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**REMOVAL ACTION NUMBER 3: SOUTH
GROUNDWATER CONTAMINATION PLUME ,
PART 1 - ALTERNATE WATER SUPPLY,
REQUEST FOR SCHEDULE EXTENSION**

04/24/92

**DOE-1444-92
DOE-FN/EPA
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LETTER
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Department of
Fernald Environmental Management Project
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APR 24 1992

DOE-1444-92

Mr. James A. Saric, Remedial Project Director
U. S. Environmental Protection Agency
Region V - 5HRE-8J
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

Mr. Graham E. Mitchell, Project Manager
Ohio Environmental Protection Agency
40 South Main Street
Dayton, Ohio 45402-2086

Dear Mr. Saric and Mr. Mitchell:

**REMOVAL ACTION NUMBER 3: SOUTH GROUNDWATER CONTAMINATION PLUME, PART 1 -
ALTERNATE WATER SUPPLY, REQUEST FOR SCHEDULE EXTENSION**

- References:
1. Letter, DOE-044-92, J. R. Craig to J. A. Saric and G. E. Mitchell, "Request for Schedule Extension on Parts 1, 2, and 3 of the South Groundwater Contamination Plume Removal Action," dated November 20, 1991
 2. Letter, J. A. Saric to J. R. Craig, "U.S. DOE Request for Extension on Parts 1, 2, and 3 of the South Plume Removal Action," dated December 6, 1991
 3. Letter, G. E. Mitchell to J. R. Craig, "South Plume Schedule Extensions," dated December 9, 1991
 4. Letter, DOE-1148-92, J. R. Craig to J. A. Saric and G. E. Mitchell, "Fernald Environmental Management Project (FEMP) Removal Action No. 3, South Groundwater Contamination Plume Part 1 - Alternate Water Supply Potential Schedule Impact," dated March 26, 1992

This letter provides explanation of a schedule delay on the commitment date for Part 1 - Alternate Water Supply (AWS) and requests a schedule extension. At this time, however, a revised milestone date cannot be determined as explained herein. Upon establishment of a revised schedule, a notification will follow, consistent with the provisions of the Amended Consent Agreement.

As noted in Reference 1, the U.S. Department of Energy (DOE) requested schedule extensions, which were subsequently approved by the United States

Environmental Protection Agency (U.S. EPA) (Reference 2) and the Ohio Environmental Protection Agency (Ohio EPA) (Reference 3). In Reference 1, the schedule extension date for Part 1 was developed assuming condemnation of the AWS well field and pipeline sites would not be required. DOE has experienced unanticipated difficulty in obtaining the access to the AWS well field and pipeline sites and has, therefore, proceeded forward with condemnation. This letter explains the current difficulties which DOE deems as good cause for a schedule extension.

As stated in Reference 4, unforeseen difficulties were encountered by the U.S. Army Corps of Engineers (COE) while negotiating for access agreement and easement for construction with the owners (the Mandery Trust or Rowe & Rowe, Trustees) of the AWS well field and pipeline sites. Based on past experience (negotiations for the installation of the test well), these difficulties were not anticipated and therefore, were not reflected in the revised schedule (Reference 1). An offer was made by COE to acquire the property for the appraised value as required by Public Law (PL) 91-646. The property owners' response to the offer was a demand for a price approximately twice the appraised value of the property and a list of 19 legal concerns they wanted resolved in the course of the negotiations. The 19 concerns have been discussed at length with COE. However, in light of the complexity of these concerns and the obvious inability to resolve the issue of price, COE has recommended that the concerns not be negotiated at this time. Attempting resolution of these issues at this point could further delay the acquisition of the property by compromising the status of the condemnation package concurrently under review. As recently as April 14, 1992, COE has attempted to obtain by negotiation a right of entry for construction. Access to the AWS well field and pipeline sites at the Trustees property will allow DOE to initiate Part 1 construction.

COE has prepared a Declaration of Taking (condemnation) package to acquire the AWS well field and pipeline sites by condemnation. As also presented in Reference 4, Mr. Frank K. Lienesch has absolutely denied access to his property. A condemnation package for his property was prepared and issued for review with the Mandery Trust package. These condemnation packages were submitted to DOE Headquarters (DOE-HQ) in Washington D.C. for review and approval. Reviews by the COE Ohio River Division and the Chief of Engineers in Washington D.C. are complete.

A condemnation package has also been prepared for the parcel which ownership cannot be verified by the recorded deeds and titles. Survey information leaves a "gap" between Lienesch's property and Mr. and Mrs. Burton's property. This package is currently being reviewed by DOE-HQ and by the COE Chief of Engineers in Washington, D.C.

As discussed in previous meetings (particularly on February 12, 1992 in Cincinnati), requirements for property acquisition by condemnation include numerous concurrent reviews by various COE and DOE offices. The condemnation process can begin only after required documentation preparation and after negotiations with property owners have been deemed unsuccessful. Enclosure 1 summarizes the requirements for property negotiations, Enclosure 2 summarizes the condemnation process, and Enclosure 3 pictorially illustrates the condemnation process.

At this time, the completion date of the condemnation process for the subject properties cannot be firmly established due to the uncertainty in required review and approval timeframes of the various agencies involved. DOE is actively pursuing definitive schedules from the offices involved in reviewing the condemnation packages. The Department of Energy, Fernald Field Office (DOE-FN) and the DOE-HQ FEMP Division Program Office have requested the assistance of the Assistant Secretary for Environmental Restoration and Waste Management (EM-1) in expediting DOE-HQ reviews. Accordingly, EM-1 has requested other DOE-HQ divisions involved in the process to expedite reviews and provide realistic deadlines for completion. Also, COE has implemented measures to expedite COE reviews. Upon establishment of definitive schedules, DOE will issue a notification with the proposed milestone dates.

In addition, DOE is reviewing planned activities to determine if any construction can be started prior to acquisition of the AWS well field and pipeline sites and to identify where and how critical-path schedule items can be accelerated and/or shortened in duration (i.e. multiple work shifts, multiple crews, etc.).

If you or your staff have any questions, please contact me at FTS 738-6159 or (513) 738-6159 or Carlos J. Fermainntt at FTS 738-6157 or (513) 738-6157.

Sincerely,


Jack R. Craig
Project Manager
Fernald Remedial Action

FN:Fermainntt

Enclosures: As Stated

cc w/enc:

R. P. Whitfield, EM-40, FORS
J. J. Fiore, EM-42, TREV
K. A. Hayes, EM-424, TREV
S. Frush, EM-424, TREV
R. P. Nicholson, AD-424, ORFO
M. Butler, USEPA-V, 5CS-TUB-3
T. Schneider, OEPA-Dayton
C. Pierce, COE, Louisville
H. F. Daugherty, WEMCO
J. P. Hopper, WEMCO
AR Coordinator, WEMCO

Federal Real Estate Acquisition Procedure**AUTHORITIES**

PL 91-646

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- as amended by PL 100-17
- subject to rules and regulations in 49 CFR Part 24

APPLICATION

- applies to any acquisition of real property for a Federal program or project and to any program or project where there is federal financial assistance
 - exceptions
 - voluntary transaction meeting the following conditions:
 - no specific site needs to be acquired
 - property to be acquired is not part of a planned or designated project area where all or substantially all of the property in the area is to be acquired within specific time limits
 - property will not be acquired if agreement cannot be reached and owner is so informed
 - owner is informed of what the agency believes to be the fair market value of the property
 - acquisition for programs or projects undertaken by an agency or person receiving federal financial assistance but which does not have the authority to acquire property by condemnation, provided:
 - prior to making offer owner is advised that agency cannot acquire the property if negotiations fail
 - inform owner of what the agency believes is the fair market value of the property
 - acquisitions from a federal agency, state or state agency of the agency making the purchase does not have the authority to acquire the property by condemnation
 - acquisition by a cooperative from a person who as a condition of membership in the cooperative has agreed to provide the property to the cooperative without charge
- provisions apply to acquisitions of fee simple title and also to these interests in real estate
 - fee title subject to retention of a life estate or life use
 - lease where lease term including option(s) for extension is 50 years or more
 - permanent easements

NOTICE

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- as soon as feasible, owner must be notified of agency's interest in acquiring the property and the basic protections afforded him including agency's obligation to secure an appraisal

APPRAISALS

- appraisal must be completed prior to initiation of negotiations
 - owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property
 - appraisal may be waived in cases involving low value properties
 - agency must determine that the valuation is uncomplicated and the fair market value is estimated at \$2,500 or less based on a review of available data
 - appraisal is not required if owner is donating the property and releases the agency from this obligation

NEGOTIATIONS

- every reasonable effort must be made to expeditiously acquire the property by negotiation
- agency must establish amount it believes is just compensation for the property
 - not less than approved appraisal taking into account the value of allowable damages or benefits to any remaining property
- agency must provide owner with written offer to purchase property
 - amount established as just compensation
 - summary of basis of offer of just compensation
 - description and location identification of property and interest to be acquired
 - identification of structures or improvements considered part of the real property for which the offer is made
 - where appropriate, identify any separately held ownership interests and indicate that such interest is not covered by the offer
 - where appropriate separately state acquisition cost and amount set for damages to remaining property
- reasonable efforts must be made to contact the owner or his representative to discuss the offer
 - explain agency acquisition policies and procedures including payment of incidental expenses
- owner must be given reasonable opportunity to consider offer and present material he believes is relevant to determining value of property and to suggest modifications of proposed terms and conditions of purchase
- agency shall consider owner's presentation

- agency must update offer of just compensation, if needed
 - if information supplied by the owner or material changes in character or condition of property indicates need for new appraisal
 - or if significant delay occurs after initial appraisal
 - if updated appraisal is warranted, agency shall promptly reestablish just compensation and offer that amount to owner in writing

- agreed purchase price may exceed the amount offered as just compensation
 - if reasonable efforts to negotiate an agreement at that amount have failed
 - authorized agency official approves the settlement as being reasonable, prudent and in the public interest
 - where federal funds will pay for all or a portion of the acquisition costs, a written justification must be prepared which indicates that available information (appraisals, recent court awards, estimated trial costs or valuation problems) supports the settlement

- uneconomic remnant
 - if acquisition will leave an uneconomic remnant, agency will offer to acquire the remnant
 - defined as parcel in which owner is left an interest after partial acquisition and which has little or now value or utility to owner

- donation
 - owner must be fully informed of right to receive just compensation
 - may then donate the property or a part thereof or any compensation paid therefor to the agency
 - an appraisal must be obtained unless the owner releases the agency from this obligation

- buildings, structures and improvements
 - must acquire an interest in these equal to the interest in land acquired if removal will be required or if they will be adversely affected by the use to which the acquired property will be put
 - determine compensation without regard to right or obligation of tenant to remove any improvements at the expiration of the lease term
 - pay to tenant the greater of the fair market value the structure contributes to the property to be acquired or the fair market value of the structure for removal from the property
 - payments must not result in duplication of payments
 - no payment made unless owner disclaims all interest in improvements of the tenant
 - tenant must, in consideration for any payment, assign the US all interest in improvement

POSSESSION

- owner not required to surrender possession until agreed purchase price

- is paid or deposit made into court
 - in exceptional circumstances, with prior approval of owner, agency may obtain a right of entry for construction before making payment
- owner/occupant must be given at least 90 days advance written notice of date by which move will be required
 - notice must state either a specific date or inform resident that further notice will be given at least 30 days in advance of the specific date by which the move will be required
- agency may allow owner or tenant to continue to occupy property for short term
 - subject to termination by government on short notice
 - rent not to exceed fair rental value of property

CONDEMNATION

- agency may not take coercive action to obtain agreement
 - don't advance time for condemnation
 - don't defer negotiations or condemnation and deposit of funds in court for use of the owner
- if condemnation is going to be required
 - formal proceedings must be instituted
 - don't intentionally make the owner file suit to prove the fact of the taking of his property

PAYMENT OF EXPENSES

- expenses incidental to transfer of title
 - owner will be reimbursed for expenses necessarily incurred and which agency deems fair and reasonable
 - recording fees, transfer taxes, surveys, title costs and similar expenses incidental to conveying the property
 - penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering the property
 - pro rata portion of real property taxes allocable to the period after the date of vesting of title in the US or the effective date of possession of the property by the US, whichever is earlier
 - not required to pay costs solely required to perfect the owner's title to the property
 - whenever feasible, these costs should be paid directly by the government
- litigation expenses
 - action under 20 USC 1346(a) or 1491 inverse condemnation
 - in event of judgement for plaintiff awarding compensation for the taking or settlement
 - reimburse plaintiff reasonable costs and expenses including attorney, appraisal and engineering fees actually incurred because of the proceeding

- condemnation instituted by federal agency
 - in event of final judgement that agency cannot acquire the property by condemnation or where proceeding is abandoned by US
 - reimburse owner reasonable costs and expenses including attorney, appraisal and engineering fees actually incurred because of the condemnation proceeding
 - award paid by head of federal agency for whose benefit the condemnation proceedings were instituted

RELOCATION ASSISTANCE

- eligibility begins on initiation of negotiations
- benefits
 - actual and reasonable expenses incurred in moving
 - actual direct losses of tangible personal property incurred as a result of moving
 - not exceeding amount equal to reasonable expenses required to relocate the property
 - actual reasonable expenses incurred in searching for a replacement business or farm
 - replacement housing payment for homeowner
 - not to exceed \$15,000
 - replacement housing payment for tenants
 - not to exceed \$4,000
 - housing replacement by agency as last resort

PROPERTY ACQUISITION BY CONDEMNATION

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When required property is identified:

- Prepare mapping and legal descriptions
- Appraisal
- Title Examination
- Clear up title exceptions
- Make offer (appraised value) to landowner
- Owner evaluates offer
- Negotiate

If negotiations are unsuccessful, then:

- Certified letter to landowner informing that condemnation proceedings will be initiated

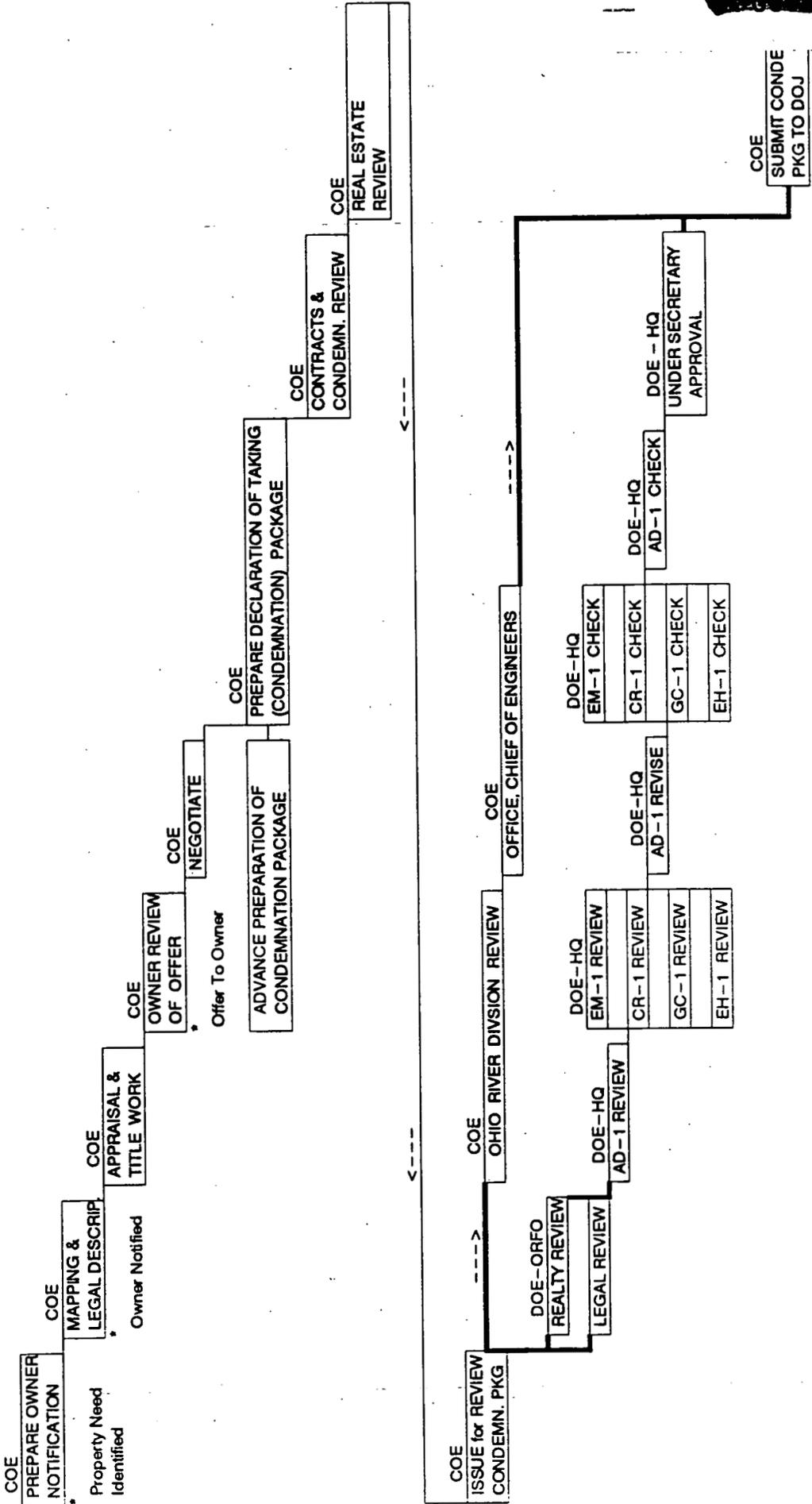
Prepare Declaration of Taking Assembly

- Ensure mapping, legal descriptions, and appraisal are current
- Determine authority
- Cite proper Appropriation Act
- Determine source of title
- Determine estate
- Prepare attorney's preliminary title opinion (if condemning for title)
- Procure appropriate copies of entire assembly
- Prepare transmittal letter
- Review and approval by Chief, Contracts and Condemnation Section, District office
- Review and approval by Chief, Real Estate Division, District office
- Review and approval by Ohio River Division - COE
Review and approval by Office, Chief of Engineers, Washington
(concurrent with)
- Review and approval by DOE, Oak Ridge
Review and approval by DOE Headquarters

- D/T assembly forwarded from OCE to DOE Headquarters
- D/T assembly from DOE Headquarters back to OCE
- COE requests check (appraised value) from DOE
- D/T assembly from COE to Department of Justice (DOJ)
- Check from COE to U.S. Attorney
- D/T assembly from DOJ to U.S. Attorney
- U.S. Attorney prepares complaint
- U.S. Attorney files complaint and D/T assembly in U.S. District Court, together with deposit of estimated just compensation
- If appropriate, immediate possession to property is requested to be given when complaint and D/T are filed in U.S. District Court

COE - U.S. Army Corps of Engineers
DOE - U.S. Department of Energy
DOJ - U.S. Department of Justice
D/T - Declaration of Taking
OCE - Office of Chief of Engineers, Washington

PROPERTY ACQUISITION BY CONDEMNATION PROCESS



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