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FEDERAL FACILITY COMPLIANCE AGREEMENT/NESHAP

04/19/91

**DOE-1205-91
DOE-FN USEPA
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LETTER**



Department of Energy

FMPC Site Office

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APR 19 1991

DOE-1205-91

Mr. Valdus V. Adamkus, Regional Administrator
U. S. Environmental Protection Agency
Region V - 5RA-14
230 South Dearborn Street
Chicago, IL 60604

Dear Mr. Adamkus:

FEDERAL FACILITY COMPLIANCE AGREEMENT/NESHAP

During recent discussions between our staffs, U.S. EPA requested that DOE identify any critical issues which must be resolved before finalizing the NESHAP FFCA. The issues identified are specific to the draft FFCA for the Subpart Q requirements only. We agree that the original Finding of Violation (FOV) under Subpart H can be closed with a certification that all of the conditions which precipitated the FOV have been adequately satisfied. We are preparing a package of the eleven revised applications for modification and other supporting documents certifying that these issues have been resolved.

The following issues must be resolved before DOE can consider signing an FFCA for Subpart Q requirements:

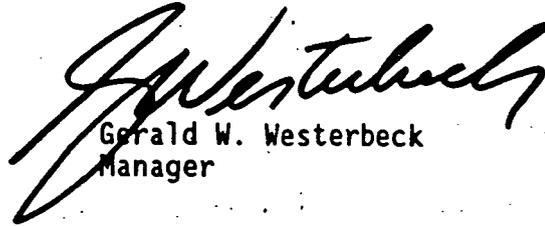
- o Recognition of the primacy of CERCLA Consent Agreement actions must be included in the FFCA. This would include language which recognizes that the actions identified in the FFCA would be consistent with actions in the CERCLA Consent Agreement.
- o Separate enforceability clauses under the Clean Air Act, including sanctions, must be deleted from the draft FFCA. Clarification can be added to the existing language in the FFCA to state that enforceability would apply only if actions were not taken in accordance with the terms of the CERCLA Consent Agreement.
- o The language "and the goal is an ambient background of no greater than 0.015 Pci/l above background as the location of the maximally exposed individual at a non-FMPC location" must be deleted from Attachment C of the FFCA. Although this criterion is identified as a goal, there is a risk that specific technical goals included in an Agreement can be taken literally during judicial proceedings. In addition, this performance goal is identified in the K-65 Silos Removal Action Engineering Evaluation/Cost Analysis (EE/CA) CERCLA Consent Agreement.

Another issue which should be discussed at these negotiations is included in the Enclosure. Although this has not been identified as a major issue, we would strongly encourage that you consider including it in the draft FFCA for means of clarification.

Upon your acceptance of these issues that need to be addressed in a draft NESHAP FFCA, our staffs could meet soon to discuss the necessary changes and finalize the agreement.

This letter represents a coordinated DOE Headquarters and Fernald Site Office position. If or your staff has any questions, please have them call David Kozlowski at (301) 353-8160 or Wally Quaider at (513) 738-6160.

Sincerely,



Gerald W. Westerbeck
Manager

FSO:Quaider

Enclosure: As stated

cc w/encl.:

- R. P. Whitfield, EM-40, FORS
- R. P. Berube, EH-20, FORS
- J. Fiore, EM-42, GTN
- K. Hayes, EM-424, GTN
- C. A. McCord, USEPA-V, 5HR-12
- G. E. Mitchell, OEPA-Dayton

ATTACHMENT

ITEM FOR NEGOTIATION ON THE
DRAFT FEDERAL FACILITIES COMPLIANCE AGREEMENT FOR RADIONUCLIDE
NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS,
FEED MATERIALS PRODUCTION CENTER, FERNALD, OHIO

- o Termination of the FFCA: A termination clause should be added to the FFCA which would allow the FFCA, by mutual consent of EPA and DOE, to terminate. Options for termination include: (1) the CERCLA Consent Agreement were modified to address Subpart Q requirements for radon emitting sites; and (2) the FFCA would be terminated following completion of the final remedial action, as determined through the CERCLA 120 Consent Agreement, and compliance with the radon flux standard of 20 pCi/m²-s was demonstrated.

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bcc w/encl.:

W. Dennison, GC-11, FORS
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