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APPLICATION OF 40 CFR 191 TO OU #4

04/25/94

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LETTER

DOE-FN



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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Mr. Jack R. Craig
United States Department of Energy
Fernald Environmental Management Project
Post Office Box 398705
Cincinnati, Ohio 45239-8705

REPLY TO THE ATTENTION OF:
HRE-8J

Application of 40 CFR 191
to OU #4

Dear Mr. Craig:

The United States Environmental Protection Agency (U.S. EPA) hereby notifies the United States Department of Energy (U.S. DOE) that recent developments concerning Title 40 of the Code of Federal Regulations Part 191 (Part 191) will impact preparation of the Record of Decision (ROD) for Operable Unit (OU) 4. Portions of Part 191 are identified in the OU 4 final Feasibility Study (FS) as either "applicable or relevant and appropriate requirements" (ARARs) or "to be considered" (TBCs). Recent developments concerning Part 191 need to be taken into account when preparing the draft OU 4 ROD. In addition, U.S. EPA would not object to U.S. DOE's submission of appropriate change pages for the OU 4 FS.

The contents of the K-65 silos do not precisely meet the definition of the wastes regulated by Part 191, but are in several respects similar in character. Therefore, U.S. EPA determined that while the Part 191 requirements are not applicable to the contents of the K-65 silos, those requirements are relevant and appropriate. In addition, because of a 1987 court decision¹ which remanded Subpart B of Part 191, U.S. EPA determined that Subpart B should be considered unpromulgated requirements. Consequently, U.S. EPA directed U.S. DOE to include Subpart B as a TBC and the rest of Part 191 as an ARAR in the OU 4 FS.

On December 20, 1993, U.S. EPA promulgated amendments to Part 191 which, among other things, reinstated the requirements of Subpart B of Part 191 (58 Federal Register 66398). Since the Subpart B requirements are now properly promulgated, those requirements are now relevant and appropriate and must be identified as an ARAR. In addition, groundwater monitoring requirements formerly set forth in Subpart B are now promulgated separately in a new Subpart C. Therefore, Subpart C of amended Part 191 must also be identified as an ARAR.

Pursuant to Section XII.J.1. of the Administrative Order on Consent, Docket Number V-W-90-C-057, U.S. DOE may submit change pages for the OU 4 FS. Such change pages should correct the ARARs table by specifying Part 191 Subparts A, B, and C are relevant and appropriate requirements for the contents of the K-65 silos. In addition, pages containing a narrative explanation of the Part 191 requirements should also be changed to reflect the repromulgation of Part 191 last December. U.S. EPA will not object to U.S. DOE's submission of change pages

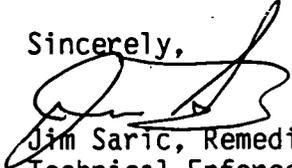
¹ See Natural Resources Defense Council, Inc. v. United States Environmental Protection Agency, 824 F.2d 1258.

so long as the change pages are strictly limited to the issues discussed in this letter.

Whether or not U.S. DOE elects to submit change pages for the OU 4 FS, all Subparts of Part 191 must be treated as an ARAR in the OU 4 ROD.

If you have any questions, please contact me at (312) 886-0992.

Sincerely,



Jim Saric, Remedial Project Manager
Technical Enforcement Section #1
RCRA Enforcement Branch

- cc: Tom Schneider, OEPA-SWDO
- Pat Whitfield, U.S. DOE-HDQ
- Don Ofte, FERMCO
- Jim Theising, FERMCO
- Paul Clay, FERMCO