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U-007-305.1

**NOTICE OF VIOLATION OU#5 ACCESS  
U.S. DOE - FERNALD  
h 890 008 976**

**12/04/90**

**USEPA/DOE-FN  
5  
LETTER  
OU5**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
230 SOUTH DEARBORN ST.  
CHICAGO, ILLINOIS 60604

3447

REPLY TO ATTENTION OF:

DEC 04 1990

5HR-12

Mr. William D. Adams  
Acting Assistant Manager  
for Environmental Restoration  
and Waste Management  
U.S. Department of Energy  
Oak Ridge Operations  
P.O. Box 2001  
200 Administration Drive  
Oak Ridge, Tennessee  
37831-8501

Re: Notice of Violation  
OU#5 Access  
U.S. DOE - Fernald  
OH6 890 008 976

Dear Mr. Adams:

On August 6, 1990, the United States Department of Energy (U.S. DOE) submitted a proposed Remedial Investigation/Feasibility Study (RI/FS) work plan addendum (dated August 3, 1990) for the above referenced site. Pursuant to this addendum, U.S. DOE proposed to install twelve 2000-series wells and an additional twelve contingency 3000-series wells. These wells were intended to characterize the groundwater in the Paddys Run area of the south plume for removal action #3 and Operable Unit (OU) #5. Figure 3 of the U.S. DOE addendum describes the locations of the proposed wells. (See Attachment A.) As provided in Attachment A, six of the 2000-series wells and six of the 3000-series wells proposed by U.S. DOE are located on property not owned by U.S. DOE. On September 7, 1990, the United States Environmental Protection Agency (U.S. EPA) approved the work plan addendum. (See Attachment B.)

Section XXVIII of the 1990 Consent Agreement obligates U.S. DOE to obtain access pursuant to its delegated authority under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9601 et seq. If voluntary access is not obtained within thirty (30) days of the approval of any work plan

Engineering Evaluation/Cost Analysis (EE/CA), or proposal that requires access to properties not owned by U.S. DOE, U.S. DOE is required by the terms of the Consent Agreement to refer the matter to the United States Department of Justice within thirty (30) days. This requirement applies to access to any property necessary to assure the timely performance of U.S. DOE's obligations under the agreement.

To implement the work plan addendum approved by U.S. EPA, U.S. DOE must obtain access from other property owners. Although U.S. DOE was unable to secure voluntary access within thirty (30) days of approval of the addendum, U.S. DOE failed to refer this matter to the Department of Justice within the following thirty (30) days (November 6, 1990) as provided by the Consent Agreement. This failure constitutes a violation of the express terms of Section XXVIII of the Consent Agreement and subjects U.S. DOE to stipulated penalties under Section XVII of the Agreement.

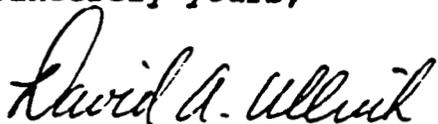
Pursuant to Section XVII, U.S. DOE may be assessed stipulated penalties at a rate not to exceed \$5,000 for the first week (or part thereof) and \$10,000 for each additional week (or part thereof). Stipulated penalties began to accrue on November 7, 1990, and will continue to accrue until the access issues raised by the work plan addendum are referred to the Department of Justice. Given the severity and extent of the violation and the effect of the violation on the implementation of the remedial action, U.S. EPA has determined that stipulated penalties in the amount of \$12,500 have accrued to date and should be assessed against U.S. DOE.

U.S. EPA hereby requests that U.S. DOE refer the relevant access issues to the Department of Justice and pay the stipulated penalties assessed above. The check for the stipulated penalties should be made payable to the Hazardous Substance Response Trust Fund, and should indicate the site name and the purpose of the check. The check should be mailed to:

U.S. EPA, Region V  
ATTN: Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

This letter constitutes written notification of violation as required by Section XVII of the Consent Agreement. As provided by the Agreement, U.S. DOE has fifteen days from receipt of this notice to invoke dispute resolution. If you have any questions regarding this matter, please contact Ms. Mary Butler at the Office of Regional Counsel at (312/FTS) 353-8514.

Sincerely yours,



David A. Ullrich, Director  
Waste Management Division

**Attachments**

cc: Richard Shank, OEPA - CO  
Graham Mitchell, OEPA - SWDO  
Joe LaGrone, U.S. DOE - ORO  
Leo Duffy, U.S. DOE - HDQ

bcc: Ralph R. Bauer, ORA  
David A. Ullrich, WMD  
Bertram C. Frey, ORC  
Dale Bryson, WD  
Robert Springer, PMD  
William H. Sanders, III, ESD  
William E. Muno, WMD  
Kevin Pierard, WMD  
Len Robinson, ORC  
Mary Butler, ORC  
Sandra Lee, ORC  
David Kee, ARD  
Dan O'Riordan, OPA  
Rose Freeman, ORA  
Gordon Davison, OS-530  
Sally Mosely, OS-530  
William Duncan, OS-530  
Ed Schuessler, PRC

DOE DISK#8:acc.11-26

RECEIVED  
DEC 5 1990

U.S. EPA REGION V  
OFFICE OF REGIONAL COUNSEL

