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LETTER OF WARNING ACCESS FOR OFF-SITE WELLS USDOE FMPC
FERNALD, OHIO OH6 890 008 976

10/27/88

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

REPLY TO THE ATTENTION OF:

5HR-12

OCT 27 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Joe LaGrone
United States Department of Energy
Environmental Protection Division
P.O. Box E
Oak Ridge, Tennessee 37830

Re: Letter of Warning
Access for Off-site Wells
U.S. Department of Energy
Feed Materials Production
Center
Fernald, Ohio
OH6 890 008 976

Dear Mr. LaGrone:

During an August 3, 1988, telephone conversation, the United States Environmental Protection Agency (U.S. EPA) requested the United States Department of Energy (U.S. DOE) continue to pursue the installation of two additional off-site groundwater monitoring wells on the property of the Southwestern Ohio Water Company. This request was repeated in a August 11, 1988, letter and U.S. DOE was instructed to install the wells in conjunction with the other off-site monitoring wells. All of the off-site wells have been installed with the exception of the two wells on Southwestern Ohio Water Company's property. In a October 7, 1988, telephone conversation, Mary Stone informed U.S. EPA that it remains U.S. DOE's position that access for the installation of the two additional monitoring wells on the Southwestern Ohio Water Company's property would not be pursued.

These two wells were a part of the approved Remedial Investigation (RI) work plan as required by the July 19, 1986, Federal Facility Compliance Agreement between U.S. EPA and U.S. DOE. The location of these two wells was selected by U.S. DOE and approved by U.S. EPA because of the significant influence that the Southwestern Ohio Water Company's collector wells have on regional groundwater flow patterns.

U.S. DOE has informed U.S. EPA that the Southwestern Ohio Water Company will not agree to the installation of the two additional groundwater

Date Recd OCT 31 1988

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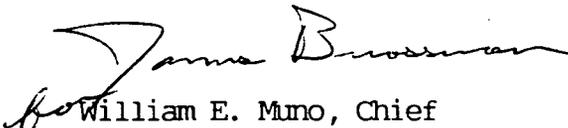
monitoring wells and may also restrict access for sampling of the existing well. U.S. EPA has communicated to U.S. DOE that authorities under the Superfund Amendments and Reauthorization Act of 1986 (SARA) should be used to gain access.

Authority for access to the Southwestern Ohio Water Company's property is provided for under Section 104(e) of SARA. U.S. DOE has the same authority as U.S. EPA for access to the Southwestern Ohio Water Company's property, as provided for in the delegation of SARA authorities by the President. U.S. DOE should begin the installation of the two wells on the Southwestern Ohio Water Company's property within ten (10) days of obtaining access to the property. Authority for obtaining access to the Southwestern Ohio Water Company's property is provided for under Section 104(e) of SARA. Executive Order 12580 has delegated concurrent authority to U.S. DOE and other Executive Departments and agencies to obtain access where releases or threatened releases are "on or the sole source of the release is from any facility or vessel under the jurisdiction, custody, or control of those departments and agencies, to be exercised with the concurrence of the Attorney General".

Within five (5) days of receipt of this letter, U.S. DOE should send a request to the Southwestern Ohio Water Company seeking its consent for U.S. DOE's representatives to enter the company's property for the purpose of installing two monitoring wells and having continued access to the property for the collection of water samples and maintenance of the well or any other necessary activities. This procedure is in accordance with U.S. EPA policy of seeking access through consent as being the preferred means of gaining access. The access request should include a consent form to be signed and returned within seven (7) days of receipt. If denied access to the property, or if no response is received within the seven day period, U.S. DOE should initiate appropriate action to gain access to the property within ten (10) days after the initial seven day period. This action may involve seeking judicial authorization through either an ex parte warrant or a court order. If these conditions are not complied with, U.S. EPA will consider U.S. DOE in violation of the RI work plan and the July 19, 1986, Federal Facility Compliance Agreement.

Please contact Catherine McCord at (312 or FTS) 886-4436, if you have any questions regarding this matter.

Sincerely yours,


William E. Muno, Chief
RCRA Enforcement Branch

Enclosures

cc: Michael Savage, OEPA-CO
Graham Mitchell, OEPA-SWDO
Rich Bendula, OEPA-SWDO

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James A. Reafsnyder, U.S. DOE
Mary Stone, U.S. DOE
M. Bruce Boswell, Westinghouse