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REPLY TO THE ATTENTION OF:

Mr. Glenn Griffiths  
United States Department of Energy  
Fernald Area Office  
P.O. Box 398705  
Cincinnati, Ohio 45239-8705

**Subject: Silos 1 and 2 Draft Explanation of Significant Differences for Operable Unit 4**

Dear Mr. Griffiths:

The United States Environmental Protection Agency (EPA) has completed review of the above-referenced document (draft ESD), dated July 14, 2003, as well as DOE's responses to draft EPA comments, received via e-mail on July 31, 2003. The draft ESD presents information to: 1) align the quantitative performance standards for treating the Silos 1 and 2 materials with the revised Nevada Test Site waste acceptance criteria; and 2) allow for the option of silo material disposal at an appropriately permitted commercial disposal facility.

EPA found the draft ESD and comment responses to be adequate, although the necessary revisions have not yet been incorporated into the draft ESD. Therefore, EPA conditionally approves the draft ESD; please submit a signed ESD that incorporates the necessary revisions. EPA's comments on the draft ESD that were previously provided to DOE in draft are enclosed. If you have any questions or concerns, please contact me at (312) 886-4591.

Sincerely,

Gene Jablonowski  
Project Manager  
Federal Facilities Section  
Superfund Division

Enclosure

cc: Tom Schneider, OEPA-SWDO  
Johnny Reising, U.S. DOE-Fernald  
Sally Robison, U.S. DOE-HDQ  
Jamie Jameson, Fluor Fernald  
Terry Hagen, Fluor Fernald  
Tim Poff, Fluor Fernald

**DRAFT**

ENCLOSURE

U.S. EPA COMMENTS ON  
"SILOS 1 AND 2 DRAFT EXPLANATION OF SIGNIFICANT DIFFERENCES FOR  
OPERABLE UNIT 4"

FERNALD CLOSURE PROJECT

(Two Pages)

**U.S. EPA COMMENTS ON  
"SILOS 1 AND 2 DRAFT EXPLANATION OF SIGNIFICANT DIFFERENCES FOR  
OPERABLE UNIT 4"**

**FERNALD CLOSURE PROJECT**

**SPECIFIC COMMENTS**

Commenting Organization: U.S. EPA

Section #: 3.1

Page #: 5

Commenter: Jablonowski

Lines #: 14 to 17

Specific Comment #: 1

Comment: The text indicates that processes other than chemical stabilization may be applied to residual material remaining in or underneath the silos and the decant sump. The text should be revised to add that decisions on how residual material is to be handled will be made in conjunction with both the U.S. Environmental Protection Agency and the Ohio Environmental Protection Agency.

Commenting Organization: U.S. EPA

Section: 3.2.1

Page #: 6

Commenter: Jablonowski

Lines #: 23 to 24

Specific Comment #: 2

Comment: The text states that Nevada Test Site personnel have completed an eligibility review of silo material and have deemed the material acceptable for disposal as 11e.(2) material that is statutorily exempt from the Resource Conservation and Recovery Act. The text should be revised to clarify whether documentation of the Nevada Test Site eligibility review findings is available.

Commenting Organization: U.S. EPA

Section: 3.2.1

Page #: 6

Commenter: Barwick

Lines #: 23 to 24

Specific Comment #: 3

Comment: The current NTS waste acceptance criteria is quoted as "waste regulated under Title 40 CFR 261-268 [the RCRA hazardous waste regulations] and State of Nevada hazardous waste regulations shall not be accepted for disposal." The draft ESD then concludes that since RCRA and the Federal regulations exempt 11e.(2) material, the NTS can accept the waste. However, State hazardous waste regulations can be broader in scope than Federal hazardous waste regulations by, for example, regulating wastes not covered by the Federal RCRA program. Such broader in scope State regulations are not part of the RCRA authorized program but are still effective as a matter of State law. The quoted NTS waste acceptance criteria is so broad that it would seem to incorporate all Nevada hazardous waste regulations, regardless of whether or not such regulations are broader in scope than the Federal regulations.

I suggest that the language in lines 18-24 of page 6 be revised as follows:

~~...that are statutorily exempt and are not regulated under Title 40 CFR 261-268 or State of Nevada hazardous waste regulations such as 11.e(2) materials or waste from the beneficiation of ores, no longer need to meet TCLP based acceptance criteria, provided the waste is otherwise disposed of in a manner that is protective of human health and the environment. As part of an eligibility evaluation, a waste profile for each statutorily exempt waste must be reviewed individually to ensure that the waste both: (1) exempt from Federal and state of Nevada hazardous waste regulations and; (2) that protective requirements are met for the constituents that would otherwise be regulated under RCRA. NTS personnel have already completed an eligibility review and have deemed determined that this material is both exempt from Federal and state of Nevada hazardous waste regulations and acceptable for disposal at NTS as 11e.(2) material that is statutorily exempt from RCRA.~~

Commenting Organization: U.S. EPA  
Section #: 3.2.4  
Specific Comment #: 4

Page #: 8

Commenter: Saric  
Line #: N/A

Comment: This text should include an estimate of the cost savings that will occur, since the FCP will not be sampling the waste form after it has been stabilized. The cost savings associated with not only the sampling and analysis, but the reduced worker handling will certainly reduce the overall cost of the remedy, and this should be discussed in the document. Further, although it may be difficult to quantify at this time, transport of the waste via rail as opposed to truck would also decrease cost.