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**CLEAN WATER ACT SECTION 404 AND 401
REQUIREMENTS FOR ADVANCED
WASTEWATER TREATMENT (AWWT) FACILITY**

DOE-FN/EPA

DOE-1769-93

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LETTER



Department of Energy
Fernald Environmental Management Project
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 (513) 738-6357

APR 27 1993

DOE-1769-93

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:

CLEAN WATER ACT SECTION 404 AND 401 REQUIREMENTS FOR ADVANCED WASTEWATER TREATMENT (AWWT) FACILITY

This letter documents our discussion of April 20, 1993 regarding wetlands issues associated with the Advanced Wastewater Treatment (AWWT) Facility project. As we discussed, a 1993 draft revision to the site-wide Jurisdictional Wetland Delineation has identified a very small area (0.08 acres) impacted by the AWWT project to be potential wetland. This area was not identified as a wetland by the 1990 Wetland Delineation.

As a result of our April 20 discussion, it was agreed that the AWWT project constitutes an on-site Comprehensive Environmental Response Compensation and Liability Act (CERCLA) response action pursuant to the Amended Consent Agreement. It was agreed that it is appropriate to utilize the exemption from administrative permit requirements provided by CERCLA Section 121e and Paragraph XIII of the Agreement. Please indicate your concurrence with this approach by signing below.

Enclosed is the permit information required by Paragraph XIII B of Amended Consent Agreement. The enclosure identifies the substantive requirements that would otherwise be imposed by an approved permit and describes how the requirements will be satisfied by the AWWT project.

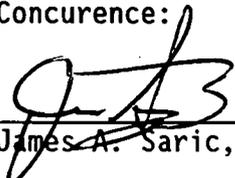
If you or your staff have any questions, please contact Jack R. Craig at 513-648-3107 or Pete J. Yerace at 513-648-3161.

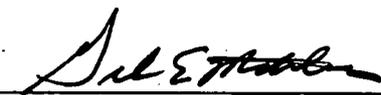
Sincerely,


Jack R. Craig
Fernald Remedial Action
Project Manager

FN:Yerace

Concurrence:


James A. Saric, USEPA


Graham E. Mitchell, OEPA

Enclosure: As Stated

cc w/enc.:

J. J. Fiore, EM-42, TREV
K. A. Hayes, EM-424, TREV
B. Barwick, USEPA-V, 5CS-TUB-3
G. Jablonowski, USEPA-V, AT-18J
J. Kwasniewski, OEPA-Columbus
P. Harris, OEPA-Dayton
M. Proffitt, OEPA-Dayton
T. Schneider, OEPA-Dayton
J. Michaels, PRC
L. August, GeoTrans
AR Coordinator, FERMCO

cc w/o enc.:

R. L. Glenn, Parsons
P. Clay, FERMCO/19
D. Dubois, FERMCO/65-2
J. W. Thiesing, FERMCO/2

PERMIT INFORMATION REQUIRED BY AMENDED CONSENT AGREEMENT PARAGRAPH XIIIIB

Pursuant to Paragraph XIII.B of the Amended Consent Agree, the U.S. Department of Energy (DOE) is required to supply the following information regarding wetland impacts associated with the construction of its Advanced Wastewater Treatment (AWWT) facility at the Fernald Environmental Management Project (FEMP) in Hamilton and Butler Counties, Ohio.

- 1) Identification of each permit that would be required absent the CERCLA 121e exemption.

Federal Requirements

Results of the recent 1993 draft revision to the 1990 FEMP Jurisdictional Wetland Delineation have identified approximately 0.08 acres of jurisdictional wetland which will be impacted (filled) during construction of the AWWT facility. Pursuant to Section 404 of the Clean Water Act (CWA), a U.S. Army Corps of Engineers (ACOE) individual wetland permit would be required to fill this area.

State Requirements

Pursuant to OAC 3745-32-02 (A) (2), Section 401 State Water Quality Certification is required to obtain a permit from the ACOE pursuant to Section 404 of the CWA.

- 2) Identification of the standards, requirements, criteria, or limitations that would have had to have been met to obtain each permit.

Federal Requirements

The ACOE reviews and issues/denies wetland permit applications primarily on the basis of compliance with CWA Section 404(b)(1) Guidelines promulgated at 40 CFR 230.10 and upon evaluation of public interest factors associated with proposed discharges. The key factors considered by the ACOE when authorizing discharges pursuant to this Guidelines are:

- 40 CFR.230.10 (a) - no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.
- 40 CFR 230.10 (b) - No discharge of dredged or fill material shall be permitted if it:
 - 1) Causes or contributes to a violation of any State Water Quality Standard;
 - 2) Violates any applicable toxic effluent standard or prohibition under Section 307 of the CWA.

- 3) Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in the likelihood of the destruction or adverse modification of a habitat which is deemed critical under the Endangered Species Act of 1973, as amended.
 - 4) Violates any requirement imposed to protect any marine sanctuary designated under Title III of the Marine Protection, Research, and Sanctuaries Act of 1972.
- 40 CFR 230.10 (c) - No discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States.
 - 40 CFR 230.10 (d) - No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.

State Requirements

Pursuant to OAC 3745-32-4 (A) filing an application with the ACOE for a Section 404 permit constitutes application for a Section 401 Water Quality Certification from the Ohio Environmental Protection Agency (OEPA). Section 401 Certifications are issued by OEPA pursuant to OAC 3745-32-05, provided the applicant has demonstrated that the discharge of fill material to waters of the state will:

- Not prevent or interfere with the attainment or maintenance of applicable water quality standards;
 - Not result in a violation of any applicable provision of the CWA.
- 3) Explanation of how the response action will meet the standards, requirements, criteria, or limitations identified in item 2 above.

Federal Requirements

- 40 CFR 230.10 (a) - Construction of the AWWT facility is an integral part of DOE's ability to minimize discharge of radionuclides in FEMP wastewater streams. It has been identified as a critical support facility for both currently ongoing and future planned response actions at the site. No practical alternatives to construction of the AWWT facility exist which would provide equivalent protection of the environment.
- 40 CFR 230.10 (b) - DOE will use only clean fill material during the subsequent construction of the AWWT facility and therefore, the discharge of fill material into the wetland area will not cause or contribute to a violation of State Water Quality Standards or standards established by Section 307 of the CWA. Furthermore, DOE will utilize standard erosion control practices during construction

to mitigate the potential erosion of fill material to the maximum extent possible, thus alleviating any potential impact on other waters of the United States and wetland areas which occur at the site.

No known threatened or endangered species inhabit the area where construction of the AWWT is to occur, nor have any been identified by DOE. In addition, construction of the AWWT will not adversely affect any Marine sanctuaries.

40 CFR 230.10 (c) - The proposed discharge will not result in significant degradation of any waters of the United States, including wetlands. DOE has taken all practicable measures to minimize adverse wetland impacts to the maximum extent possible and has limited wetland disturbances only to those areas which are absolutely essential for construction of the AWWT facility.

40 CFR 230.10 (d) - DOE intends to minimize wetland impacts associated with construction of the AWWT facility to the maximum extent possible through application of the measures described in Subpart H of the 404(b)(1) Guidelines. Wetland impacts will be limited to only the 0.08 acre area which is absolutely required for construction of the AWWT facility. Furthermore, DOE will utilize standard erosion and sedimentation controls during construction to further minimize any potential impacts associated with the possible migration of eroded material from the work site.

In addition, DOE is working to develop a comprehensive wetland mitigation plan based upon the recently conducted jurisdictional wetland delineation of the site. The intent of this plan will be to address the cumulative wetland impacts of future FEMP response actions. DOE intends to work closely with ACOE representatives on this issue. DOE is confident that once developed, this plan can be applied in conjunction with the 404(b)(1) guidelines to ensure all public interest factors with regard to wetland impacts are adequately addressed during remediation of the site.

State Requirements

Section 401 Water Quality Certification - Wetland impacts associated with construction of the AWWT facility will not cause a violation or interfere with the attainment and maintenance of applicable water quality standards, nor will it result in a violation of any applicable provisions of the CWA. DOE intends to use only clean fill material during construction and will utilize standard erosion and sedimentation controls to prevent the possible migration of material from the work site to other waters of the state, thus alleviating any concern regarding potential water quality impairments.