413 G-000-1001.97

COMMENTS ON THE PROPOSED CONSENT AGREEMENT

05/09/1990

PRS USEPA
1
COMMENT

G-000-1001.14

413

Dan O'Riordan
Community Relations Coordinator
U.S. Environmental Protection Agency (5PA-14)
230 South Dearborn Street
Chicago, IL 60604

Dear Mr. O'Riordan,

On behalf of Southwest Ohio Physicians for Social Responsibility (PSR), an organization representing more than 300 physicians in the Cincinnati/Dayton area, we offer the following comments on the Consent Agreement entered into between the United States Environmental Protection Agency (EPA) Region V, and the United States Department of Energy (DOE).

In general, PSR believes that the Consent Agreement represents a degree of progress in dealing with the critical situation at the Feed Materials Production Center (FMPC) at Fernald. The Agreement marks the beginning - but only the beginning - of the process of establishing a framework which will ensure that the FMPC is cleaned up in a way consistent with the protection of public health and the environment.

Nevertheless, despite these positive elements, PSR believes that the Consent Agreement as it currently stands does not meet the needs of Southwest Ohio citizens. The following are, we believe, the most important issues which need to be dealt with through a modification of the Consent Agreement:

1. The Consent Agreement addresses only issues under Superfund jurisdiction. Large areas of concern at FMPC, including contamination of the Greater Miami River, accidental airborne releases, and RCRA issues, are not dealt with under the Consent Agreement. PSR believes that either the Consent Agreement should be redrafted to cover these issues, or that a second Consent Agreement must be negotiated and approved together with the current Agreement as a single package.

2. The budget provisions of the Consent Agreement are weak. Under the Agreement, the DOE is required only to make a good faith effort to fund the specified cleanup projects, and is excused from meeting Agreement deadlines if project budgets are not approved. PSR believes that the Agreement should require that DOE include all covered projects' budgets as specific, identifiable items in the DOE budget request.

3. Public participation is not adequately addressed by the Consent Agreement. The Agreement specifies only that DOE shall establish a plan for "an interactive relationship" with the community, without requiring ongoing, regular forms of community oversight. PSR believes that the Agreement should be modified to include the establishment of an independent Fernald Environmental and Health Monitoring Council to oversee and review the progress of all covered projects, similar to such Committees as have been established at DOE sites in Rocky Flats, Colorado and Hanford, Washington.

4. The limitation of EPA access to the FMPC to "all reasonable times" is a potential restriction on the ability of EPA to monitor and verify compliance with the Agreement. PSR believes that EPA should have access at all times.

5. The penalties stipulated for violation by DOE of the agreement are not adequate. PSR believes that there is a substantial danger that DOE may find the cost of non-compliance to be less than the cost of compliance. PSR believes that the stipulated penalties should be increased to guarantee that this situation does not arise.

6. The inclusion of labor disputes under the Force Majeure section is troublesome, since it offers DOE the opportunity to evade compliance through the stimulation of labor disputes. While PSR believes that it is important to protect the rights of workers at FMPC, including the right to strike, we do not believe that the current inclusion of labor disputes under Force Majeure as reasonable. The parties to the Consent Agreement should re-examine this issue.

7. The Consent Agreement contains no provision for dealing with the resumption of production at FMPC. Since such a resumption has not been ruled out by DOE, PSR believes that the Agreement must cover this possibility. Renewed production at FMPC could potentially create severe problems for compliance with the Consent Agreement.

Southwest Ohio PSR would like to discuss these issues further with representatives of the U.S. EPA; please feel free to contact us at any time to arrange a meeting.

Sincerely,

Jon Weisberger
Executive Director

Constance Fox
Constance Fox, M.D.
President

Southwest Ohio PSR
103 Wm. Howard Taft
Cincinnati, Ohio 45219