



F.A.C.T.S.

(For A Clean Tonawanda Site)

"PUTTING THE PIECES TOGETHER"



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July 4, 2008

Alexander B. Grannis, Commissioner
NYS Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Subject: June 24, 2008 letter from DEC associate attorney James H. Eckl in reply to F.A.C.T.S., Inc.'s November 10, 2005 request for a groundwater corrective action at the Linde FUSRAP site

Dear Commissioner Grannis:

We are very disappointed that the Paterson administration has chosen not to make any effort to uphold either the State or the federal groundwater protection laws that require a corrective action to be undertaken to remediate the documented Manhattan Project/AEC contamination of groundwater at the Linde FUSRAP site.

In its reply, your Department 1) erroneously states that it does not believe it has the authority to act on this matter, and then, 2) parrots the faulty rationalization made by the U.S. Army Corps of Engineers (USACE).

In regard to point one, the Department *is* charged with the responsibility of upholding both State and federal groundwater protection laws. Yet the Department failed to even *request* that USACE perform the required corrective action within the specified 18 months from the finding date of the exceedances. This failure has reflected very poorly on the Department as the official representative of the public's lawful interests.

Now, your Department seems to believe that a court challenge by New York of the USACE's "no action" ROD would be unsuccessful because "the court would likely give great deference to the Corps, because the Corps is charged by Congress with making this decision."

While Congress has acted quite irresponsibly since FY1998 in charging USACE with the remaining FUSRAP remediation tasks and directing that USACE shall not be subject to NRC's radioactive materials licensing regulations, Congress has *not* exempted USACE from the groundwater protection statutes.

The judgment call by your Department not to attempt court enforcement of the groundwater statutes not only casts aspersion on the ability of the court system to uphold the laws of the land but also implies an unflattering, low opinion by the Paterson administration of the stature of New York State. Sadly, it seems that the Department prefers to attempt to 'pass the buck' back to the Congress.

Does the Paterson administration believe that this "no action" groundwater decision by USACE reflects the intent of Congress?

In regard to point two, we again refer you to the thorough analysis in our January 26, 2005 comments on this matter. Your Department's (and USACE's) rationalization that the identified contaminants "do not currently pose a significant threat to the public health or the environment" is part and parcel of an executive branch mentality that has allowed the incremental degradation of the Tonawanda area's groundwater.

The fact is this area's groundwater has been used in the past for drinking, watering gardens and lawns and other human uses. In the early 1990s, the Energy Department's environmental review found wells still in use for lawn and garden watering, car washing, etc. on Two Mile Creek Road.

In summary, the State's failure to enforce the groundwater statutes in this instance will further degrade this area's groundwater quality rendering it unsafe for any unsuspecting future users, and will place total dependence in future on the public distribution of treated surface water for drinking and other purposes.

Again, we expect much better from both you, as DEC Commissioner, and the new Paterson administration.

Sincerely,

James Rauch
Secretary

Ralph Krieger
President

cc: Sen. Clinton
Sen. Schumer
Rep. Slaughter
Rep. Higgins
Rep. Reynolds