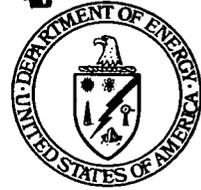


6-603.2

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Department of Energy

**Ohio Field Office
Fernald Area Office**
P. O. Box 538705
Cincinnati, Ohio 45253-8705
(513) 648-3155



DEC 04 1997

DOE-0210-98

**Ms. Tammy Carpenter
Acting Executive Director
American Chestnut Foundation
469 Main Street
Bennington, VT 05201-4044**

Dear Ms. Carpenter:

TRANSMITTAL OF GERMPLOASM AGREEMENT

This letter serves to transmit the signed Germplasm agreement ensuring that the Department of Energy (DOE) will abide by the specified terms. The DOE is interested in working with Miami University to establish a stand of the hybrid chestnut tree as part of a research grant to support environmental restoration at the Fernald Environmental Management Project (FEMP).

The FEMP is a former uranium processing facility owned by the DOE and currently undergoing remediation under the Comprehensive Response Compensation and Liability Act (CERCLA). The remediation entails the disposition of excess product and radiologically contaminated wastes, dismantling of buildings, excavation of contaminated soils and the extraction and treatment of contaminated groundwater. Following the remediation, the DOE will restore the site to a number of ecological habitats including ponds, wetlands, grasslands and forests. As part of a settlement with the site's Natural Resource Trustees, who include representatives from the DOE, the Ohio Environmental Protection Agency and the Ohio Department of Natural Resources, the DOE has agreed to restore most of the site to these native habitats. Excluded from the restoration is an area of approximately 65 acres that will be occupied by an engineered disposal facility in which soils and debris with very low levels of contamination will be disposed, and a small tract in the southeastern portion of the site that may be considered for economic development. The research grant projects are intended to provide DOE with information that will help in the ecological restoration of the remainder of the 1,050 acre site. The DOE is pleased to include a stand of American Chestnut trees in its restoration plans.

DOE is committed to working with the regulatory agencies, Natural Resource Trustees and the surrounding community to ensure that the trees provided by the American Chestnut Foundation will not be disturbed in the foreseeable future.

I hope this information is useful to you. If you have any additional questions, please feel free to contact Kathleen Nickel of my staff at (513) 648-3166.

Sincerely,



Johnny W. Reising
Associate Director
Office of Environmental Management

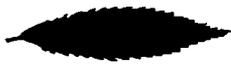
FEMP:Nickel

Enclosure: As Stated

cc w/enc:

T. Schneider, OEPA-Dayton
J. Saric, U.S. EPA
C. Keiffer, Miami University
T. Hagen, FDF, 65-2
E. Woods, FDF, 65-2
AR Coordinator

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THE AMERICAN CHESTNUT FOUNDATION GERMPLASM AGREEMENT

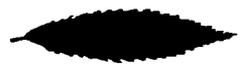
This Agreement, dated and effective _____, 199____, is between The American Chestnut Foundation, a District of Columbia nonprofit corporation with its principal facility in the State of Virginia (hereinafter referred to as "ACF"), and the entity executing this Agreement at the foot hereof (hereinafter referred to as the "Recipient").

The reasons for this Agreement: ACF is in the process of breeding hybrid chestnut trees closely resembling pure American chestnut trees but without susceptibility to the disease known as chestnut blight. The method of plant breeding being used by ACF is commonly referred to as the "backcross method" wherein lines of American chestnut stock are outcrossed once to other species of chestnut carrying genetic resistance to chestnut blight, and successive generations of such outcrosses are then repeatedly backcrossed to American chestnut to recover the desirable characteristics of the American chestnut tree while incorporating blight resistance. It is in the interests of ACF and of the Recipient to be able to test and observe the characteristics of hybrids which are in the earlier stages of such backcrossing (i.e., the original outcross and first through third backcrosses [and intercrosses between individual trees of the same generation of backcrossing] since selected offspring of third backcross trees are considered essentially an American chestnut type of tree). But ACF does not want the Recipient or others to use genetic material from such early stages for propagation purposes because: (1) ACF does not want large numbers of partially blight-resistant trees carrying significant numbers of non-American chestnut genes to be introduced into the landscape; (2) ACF wishes to preserve ACF's proprietary rights to such genetic material; and (3) ACF *most emphatically* does not want any person to take such material and market it, or to market any progeny from it.

The Terms of this Agreement: The Recipient has requested a sample of proprietary chestnut germplasm owned by ACF. This Agreement applies to all varieties of chestnut germplasm, and includes but is not limited to pollen, nuts, scion wood, sprouted seeds and small chestnut plants and rooted cuttings, all of which are hereinafter referred to as the "germplasm."

ACF agrees to supply samples of chestnut germplasm to the Recipient. In consideration of this action by ACF, the Recipient agrees to abide by the following terms and conditions as to said germplasm and any other germplasm which has heretofore been received or will hereinafter be received from ACF which is not otherwise covered by a prior or subsequent agreement, unless and until ACF specifically releases any condition imposed by this or any other agreement on the custody and use of any of said germplasm:

1. The Recipient understands and agrees that this Agreement conveys only a right to conduct research on the germplasm. None of the germplasm (or any material resulting in any manner from the germplasm) may be sold, offered for sale, given (by gift or otherwise), or in any other manner transferred or distributed to any third party whatsoever without first being covered by a specific written license from ACF describing the material sold or otherwise transferred, the conditions of the transfer, and other conditions acceptable to ACF in its sole discretion. ACF reserves the right to refuse transfer for any reason whatsoever. It is expressly understood that under this Agreement no implied or express license is granted by ACF to the Recipient for any transfer of the germplasm.
2. The sample of germplasm provided hereunder may be used for basic research, evaluation and/or field testing only. No transformation techniques will be used with the germplasm. No mutagenesis, tissue culture, or cellular techniques will be conducted with any seeds, plants, or plant parts of the germplasm, or of any plant material resulting from the germplasm, including pollen. No selection will be conducted within the germplasm.
3. Seed stock increases for evaluation are permitted. However no seed, plants, plant parts, seed parts, callous tissue or DNA of or resulting from the germplasm will be transferred or distributed to any third party.
4. The Recipient may conduct research and publish the results of research on the germplasm, but the Recipient agrees to acknowledge the contributions of ACF in the provision of the parental germplasm in all publications and in all descriptions of the research.
5. The germplasm is provided "as is." ACF MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATED TO THE GERMPLASM INCLUDING WITHOUT LIMITATION THE CONDITION OF THE SAMPLE, ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES REGARDING INFRINGEMENT OF THIRD PARTY RIGHTS. The Recipient agrees to bear all risk resulting from the germplasm, either directly or indirectly.
6. This Agreement is nonassignable, is governed by the laws of the State of Virginia and may be amended only with the mutual written consent of both parties. This Agreement is effective when signed by the Recipient. Each individual signing for a corporate entity or any other entity hereby personally warrants his or her legal authority to bind that entity. If ACF prevails in any litigation alleging violation of this Agreement, ACF shall also be entitled to an award of attorneys' fees incurred in connection with such litigation.



THE AMERICAN CHESTNUT FOUNDATION

BY _____
TITLE: _____
DATE: _____

RECIPIENT:

NAME: Johnny Rensing
BY _____
TITLE: Associate Director of Environmental Mgmt
DATE: 12/1/97