



DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

April 18, 2003

REPLY TO:
ATTENTION OF:

Office of Counsel

Karl L. Farrar, Regional Counsel
U.S. NRC Region I
475 Allendale Road
King of Prussia, PA 19406-1415

Carl Dierker, Regional Counsel
U.S. EPA Region I
1 Congress St.
Suite 1100
Boston, MA 02114

Richard Blumenthal, Attorney General
Office of the Attorney General
State of Connecticut
55 Elm Street
Hartford, CT 06106-1774

2003 APR 23 PM 1:08

RECEIVED
GENERAL

Subject: ABB Prospects Inc./Combustion Engineering (CE)
Site, Windsor, CT Potential Use of Comprehensive
Environmental Response, Compensation and
Liability Act of 1980, as amended (CERCLA) §106
order by Department of Defense (DOD) on behalf of
the United States Army Corps of Engineers (USACE)
for Formerly Utilized Sites Remedial Action
Program (FUSRAP)

Dear Messrs. Farrar, Dierker and Blumenthal:

This letter is to inform you that the U.S. Army Corps of Engineers, New England District ("District") is in the process of evaluating the feasibility of utilizing the DOD authority to issue a CERCLA section 106 order pursuant to 42 USC §§ 9606(a), as amended for specific areas at the CE site in Windsor, CT which contain FUSRAP materials. DOD has the authority to issue section 106 orders as derived from Executive Order No. 12580, 52 Fed. Reg. 2923 (Jan. 23, 1987), as amended by Executive Order No. 13016, 61 Fed.

Reg. 45871 (Aug. 30, 1996); however, this authority has not been delegated to the USACE.

DOD has preliminarily expressed a willingness to issue a section 106 order on behalf of USACE, if a particular situation warrants such an action. DOD has not, however, assessed the merits or need for a 106 order at the CE site in Windsor. It is the District's understanding that a DOD section 106 order would be subject to United States Environmental Protection Agency (EPA) concurrence and notice to the State of Connecticut. Moreover, pursuant to the Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and USACE,¹ USACE has responsibility to consult with and notify the NRC with regard to USACE's FUSRAP investigation or response actions under CERCLA.

CE has proposed use of a section 106 order for the following limited areas at the Windsor Site identified as:

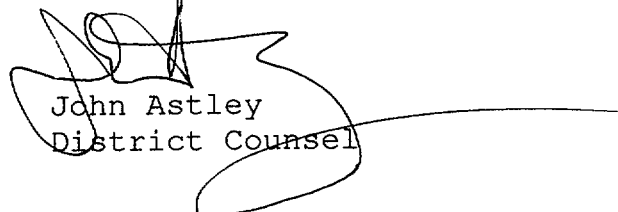
1. the drum burial pit;
2. the clam shell pile;
3. the debris pile, and
4. the woods area.

As you may be aware, the District and CE have continued with our efforts towards negotiation of a consent decree by which CE would perform the cleanup of the FUSRAP wastes under USACE auspices. The District is evaluating whether the section 106 approach is appropriate for the identified areas. In the interest of executing the FUSRAP remediation consistent with requirements of the USACE-NRC MOU and consistent with CERCLA, the District requests that NRC, EPA and the State of Connecticut provide comments regarding the appropriateness of using a section 106 order. Because the District is faced with significant pressure to expedite this matter, we appreciate if you could provide comments by May 2, 2003. The District plans to schedule a meeting or teleconference in the near future to discuss any comments that you may have regarding the proposed use of a DOD issued CERCLA section 106 order.

¹ Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the U.S. Army Corps of Engineers for Coordination on Cleanup and Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC Licensed Facilities, 66 FR 36606 (July 12, 2001)

If you have any questions, please contact me at (978) 318-8244 or Mr. Wendell Mah, Assistant District Counsel at (978) 318-8250.

Sincerely,



John Astley
District Counsel

cc:

Edward L. Wilds, Jr., Ph.D.
Director, Division of Radiation
Bureau of Air Management
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Henry Friedman, Esq.
U.S. Department of Justice
Environmental and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611