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G-000-102.156

**NOTICE OF VIOLATION (SEE CONTROL #'S 7986, 7987 AND
7989 FOR MORE INFORMATION)**

02/19/97

**DOE-0554-97
DOE-FEMP FDF
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NOTICE**



Department of Energy

Ohio Field Office
Fernald Area Office

P. O. Box 538705
Cincinnati, Ohio 45253-8705
(513) 648-3155



FEB 19 1997

DOE-0554-97

Mr. John C. Bradburne, President
Fluor Daniel Fernald
P.O. Box 538704
Cincinnati, Ohio 45253-8704

Dear Mr. Bradburne:

NOTICE OF VIOLATION

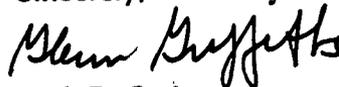
On February 14, 1997, the Ohio Environmental Protection Agency (OEPA) issued the enclosed Notice of Violation (NOV) to the Fernald Environmental Management Project (FEMP) based upon violations of the Ohio Administrative Code. These violations were the result of the failure to properly manage and store nine containers of water which were determined to be hazardous. The discrepancies were discovered as part of a Conduct of Operations assessment performed by Department of Energy, Fernald Environmental Management Project (DOE-FEMP) personnel. In response to the NOV, we request the following action items from your staff:

- A proposed response to OEPA detailing the corrective actions to be taken to insure these violations do not occur in the future.
- A detailed explanation as to why characterization of this waste was not completed until almost one year after availability of analytical results.
- An explanation as to why these containers were not labeled and placed into proper storage.
- Waste management database information, or other available data, to demonstrate the movement of this material into proper storage.
- Any reporting requirements as outlined in the enclosed August 18, 1993, memorandum from Secretary O'Leary.

The first three of these items have already been informally requested of your staff. Please provide DOE-FEMP these items not later than close of business February 21, 1997.

Any questions regarding this issue may be addressed to either Robert Danner at 648-3167 or John Sattler at 648-3145.

Sincerely,



for Jack R. Craig
Director

FEMP:Danner

Enclosures: As Stated

cc w/encs:

- D. Govans, EM-42/GTN
- J. Reising, DOE-FEMP
- T. Hagen, FDF/65-2
- J. Lester, FDF/52-5
- T. Walsh, FDF/65-2
- AR Coordinator/78
- EDC, FDF/52-7



State of Ohio Environmental Protection Agency

Southwest District Office

401 East Fifth Street
Dayton, Ohio 45402-2911
(513) 285-6357
FAX (513) 285-6249

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K-0980

FEB 10 10 59 AM '97

George V. Voinovich
Governor

FILE:

February 14, 1997

RE: U.S. DOE-FEMP
HAZARDOUS WASTE
OH6890008976
HAMILTON COUNTY

Mr. Johnny W. Reising, Project Manager
U.S. Department of Energy
Fernald Environmental Management Project
P.O. Box 538705
Cincinnati, Ohio 45253-8705

Reference: Facsimile Transmittal:

U.S. Department of Energy Fernald Area Office to
OhioEPA; 2/07/97 @ 14:44; B. Danner to P. Harris;
Subject: Fact Sheet: Liquids Stored in White Metal Boxes in
Bldg. 71 at the Fernald Environmental Management
Project Site.

Dear Mr. Reising:

On February 7, 1997, the Department of Energy- Fernald Environmental Management Project (DOE-FEMP) notified this office by telephone and facsimile transmission, of probable hazardous waste violations in regard to the storage of certain containerized waste.

A summary of the pertinent facts reported by DOE-FEMP, is as follows:

1. As a result of a container trash sorting/disposal project (February to August 1995), waste liquids (wastewater) were generated. The wastewater was collected and placed into nine (9) white metal boxes used by DOE-FEMP as waste transport/disposal containers. These containers were then placed into storage in building 71. (The facility Part B Application does not designate Building 71 as a hazardous waste storage location for "containers with free liquids".
2. Samples of the wastewater were collected on 10/10/95 for the purpose of waste characterization, and analytical results were available to the site within thirty (30) days.
3. Waste characterization was completed in October 1996. The waste was characterized as a RCRA characteristic hazardous waste (EPA Waste Codes D018 - benzene; D019 - carbon tetrachloride; D034 - tetrachloroethylene; and D040 - trichloroethylene).
4. The waste was then designated for inclusion in the Liquid Mixed Waste Project for treatment and disposal via the Oak Ridge TSCA incinerator. A Task Order was prepared

Mr. Johnny W. Reising, Project Manager, U.S. DOE-FEMP

February 14, 1997

page 2

in December 1996, to pump the wastewater into a tanker and transport it to bulking tanks in preparation for shipment.

5. A February 4, 1997, internal review of the Task Order revealed that the white metal box containers had not been properly labeled (as hazardous waste); these containers had remained in storage in building 71; and that there was no evidence of spills or leaks from the white metal boxes. The internal review further revealed that DOE-FEMP was in apparent violation of hazardous waste regulations as a result of the described situation.
6. Following the above referenced notification to Ohio EPA, DOE-FEMP immediately took corrective measures to properly label the containers, and place the waste into a designated hazardous waste "free-liquids" storage area.

Based upon a review of the information as communicated by DOE-FEMP, Ohio EPA determines that the following violation of the Ohio Revised Code (ORC) has occurred:

1. ORC 3734.11(A) Prohibition:

This statute provides that no person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code.

(Reference Order #9 of Director's Findings and Orders issued June 6, 1996, which enjoins the facility to comply with terms of its RCRA Part B Application; the Part B Application identifies specific areas for the storage of hazardous waste, and requires labeling/markings of hazardous waste containers).

Based upon a review of the information as communicated by DOE-FEMP, Ohio EPA determines that the following violation of the Ohio Administrative Code (OAC) has occurred:

1. OAC 3745-59-50(A)(2)(a) Prohibitions on storage of restricted wastes :

This rule requires an owner/operator of a hazardous waste facility, while storing hazardous waste in containers for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal, to clearly mark each container to identify its contents and the date each period of accumulation begins.

Ohio EPA acknowledges that the above violation notification is a consequence of self-reported information by DOE-FEMP. Based upon the information provided by DOE-FEMP, Ohio EPA considers that the facility has already taken action to correct these violations.

Mr. Johnny W. Reising, Project Manager, U.S. DOE-FEMP

February 14, 1997

page 3

In order to document corrective action, this office requests that within ten (10) days from the date of this letter, DOE-FEMP submit SWIFTS database information (and/or other RCRA operating log information), which will show the movement/transport of the containers into appropriate non-free liquid hazardous waste storage.

In addition, this office requests that DOE-FEMP submit the following:

1. An explanation as to why characterization of this waste was not completed until almost one year after availability of analytical results.
2. An explanation as to why this waste was placed into a storage area designated for non-free liquids, and administrative or other management controls DOE-FEMP will utilize to prevent a reoccurrence.

Should you have any questions in regard to this correspondence, please contact either myself at (937) 285-6090, or Chris Budich at (937) 285-6083.

Sincerely,



Phillip C. Harris
Division of Hazardous Waste Management

cc: P. Pardi, OEPA DHWM
T. Schneider, OEPA OFFO

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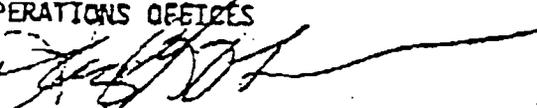
The Secretary of Energy

Washington, DC 20585

August 18, 1993

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MEMORANDUM FOR: SECRETARIAL OFFICERS
MANAGERS, DOE OPERATIONS OFFICES

FROM: HAZEL R. O'LEARY 

SUBJECT: GUIDANCE ON REPORTING PROCEDURES FOR ENFORCEMENT ACTIONS
RELATED TO VIOLATIONS OF ENVIRONMENTAL REQUIREMENTS

In recent months, there have been a number of environmental enforcement actions initiated against the Department and its contractors, many involving a potential assessment of a fine or penalty. These have raised concerns about accountability, as well as internal reporting procedures and proper coordination of expeditious corrective actions, for alleged violations of environmental requirements. Since the Department of Energy's policy is to comply fully with all applicable Federal, State and local environmental requirements, receipt of any notice of violation by the Department or its contractors is a matter of serious concern and requires continued focused management attention.

It is the Department's policy that the responsible party or parties be held accountable for violations of environmental requirements. To assist in promoting accountability for environmental violations and to clarify related reporting procedures, the Attachment to this Memorandum sets forth guidance on internal response and coordination for notices of environmental enforcement actions. I am directing the Assistant Secretary for Environment, Safety and Health to revise existing DOE Orders, as appropriate, to incorporate the principles outlined in this guidance. In addition, I am requesting the Assistant Secretary for Environment, Safety and Health to prepare annual reports analyzing the enforcement actions against the Department and its contractors during the preceding year and recommending means to improve the Department's environmental performance.

Finally, let me emphasize and affirm my commitment to developing a strong partnership among the Department, its contractors, the Environmental Protection Agency, State regulatory authorities, citizens groups, and the public in general. As we work to make the Department a model of responsible environmental stewardship, I intend to propose additional actions to build on the efforts currently ongoing to attain and maintain compliance in cooperation with the regulatory authorities and other affected stakeholders. Further guidance will be forwarded to your offices within several weeks to address management actions that should be taken to address responsibility for environmental violations and the payment of fines and penalties.

Attachment

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Attachment

Guidance on Reporting Procedures for Enforcement Actions Related
to Violations of Environmental Requirements

It is the Department's policy to comply fully with all applicable environmental requirements and to hold accountable the party or parties responsible for violations of any such requirements. The following guidance is intended to assist your offices in promoting accountability for environmental violations and to clarify internal reporting procedures for environmental enforcement actions.

The Assistant Secretary for Environment, Safety and Health is directed to revise existing DOE Orders, as appropriate, to reflect the principles in this guidance and to avoid duplication of reporting requirements. DOE 5400.1, "General Environmental Protection Program," sets out Departmental policies related to compliance with environmental requirements, and specifically emphasizes that it is Department policy that contractors will share the Department's commitment to good environmental management. DOE 5400.2A, "Environmental Compliance Issue Coordination," establishes Departmental policies and procedures for internal coordination of significant compliance issues, including responses to enforcement actions by regulators for alleged violations and associated assessed penalties. DOE 5000.38, "Occurrence Reporting and Processing of Operation Information," establishes Department procedures for reporting and responding to violations. This Order establishes the use of the Occurrence Reporting and Processing System by Department facilities and Operations Offices for the automated reporting of (among other things) occurrences under "any agreement, compliance remediation, or permit-mandated activity for which formal notification has been received from the regulatory agency...." The Order requires oral notification to the Facility Representative and the Headquarters Emergency Operations Center to occur within 2 hours for occurrences related to certain Notices of Violation. A written Notification Report must be submitted before the close of the next business day.

Actions that should be taken to supplement these existing requirements are outlined in the following provisions. As a general note, it should be emphasized that any environmental enforcement action by a cognizant regulatory authority against the Department or its contractors (including management and operating contractors, environmental restoration management contractors, and on-site subcontractors) is to be treated as an item of significance, whether or not a fine or penalty is assessed. Plans should be developed promptly to correct any violation that is the subject of such action and to prevent similar violations from occurring in the future. As soon as possible after the receipt of a Notice of Violation or similar enforcement notice against the Department or a contractor, the Operations Office should notify the Associate Deputy Secretary for Field Management and the responsible Program Secretarial Officer by phone. The cognizant Secretarial Officer is responsible for working with the Operations Office to resolve the environmental enforcement action in coordination with other Headquarters offices.

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I. Enforcement Against the Department.

Within 24 hours of receipt of an enforcement notice against the Department, the Operations Office should prepare and forward to the Associate Deputy Secretary for Field Management, the General Counsel, the Assistant Secretary for Environment, Safety and Health, and the cognizant Secretarial Officer, a copy of the enforcement notice and an information paper that describes:

- (A) the nature of the alleged violation and of the environmental threat posed thereby;
- (B) whether the alleged violation has been corrected, or is continuing;
- (C) the basis for the regulatory authority's discovery of the alleged violation (e.g., Department or contractor self-reporting or external regulatory inspection);
- (D) whether fines or penalties are being assessed and, if so, the amount; and
- (E) whether duplicative notices were issued to the Department and to a contractor for the same alleged violation.

When an Occurrence Notification Report is required under DOE Order 5000.38 for the enforcement notice, a separate information paper need not be prepared. In such cases, to avoid duplication of effort, a copy of the required Occurrence Notification Report together with any additional information needed to respond to the above items should be submitted to the individuals noted above.

Within 10 working days after receipt of an enforcement notice, the Operations Office should supplement the above report with an analysis of:

- (A) the degree of responsibility of the Department and its contractor for the alleged violation, regardless of who received the notice;
- (B) whether the Operations Office or any affected contractor disagrees with the legal or factual grounds for the alleged violation;
- (C) whether the issuing regulatory authority's proposed resolution should be accepted, or whether an attempt should be made to contest the notice or to negotiate a different settlement; and
- (D) the actions taken, or proposed, to prevent similar alleged violations from occurring in the future.

New information and developments, including ultimate resolution of the enforcement action and any payment of fines and penalties, should be reported promptly to supplement the above reports.

7988

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II. Enforcement Against Contractors.

Alleged violations of environmental requirements by the Department's management and operating contractors, environmental restoration management contractors and their subcontractors are of no less concern to Departmental management than alleged violations by the Department. Contracting Officers should direct that within 24 hours of receipt of a Notice of Violation or other enforcement notice by a contractor or subcontractor, the Contracting Officer should be provided with a copy of the enforcement notice together with a detailed description, signed by a Senior Corporate Officer of the contractor or subcontractor, of:

- (A) the nature of the alleged violation and of the environmental threat posed thereby;
- (B) whether the alleged violation has been corrected, or is continuing;
- (C) the basis for the regulatory authority's discovery of the alleged violation (e.g., Department or contractor self-reporting or external regulatory inspection); and
- (D) whether fines or penalties are being assessed and, if so, the amount.

This information should be promptly forwarded to the Associate Deputy Secretary for Field Management, the General Counsel, the Assistant Secretary for Environment, Safety and Health, and the cognizant Secretarial Officer.

When an Occurrence Notification Report is required under DOE Order 5000.38 for the enforcement notice, a separate information paper need not be prepared. In such cases, to avoid duplication of effort, a copy of the required Occurrence Notification Report together with any additional information needed to respond to the above items should be submitted to the individuals noted above.

Within 10 working days after receipt of an enforcement notice by the contractor or subcontractor, a Senior Corporate Officer of the contractor or subcontractor should provide the Operations Office with:

- (A) a preliminary assessment of whether the alleged violation resulted from a failure of the Department to provide the contractor with requested guidance, funding, or authorization to correct the conditions leading to the alleged violation;
- (B) a preliminary assessment of whether the affected contractor disagrees with the legal or factual grounds for the alleged violation;
- (C) a preliminary recommendation as to whether the issuing authority's proposed resolution should be accepted, or whether an attempt

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should be made to contest the notice or to negotiate a different settlement; and

- (D) a description of actions taken, or proposed, to prevent similar alleged violations from occurring in the future.

The Contracting Officer should forward this information promptly to the Headquarters Officials noted above to supplement the earlier report. The contractor also should be directed to provide the Contracting Officer with new information and developments on the resolution of the enforcement action. Any such new information and developments, including ultimate resolution and any payment of fines and penalties, should be forwarded to the same Headquarters officials.

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