist)

The Corps has also discussed disposal of FUSRAP materials at the Facility with the Michigan Department of Environment, Great Lakes and Energy (formerly the Michigan Department of Environmental Quality) on numerous occasions dating back to 2012 as part of the Corps' approval and audit process, including key meetings during the audits of the Facility conducted in 2015, 2017 and 2022. The Corps routinely requests approval from the Michigan Department of Environment, Great Lakes and Energy for each FUSRAP project seeking to dispose waste at the Facility, even though such approval is generally not required. In August 2024, Michigan Department of Environment, Great Lakes and Energy sent a letter of approval to the Corps regarding the NFSS waste. The letter also included the Director of Public Services from Van Buren Township.

Questions about the Facility's notification or outreach activities to the local community should be directed to Republic Services.

3. What specific measures are being implemented to ensure the safety of the community during the transportation and disposal of this waste?

The Corps has no greater priority than the protection of public health, safety, and the environment. A key element of the Corps' health and safety program is to ensure that FUSRAP waste are only disposed in facilities properly licensed or permitted to receive them. The Corps inspects and audits waste treatment and disposal facilities to ensure our safety standards are met for FUSRAP waste. The Facility was audited by the Corps in 2012, 2015, 2017, and 2022 and meets these safety standards.

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Additionally, the Corps contacts the U.S. Environmental Protection Agency's Region 5 Off-Site Rule Coordinator prior to contracting for the disposal of FUSRAP waste at the Facility. The Off-Site Rule Coordinator determined the Facility complies and has no pending enforcement actions. Additionally, the Corps must contact the U.S. Environmental Protection Agency every 60 days to ensure that the Facility remains acceptable for the disposal of FUSRAP waste.

The Corps' characterization data demonstrates that some waste at the NFSS meets the acceptance criteria of the Facility's permit. If the contaminated soils exceed the Facility's limits, the Corps will not send that package to the Facility and will pursue treatment or disposal at an appropriately authorized facility. All acceptable waste will be packaged, surveyed, marked, labeled, and manifested for transportation in accordance with DOT, U.S. Environmental Protection Agency, and disposal facility requirements, and will always be in custody to prevent unauthorized use or exposure. These waste materials will be placed into DOT-compliant trucks fitted with 8-millimeter liners rated as an industrial package-1 (IP-1) consistent with 49 CFR 173.427 requirements. This packaging will only be opened while adding or removing waste, performing sampling activities of the contents, or performing final inspections prior to disposal.

Corps personnel at the NFSS will inspect incoming transport vehicles and liners prior to waste loading to ensure they meet DOT requirements, and that shipping equipment is in good repair and suitable for transport of hazardous materials. Prior to leaving the site, all trucks will undergo documented surveys to ensure DOT compliance for radioactive contamination and dose rates per the limitations outlined in 49 CFR Sections 173.441, 173.427, and 173.443.

4. What steps are being taken to prevent any accidents during the transport and disposal of this waste?

Safety is always a fundamental priority. The Corps requires its contractors to adhere to stringent transportation requirements, in accordance with Title 49 of the Code of Federal Regulations, and Defense Travel Regulation – Part II, Chapter 204. All waste carriers must possess DOT hazardous materials certification, demonstrate proof of insurance, and will have constant communication with applicable dispatchers using satellite tracking equipment and/or cellular communication. Transportation will be performed along prescribed routes rated for truck traffic leaving the NFSS, along public interstates, and to the Facility.

5. What response plans are in place in the event of an incident during the transportation or disposal of the waste?

Each waste shipment is documented in either a Hazardous Waste Manifest for DOT-regulated hazardous materials that are considered U.S. Environmental Protection Agency-regulated hazardous waste or a Bill of Lading for DOT-regulated materials that are not otherwise considered hazardous waste. These shipping papers contain 24-hour emergency response contact information and waste descriptions including hazardous material identification numbers, proper shipping names, hazard class, and packing group. A copy of these shipping papers and a DOT emergency response guidebook accompanies the driver during each transit. In the event of an incident during transit, these documents provide initial emergency response information for the contractor and first responders.

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Following an incident, local emergency services, the Corps, and the National Response Center will be contacted immediately. Information to be relayed includes the time, location, and nature of the incident, the name(s) of the carrier and any other people involved, the extent of any injuries, waste descriptions from the manifest/Bill of Lading and other shipping papers, and a preliminary designation of immediate danger.

6. Will the waste be tested before being deposited?

No waste is shipped without concurrence from both the Facility and Michigan Department of Environment, Great Lakes and Energy. The waste materials leaving the NFSS are characterized in waste profiles that are accepted per waste stream by the Facility and receive concurrence by the Michigan Environment, Great Lakes and Energy that the waste is acceptable under the Facility's permit. All waste is sampled per 500 tons (approximately 400 cubic yards) for radioactive material content, hazardous waste toxicity characteristics (via toxicity characteristic leaching procedure [TCLP]), and physical nature such as pH, flash point and reactivity to confirm waste characterization is consistent with the approved profile. The Corps' waste shipper then certifies that the waste is consistent with the profile and signs the manifest prior to leaving the site. All Corps waste shippers are trained according to DOT and Department of Defense requirements in Title 49 of the Code of Federal Regulations and Defense Travel Regulation – Part II, Chapter 204, and are designated to this role by the Buffalo District Commander.

7. What ongoing environmental monitoring will be conducted to ensure there is no contamination or adverse impact on the surrounding environment, and how frequently will this data be reported to the public?

As part of periodic disposal audits, the Corps reviews on-site processes, historical records, and both the environmental surveillance and personnel dosimetry programs at each disposal facility capable of receiving FUSRAP waste. The environmental surveillance program at the Wayne Disposal facility is a combination of specific permit requirements, Michigan statutory requirements, and additional voluntary monitoring collectively covering air quality, groundwater, dosimetry, sediment, leachate, and leak detection monitoring. The results are reported to Michigan Department of Environment, Great Lakes and Energy annually. During the last audit of the Facility in 2022, the Corps did not identify any environmental or safety concerns, notable permit violations, or public relations issues that would warrant lack of confidence in the ability of the Facility to safely handle FUSRAP material. The Corps understands that the state of Michigan conducts additional permit inspections, and that Republic Services will provide more specific responses to these inquiries.

8. Please provide detailed information on the protocols and technologies used at the Wayne Disposal facility to safely manage and contain this waste.

It is imperative that waste is sent to facilities that demonstrate appropriate engineering controls to deal with the specific nature of the waste stream being disposed. Corps policy in EM 1110-35-1, Management Guidelines for Working with Radioactive and Mixed Waste, states that radioactively contaminated materials can only be disposed at facilities licensed by the U.S. Nuclear Regulatory Commission or an Agreement State for licensable material, or at facilities

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permitted by a federal or state regulator to accept radioactive materials in accordance with their facility permit and all applicable laws and regulations. Any permitted disposal facility under consideration for FUSRAP waste must specifically address the disposal of radioactive material in its permit or it cannot be considered for disposal of FUSRAP radioactive waste material.

The waste acceptance criteria at the Facility were developed with consideration for public health, safety, and the environment. The Facility is permitted to receive unimportant quantities of source material as defined in 10 CFR 40.13(a) and Michigan Administrative Code R. 325.5052, technologically enhanced naturally occurring radioactive materials limited to 50 picocuries per gram (pCi/g) of radium-226 and radium-228 per their state operating license, and a variety of characteristic and listed U.S. Environmental Protection Agency hazardous waste codes applicable to the NFSS. The active cell and sub-cells at the Facility are required to be lined with a minimum of a 10-foot-thick layer of native clay, 3 to 5 feet of compacted clay, and multiple layers of high-density polyethylene liners. The cell additionally possesses a leachate collection system which is rigorously monitored for FUSRAP-related constituents, among other contaminants.

Per the Facility's operating conditions, closure and post-closure financial assurances have been provided to the regulators.

9. What steps are being taken to ensure full compliance with all state and federal environmental regulations and engage with my constituents to address their concerns about the safety of this waste disposal?

The Corps prioritizes the safety of workers, the community, and the environment while implementing remedial actions under FUSRAP. The Corps ensures adherence to all state and federal environmental regulations throughout the remediation process, including packaging, transportation, and disposal of waste. The identification of this facility as a properly permitted facility to accept low-activity radioactive waste meeting state of Michigan acceptance criteria is the result of thorough and rigorous technical evaluations and engagements between the Corps, its contractors, and municipal, county, and state officials. Details on safe waste transportation, disposal facility selection, Corps audits, and routine material sampling are covered in previous questions. The Corps expects that Republic Services may further address waste disposal questions about their Facility in response to the letter from your office.

10. Will you participate in an in-person town hall in the community?

The Corps previously participated in an open house meeting hosted at the Facility in May 2017, along with the Michigan Department of Environmental Quality (now the Michigan Department of Environment, Great Lakes, and Energy), to specifically address the Facility's acceptance of low-activity FUSRAP radiological waste streams. The meeting focused on education of attendees on radiological waste streams, transportation aspects, facility requirements, and facility design and public protection procedures/monitoring. The Corps would support attending a similarly focused engagement.