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COMMENTS OF THE FERNALD ATOMIC TRADES AND LABOR COUNCIL CONCERNING THE ENVIRONMENTAL ASSESSMENT (EA) FOR OPERABLE UNIT 3 (OU-3)

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COMMENT SHEET

DOE is interested in your comments on the cleanup alternatives being considered in the *Proposed Plan / Environmental Assessment for Interim Remedial Action* of Operable Unit 3, including the preferred alternative to decontaminate and dismantle the former production area at the Fernald site. Please use the space provided below to write your comments, then fold, staple or tape, and mail this form. We must receive your comments on or before the close of the public comment period on January 7, 1994. If you have questions about the comment period, please contact Ken Morgan, the DOE Public Information Officer at Fernald, at (513) 648-3131.

Comments are attached

Name: FAT LLC

Address: Box 26

City: Ross State/Zip: OH 45061

Phone:

MAILING LIST ADDITIONS:

Please add my name to the Fernald Mailing List to receive additional information on the cleanup progress at the Fernald Environmental Management Project:

YES___ NO___

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Fernald Atomic Trades & Labor Council

AFL - CIO Metal Trades Affiliated

P.O. Box 126, Ross, Ohio 45061

Comments of the Fernald Atomic Trades and Labor Council (FAT&LC)
February 7, 1994
Concerning the
Environmental Assessment (EA) for Operable Unit 3 (OU-3)
Fernald Environmental Management Project (FEMP)
U.S. Department of Energy (DOE)
Fernald, Ohio

Introductory Comments on Operable Unit 3, Environmental Assessment

We support the DOE's effort to obtain the earliest, least cost and safest cleanup of the Fernald site. We support this interim action for OU 3 as well. However, we have reservations about whether the Environmental Assessment was properly scoped, whether risks have been properly assessed, and whether certain mitigating measures have been taken to reduce avoidable risk. Thus, our comments are intended to strengthen the EA and mitigate certain risks which we believe must be addressed in order for DOE to permissibly issue a Finding of No Significant Impact (FONSI). If the risks are properly assessed, and the mitigating actions we request are undertaken, a full EIS for this interim action will not be required.

These comments are also intended to supplement the verbal comments of Robert Tabor, speaking on behalf of FAT&LC, that were given at the public hearing on January 5, 1994 at the Plantation in Harrison, Ohio. See transcript of hearing, pages 122-136.

FAT&LC appreciates DOE's 30 day extension of the comment period. This added time provided a chance for a Roundtable with FRESH and FAT&LC to address ongoing concerns regarding NEPA compliance.

1. Has DOE Taken a "Hard Look" at the "Worst Case", Is the Risk Assessment Prepared by a Party Without Any Possible Conflict of Interest, And If Not, What Measures Have Been Taken to Mitigate These Risks?

The EA lacks the required "worst case" analysis resulting from a catastrophic failure or release from the central storage facility (CSF). The CSF is a tent which covers radioactive and other contaminated debris, waste and rubble from the demolition and decontamination of up to 200 buildings in OU 3. A "worst case" scenario is required when

preparing an EIS, pursuant to 40 CFR 1502.22. A worst case analysis would require a probability analysis, a dispersion model and an environmental impact analysis. One credible catastrophic failure is a hurricane or tornado tearing the fabric roof off of the CSF and spreading contaminated material around.

The ostensible "worst case" postulated in the EA was a ruptured High Efficiency Particulate Air filter blowing matter for 24 hours. Obviously, if a filter ruptured, the blower motor switch would be turned off! To suggest that a ruptured filter is the "worst case" scenario trivializes the intent of CEQ regulation under NEPA to examine the impacts of a worst case scenario, especially where the record contains testimony that a tornado (or comparable event) has hit near the OU-3 once before (see transcript page 51).

To the extent that there are gaps in relevant information, or scientific uncertainty, as may be the case here, CEQ regulations require the agency to "always make clear that such information is lacking or that uncertainty exists."

The EA document fails to identify these risks or the uncertainty associated with them.

FERMCO and its subcontractors, acting as agents of the Responsible Party, the U.S. Department of Energy, apparently prepared the risk assessment in the EA. According to FERMCO, the DOE and the two EPAs (US EPA and Ohio EPA) reviewed the Risk Assessments in the EA. The assumptions contained in the Risk Assessment were justified at the January 5, 1994 hearing by DOE's contractor, FERMCO, rather than DOE. An administrative agency may not delegate its public duties to private entities, particularly private entities whose objectivity may be questioned on grounds of conflict of interest. Sierra Club v Sigler, 695 F2d 957 (1983).

At the January 5, 1994 DOE public hearing, the following exchange between FERMCO and a citizen illustrates this point:

Citizen: Would it make sense to solicit comment on that from people here who are concerned about whether or not the document (EA) is properly scoped at this time?

FERMCO official: We are soliciting comments.

Citizen: No you're not, the DOE is soliciting comments.
(Transcript at 95)

Has DOE taken a hard look at the environmental consequences from a worst case scenario from the temporary storage of radioactive debris in a fabric covered CSF compared with the other alternatives? Has DOE taken a hard look at mitigating this risk?

Cost effective alternatives may be readily available, but not yet considered. Has DOE made a determination that this risk is inconsequential or so unlikely that it is not worthy of serious consideration?

The standard of scrutiny for reviewing this EA is higher when DOE uses a contractor to prepare documents for the agency, and when the contractor is speaking on behalf of the agency, as it did at the public hearing on January 5, 1994. Indeed, a review of this EA leaves the distinct impression that most, if not all of the EA was performed by the contractor working for DOE. While ostensibly the DOE was supervising, the shortage of DOE personnel leads us to question the thoroughness of DOE's review. We realize that the preparation of the EA was a mammoth task and that DOE rules permit the participation of contractors. However, the line between governmental officials making policy decisions, and that of an interested contractor engaging in inherently governmental activity has been blurred.

2. HISTORICAL RISK DATA THAT IS USED IN THE EA IS UNRELIABLE

The historical estimate of radionuclide discharges from the FEMP are based on 1987 Westinghouse data (referenced on page D-20 of the EA) that appear to grossly understate the true quantity of discharges. New emissions data was released in 1993. This EA must be updated to reflect the 1993 data on the quantity of uranium and other radionuclide releases when looking at past risks, as well as data collected in connection with the dose reconstruction project.

The annual and total mrem exposures (for skin, whole, eye, extremity and internal) are not detailed in the EA since environmental restoration work began (1989-1993).

The EA postulates that the average external exposures to workers at the FEMP was 166 mrem between 1986-87 when operations will still underway. It further states that the probability of an average exposure as high as 166 mrem/yr is low. FERMCO's own RAD I training manual notes that the US annual average radiation dose is 180 mrem per person. Thus, this risk profile from d&d activity assumes that worker exposure will be below the background levels for an average person not employed at the site.

Who has critically examined this assumption within DOE? If DOE agrees with that this level is achievable, will it lower the DOE and FERMCO administrative control levels at the FEMP correspondingly? If not, why not?

3. THERE IS NO ASSURANCE THAT THE CSF WILL NOT BY DEFAULT BECOME A LONG TERM STORAGE FACILITY, THUS SAFEGUARDS ARE REQUIRED TO ASSURE THAT THE "INTERIM ACTION" IS NOT A "FINAL ACTION"

The EA relies on the assumption that a Central Storage facility will be constructed to cover radioactive and contaminated soils, wastes and debris. These 30-40,000 square foot structures are effectively little more than a fabric covered tent. The EA also relies on the assumption that the CSF is temporary and that permanent disposal will take place after a final RI/FS and ROD is completed.

There are three major risks associated with the CSF that are not identified in Appendix E of the EA, and should have been scoped before the EA was drafted. They are:

1. The temporary (CSF) facility will, by default, become a longer term storage facility (i.e. wastes will continue to be stored after the point that the ROD is finalized in late FY 97) because of budget shortfalls, alternative waste disposal siting limitations, or technology shortfalls;

2. The CSF will become a permanent storage facility (due to budget or other reasons) i.e. final action will not be in full implementation by FY 2000 (it is noted that the design life of the CSF cover is 10 years and can be "repaired or replaced if needed to extend life); and

3. The CSF is subject to catastrophic failure due to tornado, hurricane or other event which will cause the waste and debris to be spread over the site and into the neighboring areas off site. This risk is not considered in Appendix E.4, and was not treated seriously at the January 5, 1994 hearing by FERMCO personnel. The risk from a tornado/hurricane should be compared with the risk of storing the debris in (decontaminated/locked down) standing buildings. The risk should also be assessed in terms of the likelihood and severity of such events that could spread the loose debris. While the likelihood of a tornado hitting the CSF may be low over 1-3 year period, how will the likelihood increase over 10-15 year period.

With respect to the three scenarios outlined above, the following questions emerge and deserve a clear reply:

1. Please define with precision the time frame covered by the word "interim".

2. By law or rule, what is the longest time period an action can be termed interim? 10 CFR 1021.104 does not delimit the time frame. If this term is not defined, will DOE stipulate to a maximum time period beyond which the action will no longer remain interim?

3. How can DOE and EPA guarantee that the interim action won't become permanent by default?

4. Budget crunches are very real. Has the possibility that funding will not be made available by Congress been factored in when deciding whether to rely on a fabric covered storage area instead of a more durable alternative? If so, how?

5. What are the environmental and health risks if the CSF becomes a long term or permanent storage facility? How are these risks mitigated in the EA?

6. Since there is no permanent storage facility, and a fabric tent will be used to cover the loose contaminated rubble, is the material safer in its current form from a catastrophic weather event (ie in a decontaminate and locked down building), than if it is turned into rubble?

7. Will contaminated rubble ultimately be put into a solidified form, and if so, does it make sense to begin treatment and solidification sooner to mitigate against the risks inherent in having loose rubble stored under a fabric tent?

4. DOE APPARENTLY PREJUDGED THE ADEQUACY OF THE EA TO SUPPORT A FONSI BEFORE EVER SEEKING PUBLIC COMMENT

Under questioning at the January 5, 1994 hearing in Harrison, Ohio, FERMCO revealed that DOE intends to issues a FONSI. Before the EA was ever opened to public review and comment on December 8, 1993, a draft FONSI had already been submitted dated November, 1993.

By drafting a FONSI in November, DOE has at least tentatively determined that a FONSI was warranted without even holding a public hearing on the EA. Thus, one is left to wonder whether the hearing process little more than a formality. Why else write a draft-FONSI before the EA has even been announced and released?

Why didn't DOE first announce its intent to issue a FONSI at the same time it released the EA for public comment on December 8, 1993?

In response to concerns that only an EA (and not a full EIS) would be done for the OU-3 Interim Action, Dave Kozlowski of DOE stated at the January 5 hearing:

> "in April (1993) an action description memorandum was written for this project, which indicated that an environmental assessment would most likely be documentation that would be needed from NEPA, and that was submitted for public comment and it appeared in the Federal Register. . ." (transcript page 93)

An inquiry to DOE's NEPA unit in headquarters (EH-25) informs us that there was no *Federal Register* notice on this NEPA action. The only related document DOE

could produce was a letter to the state of Ohio informing them of the intent to produce a combined EA for OU-3 and the CSF. Perhaps Mr. Kozlowski misspoke, in which case he should clarify this point of concern for the record. Was there a *Federal Register* notice, was there public comment on this notice, and why was the public not notified of an intent to perform an EA and not an EIS?

The transcript will also reveal that at no time did FAT&LC or Richard Miller of the Oil, Chemical & Atomic Workers Union ever call for an EIS instead of an EA for OU-3's interim action.

5. THE OU-3 BASELINE SUBMITTED BY FERMCO TO DOE CALLS FOR THE REPLACEMENT OF THE CURRENT HOURLY WORKFORCE AND IS AT ODDS WITH THE EA'S ASSUMPTION OF MINIMAL SOCIOECONOMIC IMPACTS

The EA for OU-3 states that there will be "no change in the number of employees," and suggests there will be minimal socioeconomic impact from implementing the Recommended Alternative (#3). This conclusion is at odds with another FERMCO document, the FEMP Baseline. FERMCO's current Baseline for the OU-3 calls for cutting the OU-3 hourly workforce from 170 down to 23 between FY 94-97 (SR-009, see section 1.1.1.3, spreadsheet dated December 6, 1993). Apparently, the existing hourly workforce will be replaced by subcontract workers. At the January 5, 1994 DOE hearing, the question of socioeconomic impact was raised, and the record reflects comments by a FERMCO official agreeing that a different hourly workforce may be used to perform OU-3 activities.

FAT&LC has subsequently been informed by DOE that the Baseline is not a decisional document, and efforts are underway to implement the workforce continuity goals of Section 3161 of the FY 93 Defense Authorization Act, 42 USC 7274h. Until these workforce issues are resolved, however, the Environmental Assessment, as explained at the January 5 hearing, grossly understates the socioeconomic impacts. Such impacts and any accompanying uncertainties should be identified in the EA.

6. A FINDING OF NO SIGNIFICANT IMPACT (FONSI) REQUIRES THE FINDING THAT THE PROPOSED ACTION WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT. DOES THE EA MEET THIS TEST OR IS FURTHER MITIGATION REQUIRED?

If DOE issues a FONSI, 10 CFR 1021.322(2) requires that a FONSI must contain:

> Any commitments to mitigation that are essential to render the impacts of the proposed action not significant, beyond those mitigation measures that are integral elements of the proposed action, and a reference to the Mitigation Action Plan. . .

The EA and the Draft FONSI do not contain any means to mitigate the risks inherent in using a fabric covered structure to cover loose contaminated debris and waste from (1) becoming a long term storage facility; (2) becoming a permanent storage facility; or (3) catastrophic failure due to a tornado or hurricane.

The EA does not explore the conversion of an existing building(s) for interim storage of contaminated debris, waste and rubble that might mitigate against the dispersal of contamination in the event that there is a catastrophic event such as a tornado or hurricane. The EA must address this option.

We recommend a stipulation between DOE, EPA, Ohio EPA and members of the public that any FONSI contain the following:

1. A hammer date by which contaminated materials placed in the CSF must begin to be removed from the CSF on an ongoing basis for treatment and final disposal (estimated date January 1, 1998);

2. An enforceable agreement among FRESH, DOE and EPA that prohibits permanent storage of material from OU-3, to be signed by the Assistant Secretary of Energy for Environmental Restoration;

3. A system of fines/penalties against DOE and the contractor if waste and debris materials are stored in the CSF on more than an interim basis, including a definition of interim; and

4. A commitment to minimize adverse socioeconomic impacts to the community by retaining the existing long term hourly workforce to perform environmental restroation and waste management activity to the maximum extent feasible.