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OPERABLE UNIT 1: ARAR MEETING SUMMARY

09/01/90

**Department of Energy**

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SEP 11 1990
DOE-1832-90

Ms. Catherine A. McCord
U. S. Environmental Protection Agency
Region V - 5HR-12
230 South Dearborn Street
Chicago, IL 60604

Mr. Graham E. Mitchell, DOE Coordinator
Ohio Environmental Protection Agency
40 S. Main Street
Dayton, Ohio 45402

Dear Ms. McCord and Mr. Mitchell:

OPERABLE UNIT 1: ARAR MEETING SUMMARY

Enclosed you will find a summary of the discussions conducted on July 13, 1990, at the USEPA Region-V office in Chicago on the development of ARAR's for Operable Unit 1.

If you have any questions, please contact Oba Vincent at (513) 738-6937 or FTS 744-6937.

Sincerely,

A handwritten signature in black ink that reads "Andrew P. Avel".

Andrew P. Avel
FMPC Remedial Action
Project Director

DP-84:Vincent

Enclosure: As stated

L. P. Duffy, EM-1, FORS
P. Q. Andrews, USEPA-5
D. A. Kee, USEPA-5
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J. Razor, IT

MEMORANDUM

To: Distribution
 From: John E. Razor *JER*
 Date: August 16, 1990
 Subject: Trip Report - OU1 ARARs Meeting in DOE, U.S. EPA, OEPA

A meeting between U.S. Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), Ohio Environmental Protection Agency (OEPA), and RI/FS project representatives was held on July 13, 1990, at the EPA Region V Headquarters in Chicago. The meeting was a group working session to discuss and develop ARARs for Operable Unit 1, Waste Pit Area. A 59-page list of proposed ARARs (Task 12) had been previously transmitted by DOE and its contractors to EPA and OEPA. This transmittal formed the basis for discussion during the meeting. An attendance list is attached.

The meeting was initiated with a short discussion on the possibility of allowing discussion of OU5 and OU3 ARARs concurrent with the scheduled topic. EPA representatives felt they were not prepared to make such a change in the meeting agenda, in that they had not received any proposed remedial action alternatives for these operable units. A meeting was scheduled to discuss OU5 ARARs (Task 12) for Friday, July 27, in order to meet the requirements of the Consent Agreement (Section X, Paragraph E). That meeting will also be used to discuss the list of OU4 ARARs (RI report) presented to EPA and OEPA on June 21 during the TIE meeting.

Action: Develop ARARs list for OU5.
By: Frazier, et al

A short discussion was held on the terminology used in the prepared table. EPA stated that there is room for the position that regulations (requirements) can be relevant and inappropriate, noting that no such listing had been made. Frazier responded that we are, of course, in the preliminary stages of development and only those requirements felt to be both relevant and appropriate are included in this presentation. As other potentially relevant and appropriate requirements are identified, a list of all requirements including appropriate and inappropriate will be developed.

ACTION: Capture all regulations considered by ARARs working group, develop position why discarded ARARs are inappropriate.
BY: Frazier, et al

EPA and OEPA noted that the transmittals received did not include a description of Alternative 5 for OU1. Apologies were offered and promises made for correction of the error in the FAX transmission.

Action: Deliver complete alternative descriptions to EPA and OEPA.

By: Oba Vincent, DOE OU-1 Manager

The working group decided to address all ARARs in the order of presentation in the prepared table. All page references are to the page numbers on the tables in the following discussion. (Unless otherwise stated, all actions are underscored and assigned to the ARARs Working Group lead by J. Frazier) It was suggested that a revision number be placed on all tables to allow identification of the most current version. During the discussion it was also noted that references to appropriate sections of the NCP might also assist the reviewers.

Page 1 - EPA (D. Arenberg) suggested that "approval to construct" was required. DOE responded that it is required that the remedy must demonstrate that it will meet the intent of the requirement, the need for a permit for anticipated releases in excess of 1% of the standard was waived by CERCLA. Issue was resolved.

It was also noted that an additional ARAR for fugitive emissions (particulates) should be included. DOE agreed and will include the State of Ohio governing regulation in the revision of the tables.

Page 3 - Discussion on the point of application of this regulation was held for point-source discharges to Paddys Run. It was agreed that discharges from OU-1 to Paddys Run would likely not generally be point-source. If collected storm water runoff constituting a point source was discharged to Paddys Run, it likely would only occur during storm events resulting in significant flow in Paddys Run, hereby easily defining the "mixing zone." However, during extreme low-flow the discharge point would be considered by OEPA as the compliance point. No action.

Page 4 - It was noted that 10 CFR 20 was undergoing revision with likely release yet this year. DOE committed to include the revision as an ARAR when final and consider any potential impact of the proposed revision during on-going work.

Page 5 - The discussion on this ARAR centered on the lack of an MCL for uranium. Frazier presented a convincing argument for using a 4 mrem committed effective dose equivalent as the basis of a "Fernald MCL" for uranium. Jim Benetti agreed with the concept of using 4 mrem as a basis for development but felt the derived concentration of 33 $\mu\text{g}/\ell$ proposed by DOE should be rounded to 30 $\mu\text{g}/\ell$ (20 pci/ ℓ). DOE agreed to prepare a position paper on this subject which would form the basis for joint agreement between DOE, EPA, and OEPA. It should be noted that all parties agreed that this action was taken solely on the basis of a lack of a MCL or a proposed MCL (with no proposed level

anticipated prior to the issuance of the OU1 ROD). As such, the development of a "Fernald MCL" is taken only for this facility and does not represent a commitment on the part of DOE for other DOE facilities.

Action: IT, John Frazier, Prepare Position Paper

- Page 6 - EPA suggested that Subpart C - Design also be considered.
DOE agreed.
- Page 7 - EPA noted that organic MCLs should be included for OU1. DOE's contractor noted that inclusion of organic MCLs was intended and would promptly correct the oversight. The requirement should be changed to "Applicable" since Pit 4 and possibly pit 5 are RCRA waste units.
- Page 8 - It was agreed that this ARAR should be deleted after a general discussion.
- Page 9 - EPA emphasized that all TBCs must be demonstrated as necessary to be protective of public health.
- Page 10 - DOE's contractor noted that the "sum rule" was left off this ARAR (also to check Ohio River reg and others for "sum rule"). DOE will add to the next revision of the table.
- Page 11 - EPA recommended that DOE consider removing this TBC in as much as ARARs are available which meet the need to protect public health. DOE agreed to review. A discussion was also held on the need to include "occupational-type" standards such as 29CFR1910. The ARAR Working Group is to review the guidance offered by the preamble to the NCP (40CFR300).

A new ARAR was proposed by EPA - 40CFR50. This regulatory function has been assumed by the State of Ohio (Fugitive Emissions) as was discussed earlier in this report. DOE contractor to add as "Applicable."

- Page 12 - EPA questioned absence U.S. Corp of Engineers governing regulation (Ex. Order) assigning that agency as trustee of the resource (waterways). DOE to research.
- Page 13 - This ARAR is thought to be a local (county) regulation and, as such, is not an ARAR. DOE will confirm and delete or clarify citation (see attached).
- Page 14 - EPA suggested that this is to be considered for all alternatives (except no action). DOE agreed and will include.

A discussion was held on 10CFR61 and it was noted that asbestos may have been placed in the waste pits. Therefore asbestos should be included in the ARAR discussion on NESHAPS and DOE will research

applicable/relevant Ohio law on asbestos. A short discussion was held on proposed DOE Order 5400.xy. DOE will check status and report on expected date of release.

Page 17 - It was suggested that the State and Federal regulations may be conflicting. Peg Andrews is to research this issue.

Page 18 - EPA initiated a brief discussion of the appropriateness of including "boilerplate" sections of regulations which are transferred to permits. It was suggested that the ARAR guidance documents may address this issue. This ARAR appears not to be used to address the alternative technology. DOE is to check "substantive requirements" and consider deletion of this ARAR.

Page 20 - 22

It was noted by IT that the table incorrectly listed this ARAR was R and A for all alternatives. This is not the case. This ARAR would only apply to new disposal systems-Alternative 4. Review of this proposed ARAR lead to a discussion of 10CFR40 Appendix A, which addresses mill tailings. J. Benitti felt 10CFR40 was "more" relevant than 10CFR61 and was required for protection of the public. DOE will review and prepare a position on this subject.

Page 26 - EPA suggested this is "Applicable" instead of "Relevant and Appropriate." DOE to respond.

Page 29 - Group consensus was reached that the last sentence under the heading "Requirement" should be deleted.

Page 30 - U.S.EPA feels that these regulations are "Applicable". DOE to respond.

Page 32-39

It was noted that these regs were "Applicable" to off-site disposal options. EPA was not sure that these regs need to be included as ARARs. No resolution of this issue was obtained. DOE to prepare position on this issue.

Page 40-51

Considerable discussion was held on the RCRA regs and the portions which are "Applicable" vs. "Relevant and Appropriate". DOE (D. Carr and ARAR Working Group) will revisit these regs and also review compliance checklists to better define requirements and basis for implementation.

Specifically on page 43 it was decided that 40CFR264.174 was "Applicable" except for Alt. #5. Also the consent decree for the RCRA program was held by OEPA to require daily inspection of RCRA waste storage instead of the regulatory mandate of weekly. It is

not clear that this requirement can be listed as an ARAR but Beth Oshiem is to offer guidance in the response.

A discussion on land disposal requirements was held and it was agreed that DOE would review the table's presentation on this subject and include a discussion from the NCP.

Page 52 - It was agreed that this ARAR could be deleted.

Page 54 - EPA questioned why the entire portion of 29 CFR applicable to the alternatives was not included. Also the note at the bottom of the page was questioned. DOE agreed to provide NCP citation in question.

Page 57 - EPA suggested that NRC Regulatory Guide 1.86 be used as a TBC instead of DOE Order 5400.5, Chapter IV, Section 4, Paragraph (d) since the DOE Order did not have a surface contamination guideline for alpha emitters (NRC uses 20 dpm/100 cm²). DOE will develop a position on this issue.

OEPA identified OAC 3745-15-97 (Public Nuisance Emissions) as an ARAR. Although OEPA thought it would not likely impact the selection of an alternative, DOE agreed to review the regulation for inclusion in the table.

The meeting concluded with a pledge from all parties to continue the effort towards consensus on the ARARs currently proposed and to make every effort to identify any additional ARARs and TBCs in a timely fashion.

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conservation district, conservancy district, other taxing district, regional council established pursuant to Chapter 167, of the Revised Code, or otherwise, or with the board of county commissioners or the automatic data processing board of any other county, or with any other federal or state governmental agency, and such authorities may enter into contracts with the county automatic data processing board, to provide automatic data processing services to any of them. The board shall establish a schedule of charges upon which the cost of providing such services shall be based. All moneys collected by the board for services rendered pursuant to contracts entered into under this section shall be deposited in the county general fund; however, such moneys may be segregated into a special fund in the county treasury until the end of the calendar year. County offices may also be charged for such services and the appropriation so charged and the appropriation of the board so credited.

HISTORY: 132 v S 269 (Eff 9-20-67); 134 v H 405, Eff 12-30-71.

Research Aids

Data processing:

O-Jur3d: Count, Twp & Mun § 123

CASE NOTES AND OAG

1. (1977) The board of county commissioners has authority to terminate an automatic data processing board, established pursuant to RC § 307.84, by adopting a resolution to that effect. Upon termination of the county automatic data processing board, the board of county commissioners may continue to purchase data processing equipment as it is authorized to do under RC § 307.84.3. Revised Code § 307.84.6 does not authorize the board of county commissioners to contract to provide data processing services to other public agencies and officials. In the absence of a county automatic data processing board, county offices may establish their own data processing operations: OAG No. 77-030.

2. (1971) A county automatic data processing board does have authority, under the provisions of RC § 307.84.6, to enter into a contract to provide automatic data processing service to an area-wide coordinating agency formed under the provisions of the demonstration cities and metropolitan development act of 1966, 42 USC § 3331 et seq: OAG No. 71-086.

3. (1968) A separate appropriation account may be established for the automatic data processing board which could be credited for services rendered other offices and departments while at the same time the appropriation accounts of such offices and departments serviced by the data processing center would be debited: OAG No. 68-029.

§ 307.85 Power to cooperate with other agencies in federal programs.

(A) The board of county commissioners of any county may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establish-

ing and operating any federal program enacted by the congress of the United States, and for such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state.

(B) The board may participate in, give financial assistance to, and cooperate with public and non-profit private agencies and organizations in establishing and operating programs to provide necessary social services to meet the needs of older persons or to provide emergency food to needy persons, in addition to those agencies and organizations receiving federal funds for this purpose. For the purpose of this division, payments to the county under the "State and Local Fiscal Assistance Act of 1972," 86 Stat. 919, 31 U.S.C. 1221, as amended, shall be considered to be county general funds. If the board finds that any agency or organization receiving funds pursuant to this division uses them for any purpose not clearly a public purpose authorized by this division and by the board or fails to comply with accounting and reporting requirements under Chapter 117, of the Revised Code, the board shall withhold further payments of such funds to such agency or organization.

HISTORY: 131 v 206 (Eff 8-23-65); 132 v H 1 (Eff 2-21-67); 136 v H 381 (Eff 11-21-75); 137 v H 221, Eff 3-22-77.

Research Aids

Power to cooperate with other agencies in federal programs:

O-Jur3d: Count, Twp & Mun § 121

Am-Jur2d: Mun Corp § 217

C.J.S.: Counties § 81; United States § 122

West Key No. Reference

Counties 47

United States 82(2)

CASE NOTES AND OAG

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1. (1981) A county welfare department does not have the authority to contract out for its parent location service: State ex rel. Godfray v. McGinty, 66 OS2d 113, 20 OO3d 100, 419 NE2d 1102.

2. (1984) Pursuant to RC § 307.85(A), a board of county commissioners may contract with an agency or department of the federal government in order to participate in a flood control program established and operated under 33 U.S.C. § 701s, provided that such contract does not require a county to perform acts in conflict with state law. (1956 Op. Att'y Gen. No. 6136, p. 11 and 1957 Op. Att'y Gen. No. 1187, p. 609, overruled.); OAG No.84-038.

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3. (1982) Pursuant to RC § 307.85, a board of county commissioners may charge a public office for services provided by an office of county government to the extent necessary to collect federal reimbursement funds which have been specifically provided for such purpose: OAG No. 82-011.

4. (1979) Revised Code § 307.85 does not authorize a board of county commissioners or the members thereof acting in an official capacity to cause the incorporation under RC Chapter 1702 of a non-profit corporation to act as a conduit for federal Community Development Block Grant funds. Revised Code § 307.85 authorizes a board of county commissioners to be members of a non-profit corporation and, as such, to vote for trustees and carry out other activities of members where such membership and activities are reasonably related to the operation of a federal program, such as the Community Development Block Grant program. County officers or employees may not act as trustees of a non-profit corporation which administers a county-operated housing rehabilitation grant and loan program for the county pursuant to contract when the official duties of such officers and employees are in any way a check upon, or subordinate to, the functions performed pursuant to contract by the non-profit corporation. A board of county commissioners which has selected the board of trustees of a non-profit corporation is not prohibited from contracting with that non-profit corporation for the administration of a housing rehabilitation loan and grant program, provided that the county officers and corporate trustees involved adhere to the duties of loyalty and good faith inherent in their respective offices. A board of county commissioners which has selected the board of trustees of a non-profit corporation and which then contracts with the non-profit corporation for administration of a county housing rehabilitation loan and grant program may not participate in the management or control of the affairs of such non-profit corporation: OAG No. 79-055.

5. (1978) A board of county commissioners has the authority to establish a self-insurance trust fund to protect county hospitals from liability under RC §§ 2743.02 and 339.06. These statutes in conjunction with RC § 307.85 provide authority for a board of county commissioners to enter into a trust agreement whereby legal title to the self-insurance fund is transferred to an independent fiduciary to administer the fund as required by federal medicare and medicaid reimbursement programs: OAG No. 78-060.

6. (1977) A board of county commissioners may act as a community action agency without violating the provisions of RC Chapter 124, that pertain to the appointment of employees in the classified civil service, if the board receives a waiver of federally mandated hiring preferences from the community services administration. (1968 OAG No. 68-087 and Syllabus No. 1, 1968 OAG No. 68-088, modified): OAG No. 77-025.

7. (1974) A board of county commissioners has no general statutory authority to contract for the services of a management consultant in every area in which the board is directed by statute to act. It may, however, do so to enable it to cooperate in a federally funded program. And, when a county, pursuant to RC Chapter 302, is operating under an alternative form of government, RC § 302.13 permits the board of county commissioners to authorize the county executive to employ experts and consultants in connection with the administration of the affairs of the county: OAG No. 74-065.

8. (1973) A board of township trustees has no authority to use public funds to support the program of a federally

funded private, nonprofit corporation which provides social services for senior citizens, styled a council on aging. A municipal corporation may use public funds to support the program of a federally funded council on aging provided such contribution has sufficient restrictions to ensure that the funds will be used only for a public municipal purpose. A board of county commissioners may, under RC § 307.85, use public funds to support the program of a federally funded council on aging, provided such contribution has sufficient restrictions to ensure that the funds will be used only for a public purpose. A unit of local government may not use federal revenue sharing funds to provide the local share of the funding required for the program of a federally funded council on aging. However, such funds may be used to match state funds, or to supplement state or local matching funds: OAG No. 73-102.

9. (1971) A board of county commissioners may not enter into a contract for services in analyzing, appraising, and making recommendations as to future needs of the county unless there is specific statutory authority for such a contract. Under RC § 307.85 a board of county commissioners may enter into a contract for a survey analysis to evaluate their local law enforcement program so long as such analysis is reasonably related to the establishment and operation of the program proposed by the omnibus crime control and safe streets act of 1968 (P.L. 90-351, 82 Stat. 197): OAG No. 71-092.

10. (1971) A county automatic data processing board does have authority, under the provisions of RC § 307.84.6, to enter into a contract to provide automatic data processing service to an area-wide coordinating agency formed under the provisions of the demonstration cities and metropolitan development act of 1966, 42 USC § 3331 et seq: OAG No. 71-086.

11. (1968) The designation of a private non-profit corporation as a community action agency by the board of county commissioners would not be an illegal delegation of authority under Ohio law: OAG No. 68-088 [modified by OAG No. 77-025].

§ 307.86 When competitive bidding required.

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022 [307.02.2], 307.861 [307.86.1], 339.05, 4115.31 to 4115.35, 5513.01, 5543.19, 5713.01, and 6137.05 of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when:

(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists and