DEPARTMENT OF THE ARMY

COMPLETE STATEMENT FOR THE RECORD

OF

MS. KAREN J. BAKER
CHIEF, ENVIRONMENTAL DIVISION

BEFORE THE

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

UNITED STATES HOUSE OF REPRESENTATIVES

ON

OVERSIGHT OF CERCLA IMPLEMENTATION

July 13, 2016

Chairman Shimkus, Ranking Member Tonko and distinguished members of the Subcommittee, thank you for allowing me to provide written testimony on the Formerly Utilized Sites Remedial Action Program and the proposed legislation (H.R. 4100 – "A Bill to require the Secretary of the Army, acting through the Chief of Engineers, to undertake remediation oversight of the West Lake Landfill located in Bridgeton, Missouri"). The Administration has serious concerns about this legislation and cannot support it in its current form, since the transfer of this site to the Formerly Utilized Sites Remedial Action Program (FUSRAP) will likely further unnecessarily delay the cleanup of the site and it will saddle the general taxpayer with the cost of cleanup and cost recovery as compared to the Potentially Responsible Parties at the site. My testimony today will focus on the technical questions on which the Corps has provided information in the past. As part of my testimony, I am attaching two letters answering questions/concerns from the U.S. House of Representatives Energy and Commerce Committee's Chairman (the Honorable Fred Upton) and the Ranking Member (the Honorable Frank Pallone).

THE FUSRAP PROGRAM

The Formerly Utilized Sites Remedial Action Program (FUSRAP) was initiated in 1974 to identify, investigate, and if necessary, clean up or control sites throughout the United States contaminated as a result of the Nation's early atomic weapons and energy program. These activities were conducted by the Manhattan Engineer District (MED) or Atomic Energy Commission (AEC) who are both predecessors of the U.S. Department of Energy (DOE).

Congress transferred responsibility for administration and execution of cleanup at eligible FUSRAP sites to the U.S. Army Corps of Engineers (Corps) in the Energy and Water Development Appropriations Act of 1998 [Public Law 105-62, 111 Stat.1320, 1326].

The Corps continues to address these responsibilities, which include sites referred after 1998 under a Corps of Engineers/DOE Memorandum of Understanding, and sites added to the program by Congress. When executing FUSRAP, the Corps follows the investigation and response framework of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

WEST LAKE LANDFILL, MISSOURI

The Superfund site known as West Lake Landfill Site, located in Bridgeton, Missouri is currently being remediated by the owner of the landfill pursuant to an order by the U.S. Environment Protection Agency (EPA) and under a plan developed by EPA. H.R. 4100, referenced above, would move the responsibility for responding to radioactive

contamination at the site to FUSRAP, the program described above and executed by the Corps.

Some of the common questions asked and answered on this potential legislation are: the timing of the potential remediation under FUSRAP; the potential remedy that would be proposed under FUSRAP; the potential cost of cleanup of this site itself and its relation to other ongoing sites in FUSRAP; and, the ability of the Corps to hold responsible and recoup costs from the Potentially Responsible Party. I will briefly discuss each of these issues and direct your attention to the two attached letters.

Timing of remedy under FUSRAP

As discussed in the letters, several variables such as the availability of funding, prioritization, and the remedy that is selected will affect when the Corps would be able to address the contamination. There are 24 sites currently in the FUSRAP program and three other sites that are eligible for consideration and are awaiting a final determination as to whether they will be included. If the West Lake Landfill site 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, but the earliest that the site could be programmed for funding to begin an evaluation is Fiscal Year (FY) 2018.

Proposed remedy

As stated in the letters, FUSRAP is a cleanup program, so the Corps would assess alternatives to address the low-level radioactive materials at the site. When funding is available, the Corps would begin by reviewing the EPA site documents including all information from the current cleanup effort by the site owner before the Corps could determine a path forward. This would include reviewing the information already generated to date through EPA's regulatory efforts. The Corps would also be required to obtain permission from the current landowner to enter the property. This would be an additional process and would be necessary to allow the Corps to properly evaluate the site and conduct any work. Any conclusions which the Corps may reach from assessing the site, reviewing information from the current cleanup efforts, and any new information would involve additional time and funding.

Cost of cleanup and effect on other sites

At this time, the Corps cannot definitively state what action it would recommend, but can state that the response action would be spread out over several years. Thus, it is impossible to state how much a response would cost, but we note that in 2011, 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. Also according to EPA, 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.[1] Recurring annual costs to operate, monitor and maintain the facility would also need to be considered.

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 would be appropriate for any additional sites. The vast majority of the current FUSRAP appropriations are dedicated to ongoing cleanup at sites already in the program, with the goal of completing ongoing projects first.

Paying for Cost of Response

As stated in the letters, it is the Corps understanding that EPA, using its regulatory authority, intends to order the Potentially Responsible Parties (PRPs) to carry out the necessary cleanup activities with hopes that this will result in a negotiated enforceable agreement.

In contrast, a transfer to FUSRAP would require the Corps to use appropriated funds to accomplish the remedy and then, using additional appropriated funds, to pursue the PRPs for cost recovery. Cost recovery is uncertain, site-specific and depends on many circumstances, but again, would be conducted after the cleanup would have been conducted.

SUMMARY:

Thank you for the opportunity to provide the background on the Formerly Utilized Sites Remedial Action Program and to discuss potential issues of adding the West Lake Landfill site to the program. Please see the attached letters for additional details and background.

[1] Supplemental Feasibility Study- "Radiological-Impacted Material Excavation Alternatives Analysis West Lake Landfill Operable Unit-1":https://archive.epa.gov/region07/cleanup/west_lake_landfill/web/pdf/supplemental_feasibility_study-west_lake_landfill_ou-1.pdf

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

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Majority (202) 225–2927
Minority (202) 225–3641

May 17, 2016

Lieutenant General Thomas P. Bostick
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

Dear Lieutenant General Bostick:

As you may know, a bill pending before the United States House of Representatives, H.R. 4100 would transfer jurisdiction over the West Lake Landfill Superfund Site (West Lake Landfill) in Bridgeton, Missouri from the U.S. Environmental Protection Agency (EPA) to the U.S. Army Corps of Engineers (USACE). The United States Senate recently approved S. 2306, which is the companion bill to H.R. 4100, by unanimous consent. The Congressional Budget Office indicated that S. 2306 will not affect direct spending and both the House and Senate bills have bipartisan support from the Missouri congressional delegation.

The West Lake Landfill is an inactive landfill that has received significant attention recently because of the presence of radiologically-impacted material and because of subsurface smoldering at the adjacent Bridgeton Landfill. The West Lake Landfill is on the National Priorities List (NPL) and EPA has jurisdiction over the cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The West Lake Landfill was added to the NPL in 1990 and there is concern in the local community about the pace of the remedial actions taken by EPA. Additionally, for the residents living near the landfill, the proximity of the underground fire to radiologically-impacted material has created a fear of a public health and safety issue. The people of St. Louis, Missouri and the surrounding area have been waiting for resolution on this site for a long time and some local citizens believe that the West Lake Landfill would be better cleaned up by the USACE under the Formerly Used Sites Remedial Action Program (FUSRAP).

However, several issues have been raised about whether the transfer of jurisdiction over the cleanup at the West Lake Landfill from EPA under CERCLA to the USACE under FUSRAP would be the best course of action – including, issues associated with the funding and timing of

the cleanup. I write today to seek information and clarification about some of these matters. Please respond to the following questions by June 7, 2016.

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?

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?

    b. Implementing the selected remedy?

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?

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

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?

    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?

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

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

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

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.

    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?

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?

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

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

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

      i. A site evaluation and selection of a remedy at the West Lake Landfill?
      ii. The remediation of the West Lake Landfill?

Thank you for promptly attending to this request. Should you have any questions, please do not hesitate to have your staff contact Tina Richards of the majority committee staff at 202-225-2927.

Sincerely,

Fred Upton
Chairman

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

JUN 0 2 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,

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

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

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March 10, 2016

Lieutenant General Thomas P. Bostick
Commanding General and Chief of Engineers
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

Dear Lieutenant General Bostick:

I write regarding the West Lake Landfill Superfund Site in Bridgeton, Missouri. Two landfill areas at the site were radiologically contaminated in 1973 when they received soil mixed with leached barium sulfate residues. The U.S. Army Corps of Engineers (USACE) is currently assisting the Environmental Protection Agency (EPA) with its work at the site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund). It is my understanding that EPA will be proposing a final remedy for the site this year, after the 2008 Record of Decision was challenged as not being fully protective.

There are currently efforts in Congress to transfer this site into the Formerly Utilized Sites Remedial Action Program (FUSRAP), which is under the purview of USACE. In July 2015, members of the Missouri Congressional delegation asked the Department of Energy to reconsider West Lake Landfill's qualifications for inclusion in the FUSRAP program. That request was denied last September. Since then, the Missouri Senators and Members of the Congressional delegation have introduced legislation, S. 2306 and H.R. 4100, to transfer authority for cleanup of the site from EPA to USACE under FUSRAP. The United States Senate passed S. 2306 on February 2, 2016 and both bills are now pending before the House Committee on Energy and Commerce.

In an effort to better understand the implications of such a proposal and the impact on the cleanup of the West Lake Landfill Superfund site, I respectfully request responses to the following questions:

1. According to EPA, a revised proposed Record of Decision for cleanup of the site is expected to be issued this year. If the site were transferred to FUSRAP, would the process for USACE to take over the ongoing work currently being completed by EPA be seamless?

a. What steps would USACE need to take to study, develop a plan, and implement cleanup of the site?
b. What would be the timeline for this process, and how long would it take to complete?
c. Would shifting the site into FUSRAP accelerate cleanup of the site?

2. 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.

   a. If the site were transferred to FUSRAP, would USACE select a full excavation as the remedy of choice?
   b. Is it possible that USACE would implement the 2008 remedy and cap the material in place?

3. Under Superfund, EPA has the authority to compel potentially responsible parties (PRPs) to either clean up contaminated sites or pay for the necessary costs. Use of this polluter pays principle ensures that taxpayers are not stuck paying for the pollution of others. EPA is currently pursuing three PRPs to pay for the cleanup of this site.

   a. What authority does USACE have under FUSRAP to require PRPs to clean up contaminated sites? What authority does USACE have under FUSRAP to compel PRPs to pay for the necessary cleanup of contaminated sites?
   b. Does USACE have the same "Enforcement First" authority as EPA to hold PRPs accountable for covering the costs of cleaning up contaminated sites?
   c. Would the ability of USACE to pursue PRPs be contingent upon appropriation of funds under the FUSRAP program?

4. Does USACE have adequate funding within its current budget to allocate to the study, design and construction of cleanup at the West Lake Landfill site?

   a. If not, would clean up of the site be contingent upon future appropriations under FUSRAP?
   b. Would allocating funds to this project have any impact on ongoing cleanups at other FUSRAP sites across the country? If so, what would those impacts be?

5. Those in favor of the site's transfer have indicated they no longer want EPA involved with the cleanup.

   a. If the site were transferred to FUSRAP, would there still be any EPA involvement?
   b. Would USACE have full regulatory authority over the site?

6. Does the proposed legislation raise any other concerns?

Thank you for your attention to this matter. I ask that you provide a response no later than March 18, 2016. Your prompt assistance is sincerely appreciated.

Sincerely,

Frank Pallone, Jr.

Frank Pallone, Jr.
Ranking Member

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

MAR 2 2 2016

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Representative Pallone:

Thank you for your March 10, 2016, letter to Lieutenant General Thomas Bostick, Chief of Engineers, regarding the West Lake Landfill Superfund Site in Bridgeton, Missouri. LTG Bostick asked that I reply on his behalf. As you are aware, the site is currently being remediated by the owner of the landfill pursuant to an order by the U.S. Environmental Protection Agency (EPA) and under a plan developed 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. According to EPA, a revised proposed Record of Decision for cleanup of the site is expected to be issued this year. If the site were transferred to FUSRAP, would the process for USACE to take over the ongoing work currently being completed by EPA be seamless?

Answer: It would not be a seamless process. The U.S. Environmental Protection Agency (EPA) is currently acting under its regulatory authorities and is overseeing a private party who is paying for and executing the work.

The authorities for the Corps are different than for the EPA. If the project is transferred to the FUSRAP program, the Corps would not be acting as a regulator. The Corps would be evaluating the site for execution under the FUSRAP program. Therefore the process and source of funding would change. As explained more fully below, this would likely make addressing the site more complex. It should be noted that EPA has the ability, under the current process, to enter into an enforceable agreement with the Corps

to assist with execution at Superfund sites. Under an already existing Support for Other Agencies program agreement, the Corps currently executes tens of millions of dollars of work for EPA every year.

1.a. What steps would USACE need to take to study, develop a plan, and implement cleanup of the site?

Answer: Both S. 2306 and H.R. 4100 would provide the Corps the authority to respond to radioactive contamination at the West Lake Landfill (WLLF) site consistent with the FUSRAP program authorities. Any non-radioactive contamination would not be within the authority of the FUSRAP program to clean up.

By moving the WLLF site into the FUSRAP program, the Corps would be required to plan and budget for any activity it might undertake with regard to the site. The FUSRAP program is a cleanup program, so the Corps would assess alternatives to address the low-level radioactive materials at the site. It would not make any broader assessments for the other materials in the landfill, nor would it address the adjacent Bridgeton Landfill. The funding needs for this site would compete for prioritization with all the other FUSRAP sites nationwide, particularly those with ongoing cleanup actions and those already in various stages of investigation. It is very likely that it would be some time before this site would be considered for inclusion in a Civil Works budget.

When funding is available, the Corps would begin by reviewing the EPA site documents including all information from the current cleanup effort by the site owner before the Corps could determine a path forward. This would include reviewing the information already generated to date through EPA's regulatory efforts, which required the preparation of a Remedial Investigation, Feasibility Study, Proposed Plan, and Record of Decision and any site owner information. The Corps would also be required to obtain permission from the current landowner to enter the property. In the FUSRAP program, because the Corps is not a regulator and the government does not own this property, permission to enter and conduct any necessary work is required from the property owner. This would be an additional process and would be necessary to allow the Corps to properly evaluate the site and conduct any work.

Any conclusions which the Corps may reach from assessing the site, reviewing information from the current cleanup efforts, and any new information from investigations which the Corps determines is necessary would involve additional time and funding. The Corps would need to initiate and conduct a cost recovery action to recapture FUSRAP expenditures through the Department of Justice (DoJ) and in cooperation with EPA, as stated in the proposed legislation. Republic Services, the current owner of the site and any other potentially responsible parties (PRPs) identified through the EPA's Superfund process, would not necessarily continue to pay for all of the actions at the site. 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.

1.b. What would be the timeline for this process, and how long would it take to complete?

Answer: The answer to this question depends on several variables such as the availability of funding, prioritization, and the remedy that is selected, so we are unable to answer the question at this point. We are able to generally discuss when the project could be started.

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. 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. We do not have sufficient information to predict what priority the site might have in the program, but the earliest that the site could be programmed for funding to begin an evaluation is Fiscal Year (FY) 2018. As stated above, any proposed onsite activities could not begin until we 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.

1.c. Would shifting the site into FUSRAP accelerate cleanup of the site?

Answer: The addition of the site to the FUSRAP program would not accelerate remediation at the WLLF. The FUSRAP program would only address the clean-up of low level radiological material at the site, which is only one issue of concern at the landfill. Currently, the 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.a. If the site were transferred to FUSRAP, would USACE select a full excavation as the remedy of choice?

Answer: At this time, the Corps cannot definitively state what action it would recommend. The Corps follows the CERCLA process and works with regulators in determining the appropriate response at a site. FUSRAP would follow the same statute and regulations as EPA and it would make use of any information already generated by EPA's process.

2.b. Is it possible that USACE would implement the 2008 remedy and cap the material in place?

Answer: While this is possible, at this time, the Corps cannot definitively state what cleanup action it would recommend. A cap in place remedy would certainly be considered as one of the options under the process.

3. Under Superfund, EPA has the authority to compel potentially responsible parties (PRPs) to either clean up contaminated sites or pay for the necessary costs. Use of this polluter pays principle ensures that taxpayers are not stuck paying for the pollution of others. EPA is currently pursuing three PRPs to pay for the cleanup of this site.

3.a. What authority does USACE have under FUSRAP to require PRPs to clean up contaminated sites? What authority does USACE have under FUSRAP to compel PRPs to pay for the necessary cleanup of contaminated sites?

Answer: It is our understanding that EPA, using its regulatory authority, intends to order the PRPs to carry out the necessary cleanup activities with hopes that this will result in a negotiated enforceable agreement. By contrast, 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 DoJ in addressing other PRPs responsibilities at the site.

A transfer to FUSRAP would require the Corps to use appropriated funds to accomplish the remedy and then using additional appropriated funds to pursue the PRPs for cost recovery. While the legislation envisions no liability accruing to the Secretary of the Army for cleanup actions under the legislation, and does not guarantee 100% cost recovery from PRPs. The PRPs may disagree with the actions taken and may contest certain costs associated with the transfer of the program or costs associated with execution. Cost recovery is site-specific and depends on many circumstances.

b. Does USACE have the same "Enforcement First" authority as EPA to hold PRPs accountable for covering the costs of cleaning up contaminated sites?

Answer: No. Please see the above.

c. Would the ability of USACE to pursue PRPs be contingent upon appropriation of funds under the FUSRAP program?

Answer: Any costs incurred by the Corps to support the DoJ in pursuit of cost recovery from PRPs would come from the FUSRAP appropriation. DoJ's costs would be funded through its appropriations.

4. Does USACE have adequate funding within its current budget to allocate to the study, design and construction of cleanup at the West Lake Landfill site?

Answer: 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, but as discussed above, the earliest that funding could be included in the budget for the WLLF is FY 18.

a. If not, would clean up of the site be contingent upon future appropriations under FUSRAP?

Answer: Yes.

b. Would allocating funds to this project have any impact on ongoing cleanups at other FUSRAP sites across the country? If so, what would those impacts be?

Answer: As discussed above, the annual appropriation to FUSRAP in recent years 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, but if another project is competing for funds under the program, it is possible that funding for other sites could be affected.

5. Those in favor of the site's transfer have indicated they no longer want EPA involved with the cleanup.

a. If the site were transferred to FUSRAP, would there still be any EPA involvement?

Answer: Both bills provide that the site will remain on EPA's National Priorities List of Superfund sites. EPA is the lead regulator for sites on that list. EPA would oversee any action that would be taken under FUSRAP at this site, as well.

b. Would USACE have full regulatory authority over the site?

Answer: The Corps is not a regulatory entity under FUSRAP. Moreover, while the FUSRAP program legislation confers lead agency authority for CERCLA response actions at FUSRAP sites to the Corps, it does not confer regulatory authority.

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,

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