

New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

June 24, 2008

Mr. James Rauch
Secretary, F.A.C.T.S
263 Exchange Street
Alden, New York 14004

Dear Mr. Rauch:

This responds to your March 4, 2007 letter to Barbara Youngberg, of this Department, regarding the US Army Corps of Engineers' Record of Decision (ROD) for the groundwater operable unit at the Linde FUSRAP site. In your letter, you referred to this Department's comments on the proposed plan for the Linde groundwater and asked why we had requested monitoring and institutional controls, instead of recommending corrective action. You also asked whether the new administration intends to enforce environmental laws that are "flouted by federal agencies."

We have reviewed again the points that F.A.C.T.S. made in comments to the Department of Energy and the Corps, which you included with your letter. We respect the thoroughness and care with which F.A.C.T.S. has analyzed these issues. However, we do not believe that we have the authority, under current State and federal law, to force the Corps to undertake a remedial action.

In this situation, our only recourse is to challenge the ROD in court. The court would likely give great deference to the Corps, because the Corps is charged by Congress with making this decision. In addition, although there are a few monitoring results that exceed drinking water standards, the fact is that the uranium and its decay products that were injected into the ground do not currently pose a significant threat to the public health or the environment. Given the characteristics of the groundwater, it is difficult to create a reasonable scenario in which that would change. Without a significant threat, there would be little basis for arguing in a legal challenge that remediation was needed.

Thank you for your efforts. If you have any technical questions, please contact John Mitchell, of our Bureau of Hazardous Waste & Radiation Management, at 518-402-8579.

Cordially,

James H. Eckl
Associate Attorney