



DEPARTMENT OF THE ARMY  
ST. LOUIS DISTRICT, CORPS OF ENGINEERS  
8945 LATTY AVENUE  
BERKELEY, MISSOURI 63134

REPLY TO  
ATTENTION OF:

SEP 27 2002

Planning, Programs, and Project Management Division  
Formerly Utilized Sites Remedial Action Program

Mr. N. Brian Gentry  
Office of Honorable Thomas Vilsack  
Governor of Iowa  
State Capitol  
Des Moines, Iowa 50319

Dear Mr. Gentry:

Thank you for your letter of August 29, 2002 regarding the applicability of the September 1990 Federal Facilities Agreement (FFA) to Formerly Utilized Sites Remedial Action Program (FUSRAP) activities at the Iowa Army Ammunition Plant (IAAAP) in Middletown, Iowa.

The Corps of Engineers concurs with the need for an agreement to govern FUSRAP activities at the IAAAP. Our first approach was to evaluate the applicability of the existing FFA between the Plant Commander, Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), and Region VII United States Environmental Protection Agency (USEPA). After review, the Corps of Engineers' Office of Counsel has determined that the existing FFA at IAAAP would not apply to Corps actions performed under FUSRAP authority at the IAAAP.

The Corps' Office of Counsel has staffed this issue through all of its levels from the St. Louis District to Headquarters. In reaching the above determination, the Corps believes that four key elements of the existing FFA do not apply to FUSRAP. These are the jurisdiction, purpose, funding, and the parties to the agreement.

The jurisdiction (recited at page 2 of the FFA) for Army entering into the FFA is the Defense Environmental Restoration Program (DERP). FUSRAP does not fall within the authority of the DERP and there is no mention of the FUSRAP authority.

The purpose set forth in the existing FFA for the IAAAP does not apply to FUSRAP. The stated purpose in the existing FFA is to clean up contamination resulting from munitions production and renovation at IAAAP that "have resulted in discharge of waste waters containing explosives and explosive by-products to surface water systems..." FUSRAP work is related to the nation's early atomic energy program and specifically addresses the historical activities of the Atomic Energy Commission (AEC) or the Department of Energy (DOE) related to the program. The appropriate FUSRAP purpose is not mentioned in the existing FFA.

With regard to funding, the FFA in paragraph XXXIII states "Funds authorized and appropriated annually by congress under the Environmental Restoration, Defense appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense (Environment) to the Army will be the source of funds for activities required by this Agreement..." FUSRAP funds are not authorized or furnished under the Environmental Restoration, Defense appropriation. Therefore, FUSRAP activities could not be conducted with the funds identified in the existing FFA.

Lastly, the parties who signed the September 1990 agreement have no connection to the FUSRAP. The Army signatory to the September 1990 agreement -- the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) -- only has authority over the Army DERP. He does not have authority over FUSRAP funds or program approvals. It is evident from the signatories to the FFA that the FUSRAP was not contemplated by the 1990 agreement. In view of the non-applicability of the essential element discussed above, this agency has taken the position that the existing FFA cannot be applied to FUSRAP activities.

Please note that although our position is that the existing FFA is not applicable for governing FUSRAP activities, the Corps recognizes the need for an agreement to address FUSRAP. To facilitate development of the new agreement, the Corps is proposing to begin negotiations with the USEPA. The State's involvement in this new agreement, which will be coordinated with the State, remains to be discussed and defined.

I hope this addresses your issues. If you have additional questions, please feel free to contact my Program Manager, Ms. Sharon Cotner, at (314) 260-3915. I look forward to working with the State on this and other IAAAP FUSRAP issues.

Sincerely,

Signed

**C. Kevin Williams**  
**Colonel, U.S. Army**  
**District Engineer**  
C. Kevin Williams  
Colonel, U.S. Army  
District Engineer

- READING FILE -



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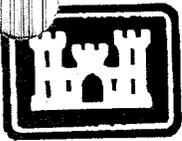
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Sincerely,



C. Kevin Williams  
Colonel, U.S. Army  
District Engineer



**US Army Corps  
of Engineers**  
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**From:** Office of Counsel  
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|--|---|
| <input type="checkbox"/> William (Bill) Levins | <input type="checkbox"/> Beth Pitrolo             |
| <input type="checkbox"/> Mark Wunsch           | <input type="checkbox"/> Kelly Bertoglio          |
| <input type="checkbox"/> Angela Cole Bonstead  | <input type="checkbox"/> Jonathan Clark           |
| <input type="checkbox"/> Jeffrey Asbed         | <input type="checkbox"/> Beverly Jefferson        |
| <input type="checkbox"/> LeeAnn Summer         | <input checked="" type="checkbox"/> Anne Woodrome |

To:	Fax No.	Name	COMMAND/ORGANIZATION	Telephone No
	314-260-3943	Sharon Cotter	FUSRAP	

**SUBJECT:**

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SJC

**OFFICE OF THE GOVERNOR**

THOMAS J. VILSACK  
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LT. GOVERNOR

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August 29, 2002

Mr. Richard Newsome  
Assistant for Restoration  
Secretary of the Army  
110 Pentagon  
Washington, D.C. 20310-0110

Colonel C. Kevin Williams  
District Engineer, St. Louis District  
Department of the Army  
8945 Latty Avenue  
Berkeley, MO. 63134

Dear Mr. Newsome and Colonel Williams:

The Army Corps of Engineers notified this office last week that federal funding to complete the Scope of Work for the survey of the Iowa Army Ammunition Plant had been transferred to the Rock Island Arsenal, pursuant to our discussion on July 26, 2002. We appreciate your assistance in arranging this transfer, and look forward to the successful completion of the survey.

This week, officials from the Iowa Department of Public Health, the Army, Army Corps of Engineers, and EPA held discussions at a meeting concerning the Scope of Work for the aerial survey. These discussions revealed several issues that must be resolved in order to ensure the successful completion of the survey, and ultimately the entire restoration project. First, the Iowa Department of Public Health could not discern from the meeting whether the Army or the Army Corps of Engineers would be responsible for coordinating and publishing the Work Plan, and the document that contains the Data Quality Objectives for gathering and analyzing the data collected from the survey. We believe that both documents are necessary components to the successful completion of an aerial survey. Please clarify this standing question

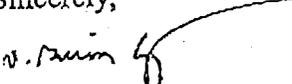
Second, it does not appear at present that the parties have reached a consensus on the technical parameters for the survey. The Iowa Department of Public Health and the EPA have proposed to set the 'trigger level' for the aerial survey at 35-40 pCi/g of depleted uranium. As I understand it, this level corresponds to the Minimum Detectable Activity of the aircraft platform for depleted uranium. The Army Corps of Engineers has proposed a 'trigger level' of 27 pCi/g. It

is my understanding that 27 pCi/g falls below the detection limits of the aircraft for depleted uranium. We fully expect that a 'trigger level' that yields quality statistical data will be selected. It is our hope that the Army and Army Corps of Engineers will continue to discuss this matter with the Iowa Department of Public Health and the EPA, and reach a consensus on appropriate testing levels for depleted uranium and other potentially hazardous isotopes.

Lastly, as you recall, on July 26, 2002 Governor Vilsack asked the Army and Army Corps of Engineers to provide a written memo that states the relationship between FUSRAP and the FFA and sets out which provision takes precedent in the assessment and remediation efforts at IAAAP. He also asked that the memo include legal authorities, which outline the interplay between FUSRAP and the FFA. To date, he has not received this memo, nor has he received a definitive statement from the Army or Army Corps of Engineers on when the memo will be furnished.

Please provide responses to the issues raised above on or before September 16, 2002. As always, please feel free to contact me with any questions or comments that you may have.

Sincerely,

  
N. Brian Gentry  
General Counsel

Copies to:

Mr. Gene Gunn, EPA  
Mr. Donald Flater, IDPH