



2381 FCAB UPDATE

Week of July 5, 1999

(Last Briefing was Dated June 21, 1999)

MEETINGS

FERNALD MONTHLY PROGRESS BRIEFING
Tuesday, July 13, 6:30 p.m.

Services Building Conference Room

STEWARDSHIP COMMITTEE
Wednesday, July 14, 1999, 6:30 p.m.

Large Laboratory Conference Room

REMEDIATION COMMITTEE
Thursday, July 15, 1999, 6:30 p.m.

Large Laboratory Conference Room

FULL BOARD
Saturday, July 17, 1999

This Meeting is Cancelled

Reminder: if you will not be able to attend any meeting, please call the office and let us know.

ATTACHMENTS

- Recommendation # 99-4, "Grazing of Cattle on the Fernald Site"
- Letter to Jim Owendoff endorsing the results of the 1999 SSAB National Transportation Workshop
- Resumption of low-level waste shipments to Nevada Test Site fact sheet
- Memorandum from DOE regarding legal representation of CAB members named as defendants in civil litigation
- Fax from Secretary Bill Richardson about the changes to the Department of Management structure
- News Clippings

NEWS and ANNOUNCEMENTS

- **Special Note:** *The full board meeting scheduled for July 17, 1999, has been cancelled. We were so efficient at our June 10 special meeting that we did not leave any issues for the full Board in July! Committees are still meeting.*

At the FCAB full board meeting on June 6, 1999, a question arose regarding the number of "Contract Administrators" in Fluor Daniel Fernald. There are approximately 40 procurement personnel, all of whom are "buyers." Some are junior buyers, some are senior buyers, and some are supervisory personnel. Senior buyers are assigned to major procurements, such as the OSDF Leachate Conveyance System. There are approximately 14 senior buyers.

These senior buyers are the procurement personnel referred to as "contract administrators." Multi-year complex procurements such as the IT contract for remediation of the Waste Pits require an experienced contract administrator; ongoing procurement of everyday items (handled by junior buyers), such as office supplies, does not.

FOR FURTHER INFORMATION

Please contact Doug Sarno or Gwen Doddy, Phoenix Environmental

Phone: 513-648-6478 or 703-971-0058 Fax: 513-648-3629 or 703-971-0006

E-Mail: PhnxEnvir@aol.com or DJSarno@aol.com



2381

June 22, 1999

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Support Staff
Phoenix Environmental
Douglas J. Sarno
Crystal M. Sarno
Gwen Doddy
703-971-0030
703-971-0006 Fax
PhnxEnvir@aol.com

Mr. Jack Craig
Manager, Fernald Environmental Management Project
U.S. Department of Energy
P.O. Box 538705
Cincinnati, OH 45253-8705

Dear Mr. Craig:

Enclosed please find FCAB Recommendation #99-4, "Grazing of Cattle on the Fernald Site".

This recommendation represents an issue of significant importance to the FCAB and one in which we originally evaluated and identified our position in 1995. We continue to hold to the position that the grazing of cattle or any other agricultural use of the Fernald site is wholly inappropriate now or in the future. We recognize the DOE's desire to be a good neighbor to the current lease-holder, but in our own research have found other more appropriate local pasture land for lease and can see no reason for the continuation of this inappropriate use of the Fernald site. To be as fair as possible, we have developed the enclosed recommendation, which reiterates our main contention while identifying the conditions under which we believe grazing could continue for a short period of time.

As always, please feel free to contact me or Pam Dunn, Stewardship Committee Chair, if you wish to discuss any aspect of this recommendation further.

Sincerely,

James Bierer
Chair

Cc: Martha Crosland, EM-22
Leah Dever, DOE-Ohio
SSAB Chairs

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RECOMMENDATION #99-4

Grazing of Cattle on the Fernald Site
June 22, 1999

Presented to: Jack Craig

Source of Recommendation:

- Full Board
- Remediation Committee
- Stewardship Committee
- Steering Committee

Type of Recommendation:

- Initial
- Follow-on to Recommendation

Response Requested by: July 6, 1999

Recommendation:

As part of our deliberations on future use leading up to the 1995 recommendations, the FCAB gave careful consideration to the issue of cattle grazing on the Fernald site. While recognizing that no direct health threats could be measured, we felt strongly at that time that such activity was incompatible with the nature of a radioactive waste site. In our 1995 recommendations, we clearly state that residential and agricultural uses should not be considered for the future of the Fernald site. We do not believe that these uses are compatible with a remediated waste site and we believe that it is important to state clearly that they are even less appropriate for a waste site undergoing active remediation. Our preference today is the same as our preference was in 1995: that grazing be eliminated from the Fernald site as soon as possible.

Should DOE continue its consideration of leasing Fernald property for grazing, the FCAB offers a number of recommendations. With regard to the specific proposal currently under consideration, we believe that the October 1999 dates to cease grazing in Area 8, Phase II and Area 1, Phase III should be upheld. The southern portion of Area 8, Phase III is being considered for Native American activities and will not likely be available through the proposed October 2001 date, but more likely will be needed by the summer of 2000. In principle, we support the recommendations provided to DOE by the Ohio Environmental Protection Agency. We further recommend that very strict conditions be placed on all leases as follows:

1. All schedules for remediation, restoration, and future use planning must be unaffected by the cattle grazing. Opportunities for early action on all site activities must be taken advantage of as they arise without consideration of how these actions might impact the grazing operations. Leases must be short-term and allow DOE extreme flexibility for cancellation on short notice (e.g. 30 to 45 days).

2. Cattle must be moved a sufficient distance away from Paddys Run (a minimum of 100 to 150 feet) to facilitate the natural succession of a riparian zone in that area. Fences must be maintained to keep cattle from entering the riparian zone once. This action should be taken immediately.
3. Cultural resources must be protected to the maximum extent practicable. Cultural surveys to identify areas where cattle could damage important cultural resources must be conducted prior to lease renewal, in order to provide adequate time to protect any sensitive areas.
4. A strict limit should be placed on the number of cattle to ensure that the property will not be over-grazed and/or create excessive damage to the property.
5. Leases should be for a maximum of one year with annual reviews and no promise of continued leases beyond July 2000.
6. Grazing should be eliminated or drastically reduced during wet winter months (October to April/May) to limit damage to the property.
7. A clear program to monitor contamination of the grazing land and the cattle should be implemented including a contingency plan that outlines required actions should results exceed acceptable limits. The costs of such a program that are in addition to those required to protect the health and safety of workers and the surrounding community and cultural and ecological resources are not legitimate costs of remediation and should not be borne by the Department of Energy, but by the lease-holder. These costs and the potential risks of grazing on this property should be clearly explained to the lease-holder and included in the lease.
8. All costs associated with the grazing of cattle including, but not limited to fencing, mowing, and repair of damaged property must be borne by the lease-holder and clearly stipulated in the lease.

If the DOE is unwilling to enforce these lease conditions or if the lease-holder is unwilling to accept them, the FCAB requests that all grazing on the Fernald site cease no later than October 1999, which provides the lease-holder sufficient time to move any cattle to other locally available pasture land.

The FCAB asks that DOE provide specific feedback as to how each of these recommendations are taken into account in its overall planning for cattle grazing prior to the formal decision for lease renewal. Should grazing continue, the FCAB requests a detailed briefing on the status of grazing land and lease renewals with regard to the above recommendations at least quarterly and prior to the renewal of any leases.



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June 23, 1999

Jim Owendoff
U.S. Department of Energy
Forrestal, EM-1
1000 Independence Ave. SW
Washington, DC 20585

Chair
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Sandy Butterfield
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Crystal M. Sarno
Gwen Doddy
703-971-0030
703-971-0006 Fax
PhnxEnvir@aol.com

Dear Mr. Owendoff:

I am writing on behalf of the Fernald Citizens Advisory Board to offer our endorsement for the results of the 1999 SSAB National Transportation Workshop. As you know, the workshop resulted in eight consensus statements, each of which was signed by the vast majority of SSAB members attending the workshop. Upon evaluation of these statements, the FCAB endorses seven of them as written at the workshop. The one exception, statement number Four, regarding risk, must be strengthened before we can provide our unanimous support. By adding the following sentence to that statement, we offer our endorsement to that as well: "In addition, the public must be involved in the formulation of the assumptions that are used to determine human and environmental exposures and the consideration of cultural resources in the risk assessment process, as local publics are most knowledgeable regarding the actual practices of the individuals and communities at risk."

We believe that this set of statements represents some of the most important issues facing stakeholders in the consideration of DOE's transportation of radioactive materials. We appreciated the opportunity to host the 1999 Transportation Workshop and believe that it provided an excellent forum for stakeholder education and multi-lateral understanding of the key issues that must be taken into account in considering stakeholder concerns in planning transportation programs.

Please do not hesitate to call on us if we can be of any further service to DOE in this most important endeavor.

Sincerely,

James C. Bierer
Chair

Cc:
Martha Crosland, EM-22
Kelly Kelkenberg, DOE NTP
SSAB Chairs

Enclosure

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June 24, 1999

Topic: Resumption of low-level waste shipments to the Nevada Test Site (NTS)

The U.S. Department of Energy has approved the restart of low-level waste shipments to the Nevada Test Site. Shipments are expected to resume during the week of June 28, 1999.

Background:

- On December 15, 1997, a truck transporting depleted and slightly enriched uranium residues from Fernald was on its way to NTS. During a routine stop in Kingman, Arizona, the driver noticed fluid leaking from the trailer. DOE-Albuquerque's Radiological Assistance Program team was dispatched to the scene and confirmed that the one to two gallons of liquid that leaked from the shipment were not radioactive. Upon further inspection of the shipment, cracks were found near the bottom runners of the shipping containers. The load was overpacked and the truck was returned to Fernald. As a result, shipments of waste from Fernald to the Nevada Test Site were suspended pending corrective actions.
- Several corrective actions and lessons learned have been completed and implemented within the Waste Management Project. Specific areas where notable improvements have been implemented include:
 - Waste Container Integrity
 - Waste Characterization Corrective Actions
 - Waste Program Oversight Corrective Actions
 - Waste Programs Emergency Response Corrective Actions
 - Calibrated Equipment Corrective Actions

Key Points:

- Fernald will restart the low-level waste shipments to Nevada using northern routes that were selected by motor carriers working in conjunction with DOE. These transportation routes avoid the Hoover Dam and the I-15/US93 & US95 interchange (Spaghetti Bowl), which has been a major sensitivity for Nevada congressionals and stakeholders.
- The first shipment of low-level waste from Fernald to NTS will be transported by Landstar Ranger. Subsequent shipments may be transported by either Tri State, Fluid or Landstar Ranger as these companies have been awarded contracts and have successfully passed the Motor Carrier Evaluation Program.
- The first shipment of waste from Fernald to NTS will consist of one Sealand container on a flat bed trailer. It will contain empty T-Hopper containers and contaminated trash. The T-Hoppers were previously used to transport nuclear materials to other DOE sites.
- Prior to departure, DOE and Fluor Daniel Fernald will conduct thorough surveys of the trucks and containers to ensure all Department of Transportation shipping requirements are met.

- In the case of an unexpected emergency, the motor carrier will immediately notify the designated state and local authorities and DOE. All motor carriers are required to have Global Positioning System capabilities that allow the immediate tracking and location of shipments. A representative from Fernald will travel with the first shipment to Nevada.
- Fernald has shipped 5.3 million cubic feet of waste to NTS since 1985.
- Estimated future waste to be generated through clean-up activities at Fernald - 110 million cubic feet
- Estimated clean-up waste to be shipped offsite (FY1999-FY2008) – 20 million cubic feet
- Estimated clean-up waste to be shipped to NTS (FY1999-FY2008) - 3.4 million cubic feet consisting mostly of construction rubble and debris, trash and residues.
- Average number of trucks that will be sent to NTS per week - 15
- Distance to NTS - approximately 2200 miles

Sensitivities:

- The transportation of radioactive waste, both high-level and low-level, is a politically sensitive issue for stakeholders from all states potentially affected by truck shipments from Fernald to Nevada. For example, California does not want radioactive waste from the east transported through California to NTS. Specifically, use of CA127 is a concern because of tourist activity. Nevada, in particular the cities of Las Vegas, Boulder City, and North Las Vegas, and Clark and Nye counties have all expressed various concerns over transporting waste through their locales.
- A general concern exists regarding the transportation of radioactive waste through densely populated areas and the potential for accidents, no matter how low the probability.
- The potential use of the same routes for transport of transuranic waste to WIPP and for future transport of high-level waste to Yucca Mountain increases the complexity of the transportation of low-level waste from Fernald to NTS.
- The primary political sensitivity is resistance from the Clark County Commissioners who object to any route that travels through Clark County, wherein 80% of Nevada voters reside. Potential resistance from California stakeholders is the second sensitivity.
- DOE has identified and publicly presented a strategy that calls for motor carriers to identify a preferred route prescribed by DOT regulations. DOE and Fluor Daniel Fernald have been managing the process of implementing this strategy.
- DOE and Fluor Daniel Fernald have addressed political sensitivities of avoiding the Las Vegas Valley and the Hoover Dam area. All routes selected by the motor carriers (northern and southern) do this.

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For Distribution:

Enclosed is a memo from the OGC at Sandia concerning the times and conditions under which the U.S. Government will provide representation, should a member of a board get sued for something she or he did at a board meeting. This is being distributed per the last chairs conference call.

NB: Administrators: Please make sure that the chair at your site has a copy of this document. Not everybody had a fax number. I've excluded Sandia, as they already have a copy of this document.

Michael Purkey/EM-22/202.586.0040

3 PAGES

Gary Stegner •

Fax: (513) 648-3071

Gail McClure

Fax: (509) 376-1563

Woody Russell •

Fax: (208) 526-0553

Patty Natoni, Assistant

Fax: (208) 526-0553

M.J. Byrne

Fax: (505) 665-1718

Audrey Berry

Fax: (970) 248-6023

Kevin Rohrer

Fax: (702) 295-5300

Marianne Heiskell

Fax: (423) 241-5712

John Sheppard

Fax: (502) 441-6801

Jerry Johnson

Fax: (806) 477-5896

Anna Martinez

FAX: 303/966-3679/6633

Gerri Flemming

Fax: (803) 725-5766

James Bierer, Chair

Fax: (513) 863-0066

Dr. Thomas Wagner, Vice-Chair

Fax: (513) 556-1274

Merilyn Rceves, Chair

Fax: (503) 835-6306

George Kyriazis, Vice-Chair

Fax: (509) 783-5609

Charles M. Rice, Chair

Fax: (208) 522-3211

Stanley N. Hobson, Vice-Chair

Fax: (208) 334-9575

Dale Slade, Chair

Fax: (801) 678-3276

H. Ray Johnson, Acting Chair

Fax: (702) 270-3402

William M. Pardue, Chair

Fax: (423) 481-8597

Ron Zern, Co-Chair

Fax: (806) 477-6169 •

Jim Kinsinger, Chair

Fax: (303) 447-1227

Thomas W. Marshall, Vice-Chair

Fax: (303) 444-6523

Diane Terry, Interim Chair

Fax: (505) 293-2099

Ann G. Loadholt, Chair

Fax: (803) 259-9888

Gwen Doddy

Fax: (513) 648-3629 or

(703) 971-0006

Tisha Clark Patton

Fax: (513) 648-4011

Donna Sterba

Fax: (509) 943-5528

Wendy Green Lowe

Fax: (208) 522-2076

Ann DuBois

Fax: (505) 665-4872 •

Michelle Smith

Fax: (970) 248-6403

Carolyn Gardner

Fax: (702) 633-5200

Sheree Black

Fax: (423) 241-5712

Debbie Wattier

Fax: (502) 441-5101/5022

Becky Lopez

Fax: (806) 372-3999

Dcb Thompson, Erin Rogers, or Ken Korkia

Fax: (303) 420-7579

Dawn Haygood

Fax: (803) 725-8057

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United States Government

Department of Energy
Albuquerque Operations Office
Kirtland Area Office

memorandum

MIKE

DATE: January 14, 1999

REPLY TO
ATTN OF: KAO:KAG

SUBJECT: Legal Representation of Citizens Advisory Board Members Named as Defendants in Civil Litigation

TO: Michael J. Zamorski, Area Manager, KAO

You have asked me to explain the Department of Energy's (DOE) policy regarding legal representation of Citizens' Advisory Board (CAB) members named as defendants in civil litigation. The following addresses the policy in general terms.

The DOE recognizes that the prospect of personal liability and the uncertainty as to what conduct may result in a lawsuit against individual board members can intimidate citizens from participating on advisory boards. Citizen participation in democratic government processes is essential, and it should not be discouraged by the threat of a civil lawsuit. For this reason, it is the general policy of the DOE to recommend to the Department of Justice that it represent advisory board members who are individually sued as a result of actions properly taken within the scope of their responsibilities as board members.

Department of Justice (DOJ) representation is not automatic. Two criteria must be met in order for the DOJ to represent a board member. First, the board member's actions giving rise to the lawsuit must reasonably appear to have been performed within the scope of his or her duties as a board member. Second, it must be determined that providing representation is in the interest of the United States. Representation is provided in order to protect the interest of the government, not the individual interests of the board member. It would generally be in the interest of the United States to represent board members in order to avoid a chilling effect on advisory board participation.

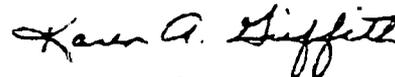
The DOJ is responsible for making the "scope" and "interest" determinations after benefiting from the recommendations of the DOE's Office of General Counsel. If the determinations are in the affirmative, a DOJ attorney or the United States Attorney in whose district the lawsuit is filed is authorized and requested to provide representation to the individual board member defendants. Representation by the DOJ is not compulsory; a board member is always free to retain private counsel at his or her own expense.

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If representation by the DOJ is offered and accepted, a board member defendant will be asked to sign DOJ Form-399, which contains the limitations and conditions of federal representation. A copy of this DOJ form is attached to this memorandum. It is important to note that, regardless of whether representation is provided by the DOJ, a board member remains personally responsible for the satisfaction of a money judgment entered solely against that member. There is no right to compel indemnification from the United States or a government agency. However, consideration may be given to indemnification on a case-by-case basis.

Conclusion: It is the general policy of the DOE to recommend to the DOJ that legal representation be provided to individual advisory board members sued as result of actions properly taken in the course of their service as board members. Underlying this policy is the DOE's desire to promote vigorous citizen participation on its advisory boards.

If I can assist you in explaining the above-described general policies to the CAB, I would be please to do so.



Karen A. Griffith
Area Office Counsel

Cc:
Tami Toops, KAO



The Secretary of Energy
Washington, DC 20585

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April 21, 1999

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS
FROM: THE SECRETARY *BK*
SUBJECT: Changes to the Departmental Management Structure.

On February 8, 1999, I initiated a Management Review of the Department's headquarters and field relationships. This review was intended to identify opportunities for improving how we manage across a set of issues including roles and responsibility, authority, accountability and reporting. This review relied on previous management studies and reports as well as interviews with a broad range of individuals, internal and external, with first-hand knowledge of the Department. The Report made a number of recommendations and I have approved them. These recommendations are summarized in this memorandum and the full Report is attached to provide further detail and guidance.

1. **The Department shall adopt a Lead Program Secretarial Office (LPSO) concept for field office reporting.** Each field office will now report to one LPSO. The LPSO will be responsible for the institutional health and long-term planning at assigned sites, for landlord activities, and have accountability for overall site integration and operations. Recognizing that most field sites are multi-program, the LPSOs have overall line accountability for site-wide environment, safety and health, for safeguards and security and for the implementation of policy promulgated by headquarters staff and support functions. The designated LPSOs are Defense Programs, Science, and Environmental Management, as well as those Offices currently assigned Special Purpose Offices. The eleven field offices, ten of which currently report programmatically to the line programs and corporately to the Office of Field Management, will now report directly to the LPSOs as follows:

- Defense Programs**
 - Albuquerque Operations Office
 - Nevada Operations Office
- Science**
 - Chicago Operations Office
 - Oakland Operations Office
 - Oak Ridge Operations Office
- Environmental Management**
 - Richland Operations Office
 - Savannah River Operations Office
 - Idaho Operations Office
 - Rocky Flats Field Office
 - Ohio Field Office
 - Office of River Protection

Each of these three Lead Program Secretarial Offices will establish a Principal Deputy for Operations, preferably with prior field experience, who will be responsible for assisting the Secretarial Officer in managing the additional operational functions and activities. The LPSOs shall rely on their field offices and the Headquarters staff offices for matrix support in staff areas and, thereby, not increase staffing levels to carry out these duties. The reporting assignments for all of the national laboratories will remain unchanged, with the exception of Brookhaven National Laboratory. Brookhaven will report to the Chicago Operations Office.

2. Other Program Secretarial Offices (PSO) will establish a relationship in which they are "customers" of the field office where their work is performed. These offices (that is those program offices not considered the LPSO for that site) will provide broad program policy and direction to the field, budget to support program work, an appropriate share of the landlord costs and retain line accountability for safety and security for PSO specific facilities at a site.

3. Departmental Staff and Support Offices (i.e., non-Program offices) promulgate policy, advise the line and provide matrix support, but rely on LPSOs to issue decisions, directives, orders, etc. directly to the field. Policy guidance will first be reviewed with the Field Management Council (see below) before it is issued. Environment, Safety and Health, Intelligence and Counterintelligence continue to conduct independent oversight. The staff offices will have recourse to the Field Management Council to reconcile any issues which may arise.

4. The Operations and Field Office Managers remain responsible for all site program and project execution, contract management and facility operations oversight. As such, the Manager has line responsibility for the safe and secure conduct of all operations at the site. The Manager will be the Department's single voice in regard to all site regulatory matters, will have oversight of all contractor activities, ensure timely communication and reporting to the headquarters organizations, manage institutional health and long term planning, and function as contracting officer for all contracts. All current business management delegations (financial, personnel, labor relations, contracting, etc.) are unchanged. Area offices serve as extensions of the Operations Office and execute only those responsibilities delegated to them.

5. A Field Management Council will be established and will be charged with both corporate program integration and the integration of support activities with line programs. All staff and support office policy and guidance which impact the field will flow through the Council. Once policy is reviewed by the Council, the LPSOs will be responsible and accountable for its proper implementation at their sites.

The Council, chaired by the Deputy Secretary as Chief Operating Officer (COO), shall include the Under Secretary of Energy, the Assistant Secretaries for Defense Programs and Environmental Management, and the Director of the Office of Science. Two other members, one from among the other offices with programs in the field offices, and the other, a field manager, will serve in rotational positions. Other existing Councils, such as the Safety Council, will coordinate with the Field Management Council and will make recommendations to it as

appropriate.

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6. The current Office of Field Management shall be renamed the Office of Field Integration and will report directly to the COO and serve as the secretariat to the Field Management Council. It will also provide a wide variety of facilitation and integration services while ensuring that field and operational concerns are considered during policy discussions. It will also participate in the selection and performance evaluation processes for field Senior Executive Service members. No transfers of Field Management employees to other organizations are planned at this time.

In the structure envisioned, there are four focal points in the line:

- The Office of the Secretary and the Chief Operating Officer;
- The PSOs for broad program strategy, policy definition, evaluation and oversight (those PSOs which are also assigned responsibility for one or more field locations also have site-wide Integrated Safety Management, business management and site service responsibilities);
- The Operations Offices for programmatic execution to implement the goals of the PSOs, site-wide integration, resource requirements determination, contract management and oversight to ensure safe and secure operations; and,
- The contractors for day-to-day execution, management and operation of assigned activities and accountability for safe and secure operations.

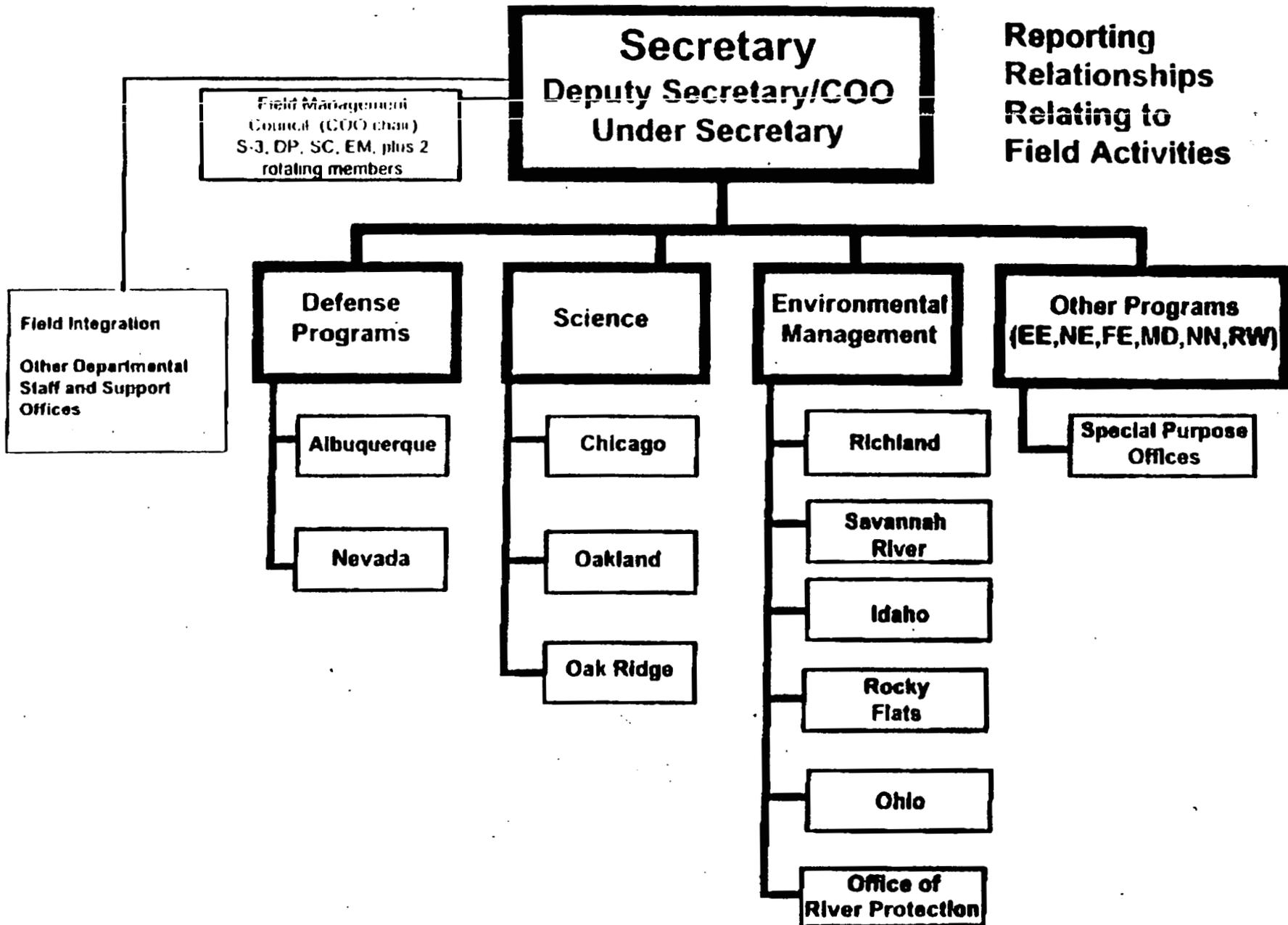
The Deputy Secretary, as Chief Operating Officer, will be responsible for the implementation of these decisions. The restructuring will be effective May 1, 1999, except for any actions subject to statutory bargaining processes.

This new structure requires a change by many of the Department's management in their relations between headquarters and field offices. The success of this restructuring will be dependent upon the full cooperation of all personnel in the Department, and especially upon the example set by management personnel. The exercise of leadership and discipline will be key as new roles and responsibilities are adopted. Finally, as always during periods of change, effective relationships and an attitude committed to making it work is essential. I trust that you will join me in assuring the success of this restructuring.

Attachments

1. Reporting Relationships Relating to Field Activities Chart
2. Management Review Report

cc: The Deputy Secretary
The Under Secretary



**Reporting Relationships
Relating to
Field Activities**

05/11/99 TUE 11:30 FAX 2025860590

DOE EMAB

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Attachment 1

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