

OH. 4-5



Department of Energy
Washington, DC 20585

JUN 16 1999

Mr. William Augustine
CECW-B
U.S. Army Corps of Engineers
20 Massachusetts Ave., N.W.
Washington, D.C. 20314-1000

Re: Former Harshaw Chemical Company Site

Dear Mr. Augustine:

As requested, this note is in follow-up to several phone conversations between Department of Energy (DOE) and Army Corps of Engineers staff and counsel concerning why DOE did not previously include the Former Harshaw Chemical Company site in Cleveland, Ohio in the Formerly Utilized Sites Remedial Action Program (FUSRAP), when DOE was responsible for FUSRAP. As indicated in my June 3 letter to you, DOE has performed historical research regarding the site and has concluded, pursuant to the March 1999 MOU between DOE and the Army Corps of Engineers, that this site was used for activities which supported the Nation's early atomic energy program. Further, DOE has determined that radioactive residues on the site can be attributed to production operations conducted by Harshaw under contracts with the Atomic Energy Commission (AEC).

When DOE was responsible for FUSRAP, otherwise eligible sites that were licensed by the AEC, the Nuclear Regulatory Commission (NRC) or an Agreement State, and sites where DOE could locate a contractual provision releasing the Government from future liability, were not generally included in FUSRAP for cleanup by DOE. DOE did not include the former Harshaw Chemical Company site in FUSRAP, because DOE had obtained information which appeared to indicate that Harshaw had an AEC license for work for DOE's statutory predecessors, and because DOE found a contract provision from a contract between Harshaw and the United States in which Harshaw released the United States "from all claims and demands whatsoever arising under or by virtue of said contract...."

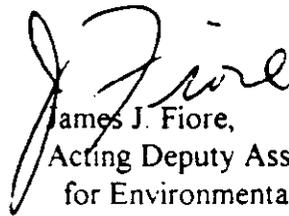
For your information, both the current site owner, Chevron, and the Nuclear Regulatory Commission have recently advised DOE that Harshaw's AEC license did not cover the facility that was used for DOE's statutory predecessor agency activities. In addition, Chevron has also advised DOE, and DOE has independently verified, that Harshaw had at least eleven contracts with the AEC, for which available records are incomplete (e.g., closeout documents are only available for one contract).



In these circumstances, while DOE was still responsible for FUSRAP, DOE would have reevaluated its initial decision not to include a site in the program if the site owner established either that DOE's factual understandings were not correct or that a credible basis existed for either a contract claim or a CERCLA contribution claim against the United States.

We understand that this information adequately responds to your question.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Fiore". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke.

James J. Fiore,
Acting Deputy Assistant Secretary
for Environmental Restoration