



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, D.C. 20314-1000

JUN 02 2016

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your May 17, 2016, letter to Lieutenant General Thomas Bostick, Chief of Engineers, regarding the West Lake Landfill (WLLF) Superfund Site in Bridgeton, Missouri. LTG Bostick asked that I reply on his behalf. As you are aware, the site is currently being addressed by the responsible parties pursuant to multiple orders from the U.S. Environmental Protection Agency (EPA) and under plans approved by EPA. A bill, (S. 2306) has passed the U.S. Senate that would move the responsibility for responding to radioactive contamination at the site to the Formerly Utilized Sites Remedial Action Program (FUSRAP), a program that is executed by the U.S. Army Corps of Engineers (Corps) under its Civil Works program. A corresponding bill has been introduced in the U.S. House of Representatives (HR 4100). In your letter, you asked a number of questions about these bills. Before I address each of your questions, I do want to clarify, while the Corps may respond to Congressional inquiries and questions regarding pending legislation, the Corps does not take a position for the Administration in support or opposition of proposed legislation. If the legislation were enacted, the Corps would execute the law in accordance with its requirements. For ease of reading, I have restated the questions here, along with the corresponding response.

1. Do you believe that the transfer of the West Lake Landfill to the FUSRAP will expedite the cleanup process versus leaving it under the jurisdiction of EPA and CERCLA?

Answer: The addition of the site to the FUSRAP program would not accelerate remediation at the WLLF. The FUSRAP program would only address the cleanup of low level radiological material at the site, which is only one issue of concern at the landfill. Currently, the Potentially Responsible Parties (PRPs) execute and pay for actions as directed by EPA. Transferring the site to FUSRAP would subject the site to the limitations of the FUSRAP budget and appropriations process, and its necessary prioritization with respect to the sites currently competing for the program's limited appropriations. Additionally, there is no guarantee that the ultimate cleanup actions would be different than those which would occur under the current process.

In 2008, after EPA selected a remedy to cap the site and leave contaminated material in place, advocates challenged the remedy as not being fully protective. EPA is now considering three potential alternatives: the original 2008 remedy, a partial excavation, or a full excavation of the site.

2. If the cleanup of the West Lake Landfill were transferred to the USACE under the FUSRAP, what would be the USACE's proposed timeline for:

- a) Completing an evaluation and making a decision regarding the appropriate remedy?

Answer: The answer to this question depends on several variables such as the availability of funding and prioritization throughout the FUSRAP program, so the Corps cannot answer the question at this point. As background, there are 24 sites currently in the FUSRAP program and three other sites that have been determined as eligible for consideration and are awaiting a final determination as to whether they will be included in FUSRAP. If WLLF is added, its relative priority will be ranked against the priority of other sites currently in the program. Funds available for FUSRAP must be prioritized. The Corps does not have sufficient information to predict what priority the site might have in the program. Any proposed onsite activities could not begin until the Corps obtained a right of entry from the landowner. Such agreements typically take a number of months or longer to negotiate and in some cases landowners have denied the Corps entry to their property.

- b) Implementing the selected remedy?

Answer: In addition to the budget and prioritization variables discussed above, the alternatives that would be considered could differ greatly in terms of time and cost requirements. As stated above, any proposed onsite activities could not begin until the Corps obtained a right of entry from the landowner. Such agreements typically take a number of months or longer to negotiate and in some cases landowners have denied the Corps entry to their property. Following selection of a remedy, additional steps such as engineering, design and contract procurement would need to be completed before work could begin.

3. As the West Lake Landfill is on the NPL, EPA has final decision-making authority over the remedy selection - How would that impact the timing of actions taken by the USACE under FUSRAP?

Answer: Under the FUSRAP program, the Corps would follow the CERCLA process and its proscribed procedures. The Corps would analyze an array of alternatives, seek public comment, and ultimately would select a remedy with the approval of EPA. The Corps works closely and in tandem with regulators at every site-whether on the NPL or not, so the fact that the site is on the NPL is not anticipated to impact the timing of remedy implementation.

4. If EPA issues a record of decision (ROD), would the USACE take into account the remedy selected by EPA? If so, how?

Answer: The Corps would give serious consideration to any remedy recommended by EPA. However, if the site is transferred to the FUSRAP program, the process would require a review of alternatives before a remedy would be selected. As stated above, EPA would remain in its regulatory role at the site and before any remedy could be implemented, it must be approved by EPA.

5. How would transfer of the West Lake Landfill to the FUSRAP impact the work that is currently underway, such as the installation of a planned physical isolation barrier to separate the radiologically-impacted material at the West Lake Landfill from the subsurface smoldering event at the nearby Bridgeton Landfill?

Answer: It is our understanding that actions that are currently underway are pursuant to administrative orders from EPA. It is unclear how a transition to execution under the FUSRAP program would affect previous actions ordered by EPA. The Corps does not have the same authority to order other parties to take action. EPA would remain the regulatory agency at the site, so any transition of actions to address WLLF under FUSRAP would have to be coordinated with EPA. Specifically, with regard to the planned barrier, our understanding is that it will be located on the Bridgeton Landfill and West Lake Landfill boundary and installed by the land owner with EPA oversight. Pursuant to the proposed transfer, Corps authority under FUSRAP would only extend to addressing radioactive contamination at WLLF. The Corps would not be involved with the installation of the barrier as a result of shifting the WLLF site to FUSRAP. If the WLLF is shifted to the FUSRAP program, the Corps would coordinate with EPA to minimize impact to ongoing activities and related to addressing any other contamination in the WLLF landfill or related sites.

a) To the best of your knowledge, is a Responsible Party paying for the work that is currently taking place at the West Lake Landfill?

Answer: The site is currently being remediated by the owner of the landfill pursuant to multiple orders by the EPA and under plans approved by EPA.

b) Would the USACE similarly be able to require a Responsible Party to pay for the work?

Answer: No. While the FUSRAP program legislation confers lead agency authority for CERCLA response actions at FUSRAP sites to the Corps, it does not confer regulatory or enforcement authority. Such authority has never been applied to FUSRAP. The lack of authority to order PRPs to take response actions under FUSRAP is recognized in the proposed legislation, which provides that the Corps will work in cooperation with EPA and the Department of Justice (DOJ) in addressing other PRPs responsibilities at the site.

6. How does the USACE categorize and prioritize sites for cleanup under the FUSRAP?

Answer: The FUSRAP program actively gives priority to those objectives and phases of work that best support the overall program goal of eliminating demonstrable threats to public health, safety, or the environment. Funding priority is given towards previously awarded contracts to continue design, removal, or remediation, especially for projects in the construction phase so work can be conducted efficiently and effectively. This priority is followed by continued funding for ongoing Remedial Investigations (RI), Feasibility Studies (FS) and Records of Decision (ROD); and then for new RI/FS/ROD contracts. Final funding priority is given to activities concerning site closeout, coordination and transition to Department of Energy – Office of Legacy Management; as well as to any removal actions needed to meet CERCLA criteria for time-critical or non-critical removals. With regard to prioritization, the House Report accompanying the FY 12 appropriation advised, “The Committee continues to support the prioritization of sites, especially those that are nearing completion.” H.R. REP. 112-118 (June 24, 2011). The Joint Explanatory Statement accompanying the Energy and Water Development Appropriations Act for FY 12 echoed that in prioritizing sites, the Corps is to focus on sites nearing completion.

a) Where would the West Lake Landfill fall in order of priority?

Answer: There are 24 sites currently in the FUSRAP program and three other sites that have been determined as eligible for consideration and are awaiting a final determination as to whether they will be included in FUSRAP. At this time there are six sites underway which have priority as ongoing cleanup actions and which account for over 80% of the current funding level. As stated previously, if WLLF is added, its relative priority will be ranked against the priority of other sites currently in the program. Funds available for FUSRAP must be prioritized. The Corps does not have sufficient information to predict what priority the site might have in the Program.

7. There is some concern about how the USACE would budget for the investigation and cleanup under the FUSRAP.

a) Would the money come from the USACE's appropriated funds? If, not please explain where the money will come from.

Answer: Yes, both S. 2306 and H.R. 4100 provide that “The Secretary shall use amounts made available to the Secretary to carry out the Formerly Utilized Sites Remedial Action Program to carry out [this remediation].”

b) Would the USACE be able to make a Responsible Party at the West Lake Landfill pay all or a portion of the cleanup costs?

Answer: The Corps would be forced to request that the DOJ initiate and conduct a cost recovery action to recapture FUSRAP expenditures. The legislation recognizes this and

provides for cooperation among the DOJ, EPA, and the Corps. Republic Services, the current owner of the site and any other PRPs identified through the EPA's Superfund process, would not necessarily continue to pay for all of the actions at the site. Instead, these costs would initially be paid using appropriated funds and legal action would have to be initiated to recover those costs. This would be an additional process and would further increase costs to the federal government and would likely take considerable time given the PRPs could resist paying 100% of all costs, particularly those added by moving the site to the FUSRAP program.

- c) At what point in the process would the USACE be able to recoup funds from a Responsible Party? Would the USACE be able to require a Responsible Party to pay concurrently as the investigation and cleanup progresses or would the USACE have to seek cost recovery after-the-fact?

Answer: EPA has the authority to require responsible parties to pay for response actions. The Corps does not have such authority. The DOJ would be required to bring an action forcing the negotiation of some form of cost recovery or concurrent payments. A shift to the FUSRAP program would certainly impact the current situation where it is anticipated that the PRPs will pay all costs upfront. Under FUSRAP and working through the legal process it is not clear what the outcome or timing would be.

8. Does the Corps currently have sufficient funding to remediate the West Lake Landfill?

Answer: The response action would be spread out over several years, but at this time, the Corps cannot definitively state what cleanup action it would recommend and therefore does not know how much a response would cost or how long it would take. The recent annual appropriation to FUSRAP is approximately \$100 million. This amount is divided among the 24 sites currently in the program on a priority basis. The Corps lacks sufficient information to analyze the priority that is appropriate for WLLF. The vast majority of the current FUSRAP appropriations are dedicated to ongoing cleanup at sites already in the program.

- a) If not, in your best estimate how much would Congress need to appropriate for the Site?

Answer: This is dependent on the remedy that is chosen and at this time, the Corps lacks sufficient information even to make a reasonable estimate. However, we note that in its 2011 Supplemental Feasibility Study, EPA estimated the cost of its selected cap-in-place remedy to be \$43 million. Of course, this estimate was made using then current information and is likely one of the less costly alternatives that the Corps would consider. The estimated costs to conduct the "complete rad removal" with off-site disposal remedy (i.e., design costs, capital costs, and costs for monitoring during the construction period) range from \$259

million up to \$415 million, depending upon which disposal facility is used. Recurring annual costs to operate, monitor and maintain the facility would also need to be considered.

b) In your estimation, what is the earliest date that the USACE would have funds available to undertake:

c) A site evaluation and selection of a remedy at the West Lake Landfill?

Answer: The Corps does not have sufficient information to predict what priority the site might have in the program, but, as noted above, the vast majority of current FUSRAP appropriations are dedicated to ongoing cleanup at sites already in the program.

d) The remediation of the West Lake Landfill?

Answer: This is dependent on the prioritization among current sites and any which may be added in the future, the selected remedy for WLLF, and the future level of funding for the program.

Thank you for your questions and continued interest in the Army's Civil Works Program. If you have any questions or concerns, please feel free to contact me at (202) 761-0100.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. L. Stockton', written in a cursive style.

Steven L. Stockton, P.E.
Director of Civil Works