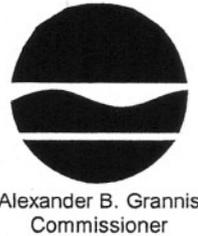


New York State Department of Environmental Conservation
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AUG 07 2008

F.A.C.T.S.
ATTN: Mr. Ralph Krieger, President
Mr. James Rauch, Secretary
263 Exchange Street
Alden, New York 14004

re: Linde site groundwater operable unit

Gentlemen:

This refers to your recent letter to Commissioner Grannis, who has asked me to reply on his behalf.

We regret your disappointment with the position that this Department has taken. However in view of the law applicable to cases such as this, by which the authority of a State government with respect to the federal government is constrained, and in view of the facts of this particular case, I am satisfied that this is the appropriate position. We are gratified to be able to tell you that we have not neglected our obligation to protect groundwater quality, even if we have not done as you desire. In our collaboration with the Corps in the ongoing soil remediation, we have observed that the Corps has typically met our more stringent cleanup standards, and we expect that groundwater quality will ultimately be improved as the result of addressing this source of contamination.

It will be recalled that the assignment by federal law of the duty of administering the Formerly Utilized Sites Remedial Action Program is subject to the proviso "That response actions by the United States Army Corps of Engineers under this program shall be subject to the administrative, procedural, and regulatory provisions of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) ..." [Public Law 105-245, Title I, at 112 Stat. 1843; see also Public Law 106-60, Title VI, § 611(b), at 113 Stat. 502]. Accordingly, it may be that F.A.C.T.S., or one or more of its members, could proceed under that statute's *Citizens suits* section (42 U.S.C. 9659).

Thank you for your interest.

Sincerely,


Alison H. Crocker
Deputy Commissioner
and General Counsel

c: Commissioner
Senator Clinton
Senator Schumer
Representative Slaughter [28th Dist.]
Representative Higgins [27th Dist.]
Representative Reynolds [26th Dist.]