



Department of Energy

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JAN 23 1998

DOE-0361-98

**Mr. James A. Saric, Remedial Project Manager
U.S. Environmental Protection Agency
Region V-SRF-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590**

**Mr. Tom Schneider, Project Manager
Ohio Environmental Protection Agency
401 East 5th Street
Dayton, Ohio 45402-2911**

Dear Mr. Saric and Mr. Schneider:

**RESPONSES TO OHIO ENVIRONMENTAL PROTECTION AGENCY COMMENTS ON THE
PROPOSAL ESTABLISHING A CONSERVATION AREA NEAR THE FERNALD
ENVIRONMENTAL MANAGEMENT PROJECT**

**Reference: Letter from Schneider to Reising, "OU4 SEP Conservation Area," dated
January 5, 1998.**

**This letter serves to transmit responses to the Ohio Environmental Protection Agency's
(OEPA) comments on the proposal establishing a conservation area near the Fernald
Environmental Management Project.**

**If you have questions or comments regarding these responses, please contact Kathleen
Nickel at (513) 648-3166.**

Sincerely,

**Johnny W. Reising
Fernald Remedial Action
Project Manager**

FEMP:Nickel

Enclosure: As Stated

cc w/enc:

- G. Jablonowski, USEPA-V, 5HRE-8J
- R. Beaumier, TPSS/DERR, OEPA-Columbus
- T. Schneider, OEPA-Dayton (total of 3 copies of enc.)
- F. Bell, ATSDR
- M. Schupe, HSI GeoTrans
- R. Vandegrift, ODOH
- F. Barker, Tetra-Tech
- D. Carr, FDF/9
- T. Hagen, FDF/65-2
- J. Harmon, FDF/90
- E. Woods, FDF/65-2
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cc w/o enc:

- N. Hallein, EM-42/CLOV
- A. Tanner, DOE-FEMP
- R. Heck, FDF/2
- S. Hinnefeld, FDF/2
- EDC, FDF/52-7

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**RESPONSE TO OHIO EPA COMMENTS ON THE PROPOSAL ESTABLISHING A
CONSERVATION AREA NEAR THE FEMP**

Comment #: 1

Comment: Considering DOE's limited experience with obtaining and implementing conservation easements, Ohio EPA recommends DOE more fully evaluate the option of using a third party (e.g., Nature Conservancy, Hamilton County Parks, ODNR, etc) for obtaining, implementing and monitoring the conservation easement. Using a third party would reduce the need for DOE to continue perpetual monitoring while providing DOE access to the property for study. Considering the DOE legal process and land acquisition process, it is likely the use of a third party would be much more efficient, timely and less onerous on the land owner.

Response: The DOE-FEMP office has initiated communication with the Army Corps of Engineers (ACOE) with regard to utilizing their services in obtaining and implementing the conservation easement. The ACOE has extensive experience in acquiring easements and has indicated their willingness to support DOE-FEMP in this process. In addition, the landowner has expressed some tentative interest in working with DOE-FEMP in obtaining the conservation easement.

The option of working with ODNR, U.S. F&WS and Hamilton County Parks was explored in some detail. However, only ODNR had an interest in working with DOE and only if the property was eligible for the wetland reserve program. There are also private organizations that may be willing to work with DOE-FEMP in obtaining the easement, but the added value is questionable. A private third party, if involved, would have to be part of the negotiations with the landowner and would also have to be a party to the conservation easement which would likely result in added complexity. Therefore, working with the ACOE appears to be the most appropriate option for obtaining the conservation easement.

Action: None Required

Comment #: 2

Comment: Additional detail regarding monitoring must be included. Ohio EPA recommends initial monitoring be completed prior to finalization of the easement so that the easement can accurately define the current condition which is to be conserved. Finally, monitoring over the duration of the easement is an essential element for ensuring compliance.

Response: Agreed. DOE-FEMP agrees that it would be necessary to inspect the property prior to the establishment of the conservation easement in order to

establish the baseline condition of the property to be conserved.

Action: Additional detail will be added to the work plan with regard to monitoring. The added language will identify that an initial inspection of the property will occur prior to the establishment of the conservation easement. In addition, DOE-FEMP will plan to discuss an initial inspection of the property during upcoming discussions with the landowner.

Comment #: 3

Comment: Ohio EPA requests the opportunity to review any draft conservation easement being negotiated with the land owner to ensure compliance with the Supplemental Project objectives.

Response: Agreed.

Action: DOE-FEMP will plan to forward the draft conservation easement to both U.S. EPA and Ohio EPA so that input can be obtained as early in process as practicable.

Comment #: 4

Comment: As a particular piece of property was envisioned during negotiations of the OU 4 Dispute Resolution, Ohio EPA would like to participate as appropriate in meetings with the landowner. Additionally, it may be appropriate to discuss with the landowner which group would be preferable for implementing such an easement (DOE or third-party).

Response: DOE-FEMP has no objection to Ohio EPA participating in meetings with the landowner as appropriate. With regard to the use of a third party, please refer to response to Comment #1. DOE-FEMP is essentially planning to utilize a third party by working with the ACOE. In addition, DOE-FEMP has no objection to discussing the use of a third party with the landowner as another option for establishing the conservation easement. However, DOE-FEMP would propose that consensus with Ohio EPA be reached on the appropriate path forward prior to the next discussion with the landowner.