



Department of Energy

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

DOE-0703-99

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

Dear Mr. Saric and Mr. Schneider:

**SUBSTANTIVE WETLAND PERMITTING CROSSWALK FOR INTERIM LEACHATE
CONVEYANCE SYSTEM CONSTRUCTION - FERNALD ENVIRONMENTAL MANAGEMENT
PROJECT**

This notification is being provided to inform your office that Department of Energy (DOE) is planning to construct an interim leachate conveyance system that will impact approximately 0.3 acres of jurisdictional wetland in support of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedial activities at its Fernald site in Hamilton/Butler County, Ohio. The approximately 0.3 acre impact will result from the construction of an interim leachate conveyance system associated with the On-Site Disposal Facility (OSDF). As part of a CERCLA response action, the proposed project is exempt from the requirement to obtain administrative permit approval pursuant to Section 121(e) of CERCLA and 40 CFR 300 (e).

Based upon its review of the U.S. Army Corp of Engineers Nationwide Permits (NWP) promulgated in Appendix A to 33 CFR Part 330, we have determined that the proposed project meets the terms and conditions of NWP - 26, and therefore are proposing that the wetland work be authorized in accordance with the substantive requirements of this NWP. The enclosed table summarizes the manner in which the proposed project will comply with the substantive wetland permitting requirements mandated by NWP - 26 and its corresponding Section 401 State Water Quality Certification. Attachment A shows the proposed interim leachate system construction.

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The wetland determination for the proposed project location was made during DOE's 1993 wetland delineation of the site, which was reviewed and approved by the U.S. Army Corp of Engineers, Louisville District Office, in August 1993. Based upon on-site investigations of the project area and past conversations with the State Historic Preservation Office, the Ohio Department of Natural Resources, and the U.S. Fish and Wildlife Service, we have determined that the proposed project will not impact historic properties or threatened or endangered species habitat.

If you have any questions or require additional information, please contact Kathleen Nickel at (513)648-3166 or Ed Skintik at (513)648-3151.

Sincerely,



Johnny W. Reising
Fernald Remedial Action
Project Manager

FEMP:Nickel

Enclosure

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cc w/enclosure:

G. Jablonowski, USEPA-V, SRF-5J
R. Beaumier, TPSS/DERR, OEPA-Columbus
T. Schneider, OEPA-Dayton (three copies of enclosure)
F. Bell, ATSDR
M. Schupe, HSI GeoTrans
R. Vandegrift, ODH
F. Barker, Tetra Tech
AR Coordinator, FDF/78

cc w/o enclosure:

N. Hallein, EM-42/CLOV
A. Tanner, OH/FEMP
D. Carr, FDF/52-2
J. D. Chiou, FDF/52-0
M. Cherry, FDF/90
T. Hagen, FDF/65-2
J. Harmon, FDF/90
R. Heck, FDF/2
M. Hickey, FDF/64
S. Hinnefeld, FDF/31
J. Jenkins, FDF/64
F. Johnston, FDF/52-2
T. Walsh, FDF/65-2
ECDC, FDF/52-7

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bcc w/enclosure:

R. J. Janke, OH/FEMP

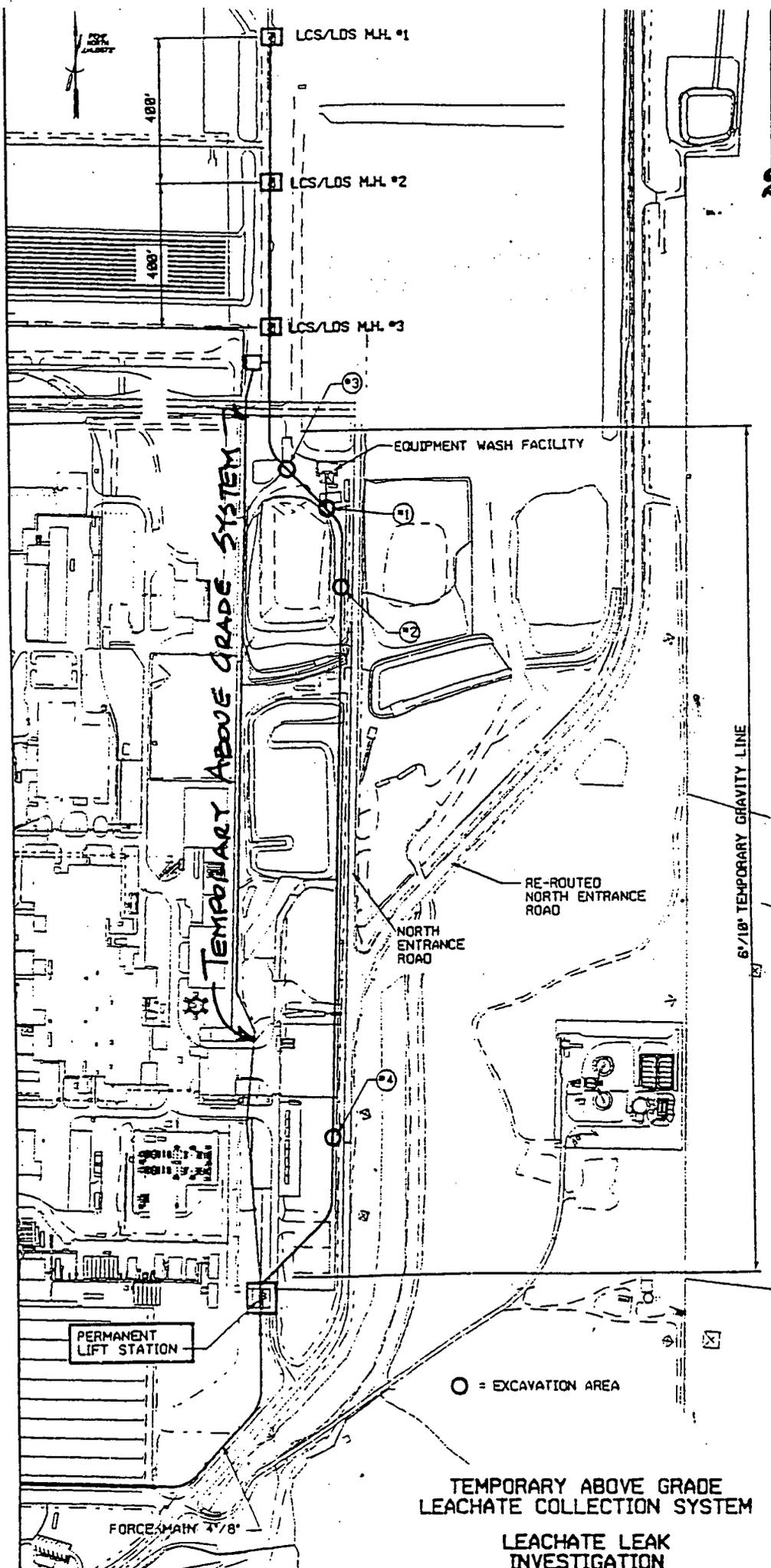
K. Nickel, OH/FEMP

E. Skintik, OH/FEMP

bcc w/o enclosure:

A. Tanner, OH/FEMP

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ATTACHMENT

A

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TEMPORARY ABOVE GRADE
LEACHATE COLLECTION SYSTEM

LEACHATE LEAK
INVESTIGATION

ATTACHMENT B

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On-Site Disposal Facility
Interim Leachate Conveyance System
Substantive Permitting Cross-Walk

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Condition	Substantive Requirement	Compliance Plan
Nationwide Permit 26 - Headwaters and Isolated Waters Discharge¹ - General Conditions		
Navigation	No activity may cause more than a minimal effect on navigation.	Portions of the proposed project will result in the placement of fill material into a jurisdictional wetland. A maximum of approximately 0.3 acres of jurisdictional wetlands could be impacted. No work will occur within any water bodies used for navigation, either in commerce or recreation. Therefore, the proposed activity will not have an adverse impact on navigation.
Proper Maintenance	Any structure or fill authorized shall be maintained to ensure public safety.	Personnel access restrictions will be imposed during construction in the form of construction fencing and/or barrier ropes. The project area will be inspected during construction under the site Storm Water Pollution Prevention Plan (SWPPP) construction inspection program to ensure erosion and sedimentation controls are properly maintained.
Erosion and Siltation Controls	Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.	Heavy equipment will be limited to the immediate project vicinity. Silt fence and/or other appropriate methods of sedimentation and erosion control will be used as necessary to minimize potential erosion and sediment transport during construction. The project area will be inspected during construction under the site SWPPP construction inspection program to ensure erosion and sedimentation controls are properly maintained.
Aquatic Life Movement	No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.	Portions of the proposed project will be conducted within a jurisdictional wetland. No disruption in the movement of aquatic species is anticipated as a result of the project.

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Condition	Substantive Requirement	Compliance Plan
Equipment	Heavy equipment working within wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.	Heavy equipment working in wetland areas will be limited to the immediate vicinity of the proposed temporary leachate line to avoid and minimize impacts to wetland areas located outside the project boundary. Equipment moving actually into the wetland area will be prevented to the maximum extent possible. Should entry into the ditch be required matting or other suitable protection will be implemented.
Regional and Case-by-Case	Activities must comply with any regional or case-by case conditions added by the Division Engineer.	Not applicable. No regional or case-specific conditions have been added by the U.S. Army Corp of Engineers.
Wild and Scenic Rivers	No activity may occur in a component of the National Wild and Scenic River System.	Not applicable. The project area is not part of the National Wild Scenic River System.
Tribal Rights	No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.	Not applicable. No tribal water, fishing, or hunting treaty rights have been granted for the wetland area in which the project will be conducted.
Water Quality Certification	Section 401 State Water Certification must be obtained or waived.	Ohio EPA issued its corresponding Section 401 State Water Quality Certification for NWP 26 in February 1997 and modified per the NWP 26 settlement in May 1998.
Coastal Zone Management	State coastal zone management consistency concurrence must be obtained or waived.	Not applicable. The project area is not regulated under state coastal management regulations or statutes.
Endangered Species	No activity is authorized under any NWP, which is likely to jeopardize the continued existence or modify the critical habitat of a threatened or endangered species or species proposed for such designation.	No known federally-listed threatened or endangered species or critical habitat will be impacted by the project. No known individuals were encountered in the immediate project area during on-site threatened and endangered species surveys.

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Condition	Substantive Requirement	Compliance Plan
Historic Properties	No activity which may affect historic properties listed, eligible of listing, in the National Register of Historic Places in authorized.	No impacts to historic properties are anticipated. The project area has been surveyed prior to disturbance in accordance with the Programmatic Agreement Regarding Archaeological Investigations at the Fernald Environmental Management Project (March 6, 1997). Any unanticipated discoveries encountered during actual field work will be addressed in accordance with that programmatic agreement between DOE, the Ohio Historic Preservation Office, and the Advisory Council on Historic Preservation.
Notification	When required by the terms of a NWP, the permittee must notify the ACOE in accordance these provisions.	Not applicable. ACOE notification is not required for CERCLA remedial actions regulated by USEPA.
Nationwide Permit 26 - Headwaters and Isolated Waters Discharge¹ - Section 404 Conditions		
Water Supply Intakes	No discharges of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structure or adjacent bank stabilization.	Not applicable. No public water supply intakes are located in the vicinity of the proposed project.
Shellfish Production	No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to shellfish harvesting authorized by NWP 4.	Not applicable. The project area is not used for shellfish production.
Suitable Material	No discharge of dredged or fill material may consist of unsuitable material (e.g. trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts.	No fill material containing unsuitable or toxic materials will be placed.

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Condition	Substantive Requirement	Compliance Plan
Mitigation	Discharges of dredged or fill material into waters of the United States must be minimized and avoided to the maximum extent practicable at the project site.	Work within wetland areas will be limited to the immediate vicinity of the proposed temporary leachate line. Approximately 0.3 acres of jurisdictional wetland will be impacted. Appropriate erosion and sedimentation controls will be used as necessary to minimize sediment transport. The 0.3 acre wetland impact associated with the proposed project is already accounted for in the site-wide wetland mitigation strategy outlined in the Natural Resource Restoration Management Plan and will be mitigated at a 1:1.5 acre ratio
Spawning Areas	Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.	No adverse impacts to spawning areas are anticipated. Appropriate erosion and sedimentation controls will also be used as necessary to minimize sediment transport in downstream portions of the watershed.
Obstruction of High Flows	To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).	No permanent restrictions or impediments to normal or expected high flows are anticipated.
Adverse Effects from Impoundments	If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.	No temporary or permanent impoundments or structures are planned as part of this project.
Waterfowl Breeding Areas	Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.	Not applicable. The project area is not used extensively by water fowl during the breeding season.

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Condition	Substantive Requirement	Compliance Plan
Removal of Temporary Fills	Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.	Not applicable. No temporary fills are anticipated as part of the proposed project.
Clean Water Act Section 401 State Water Quality Certification² - General Conditions		
Bank Stabilization	Steps shall be taken, upon completion of the project, to ensure bank stability. This may include, but is not limited to, the placement of rip-rap or bank seeding.	Disturbed soils associated with construction of the temporary leachate line will be re-stabilized upon completion of the project using appropriate seeding techniques.
Mitigation	Any damages to the immediate environment of the project by equipment for construction or hauling will be repaired immediately.	The movement of heavy equipment will be limited to the immediate project area. Disturbed soils associated with construction of the temporary leachate line will be re-stabilized upon completion of the project.
Adverse Impacts to Water Quality and Aquatic Life	Care must be employed throughout the course of the project to avoid the creation of unnecessary turbidity which may degrade water quality or adversely affect aquatic life outside of the project area.	The movement of heavy equipment will be limited to the immediate project vicinity. Appropriate erosion and sedimentation controls will also be used to minimize sediment transport from the project area.

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Condition	Substantive Requirement	Compliance Plan
Discharge Criteria	The discharge does not cause the loss of more than one acre of waters of the United States nor cause the loss of waters of the United States for a distance greater than 500 linear feet of the stream bed.	Approximately 0.3 acres of jurisdictional wetlands will be impacted as a result of the proposed project. This is below the impact authorized under the Section 401 Water Quality Certification for NWP 26.
	For discharges causing the loss of greater than 1/3 acre of waters of the United States, the permittee notifies the District Engineer in accordance with the "notification" general condition in the NWP.	Not applicable. ACOE notification is not required for CERCLA remedial actions regulated by USEPA. Pre-discharge notification to U.S. EPA and Ohio EPA will be conducted by DOE.
	For discharges causing the loss of 1/3 acre or less of waters of the United States, the permittee must submit a report within 30 days of completion of the work with the requisite information.	Not applicable. ACOE notification is not required for CERCLA remedial actions regulated by USEPA. Pre-discharge notification to U.S. EPA and Ohio EPA will be conducted by DOE.
	For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites.	Not applicable. ACOE notification is not required for CERCLA remedial actions regulated by USEPA. Pre-discharge notification to U.S. EPA and Ohio EPA will be conducted by DOE.
	The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.	This temporary leachate line is in support of the on-going operations of waste placement into the On-Site Disposal Facility
Clean Water Act Section 401 State Water Quality Certification² - Special Conditions and Limitations		
Streams designated as Exceptional Warm water Habitat or Coldwater Habitat	NWP 26 shall not authorize impacts to streams designated Exceptional Warm water Habitat or Coldwater Habitat in Ohio's Water Quality Standards (Rule 3745-1 of the OAC).	The wetland in question, nor the receiving waters to which this area ultimately drains (Paddys Run) is classified as Exceptional Warmwater Habitat or Coldwater Habitat.

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Condition	Substantive Requirement	Compliance Plan
Discharge Restrictions within Bogs and Fens	No discharges of dredged or fill material shall occur within bogs or fens.	No work will occur within a bog or fen system.
Notification	The Corps of Engineers shall provide copies of the pre-discharge notifications to both the Ohio EPA and the Ohio Department of Natural Resources pursuant to the notification procedures outlined in Appendix A to 33 CFR Part 330.	Not applicable. ACOE notification is not required for CERCLA remedial actions regulated by USEPA. Pre-discharge notification to U.S. EPA and Ohio EPA will be conducted by DOE.
10 CFR 1022 - Compliance with Floodplain/Wetlands Environmental Review Requirements		
Avoidance and Minimization of Wetland Impacts and Incorporation of Flood Plain Management	Federal agencies undertaking actions within wetlands must take appropriate steps to avoid and minimize potential wetland impacts and incorporate flood plain management into planning decisions. Federal agencies are to provide the opportunity for public involvement.	The proposed project is not located within the 100-yr or 500-yr flood plain of Paddys Run. A Notification of Wetland Involvement is contained in the OU5 Feasibility Study.

¹ See 61 FR 65874 and Appendix B of the OU5 ROD for additional detail.

² Ohio EPA granted Section 401 State Water Quality Certification for NWP - 26 on February 11, 1997 and modified the conditions pursuant to the NWP 26 Settlement on May 20, 1998. See OAC 3745-32 and Appendix B of the OU5 ROD for additional details.