



State of Ohio Environmental Protection Agency

Southwest District Office

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April 9, 2001

Mr. Stephen H. McCracken, Director  
U.S. Department of Energy  
Fernald Environmental Management Project  
P.O. Box 538705  
Cincinnati, Ohio 45253-8705

Mr. John Bradburne, President  
Fluor Fernald  
P.O. Box 538704  
Cincinnati, Ohio 45253-8704

**SUBJECT: U.S. DOE-FEMP - NOTICE OF VIOLATION (NOV)**

Dear Sirs:

As a result of a complaint filed with Ohio EPA's Southwest District Office, representatives from this office met with U.S. Department of Energy and Fluor Fernald representatives at the U.S. DOE-FEMP site on February 13 through 15, 2001, and February 27, 2001, for the purpose of investigating the complaint's allegations. The complaint alleged that leaking waste containers on the Plant 1 pad were not being addressed in accordance with regulatory requirements. Ohio EPA SWDO personnel investigating this complaint were David Combs, Special Investigations Unit; Phillip Harris, Division of Hazardous Waste Management; and Michelle Waller, Office of Federal Facilities Oversight.

During the pre-investigation meeting, facility management personnel indicated that the facility's standard for remediating any leaking waste container is; 1) immediate containment and/or clean-up of the spill, 2) appropriate patching or plugging of the container and, 3) if required, over packing the container within 24 hours.

In investigating the complaint, Ohio EPA performed an extensive audit of facility records designed to document the discovery and subsequent mitigation of any leaking waste containers on the Plant 1 Pad. Ohio EPA's audit of Plant 1 Pad records was for the period January 1, 2000, through August 31, 2000.

Results of the complaint investigation are as follows:

**INVESTIGATION SUMMARY:**

1. Ohio EPA notes that DOE-FEMP maintains a large population of containerized waste in storage on the Plant 1 Pad. DOE-FEMP's storage of this waste is necessary until such time as off-site shipment for treatment and disposal can be scheduled. Leaks do occur, as a result of container deterioration due to weathering and other factors.

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2. DOE-FEMP has waste management procedures in place to discover, document, track and mitigate leaking containers. These procedures are in use facility-wide, including the Plant 1 Pad. Protocols and procedures developed for this activity are designed to allow the facility to react in a timely manner to mitigate leaks from any waste container. The facility has an inspection and classification system designed to differentiate between those containers that are actually leaking, and those that have visible areas of deterioration. Containers that are actually leaking waste are identified as Type 1 containers. The majority of Type 1 container leaks result in the release of a small quantity of waste material (e.g., 2 ounces).
3. Ohio EPA's audit focused upon Type 1 leaking containers identified during scheduled container management inspections conducted by the facility. Due to regulatory authority issues, the audit ultimately focused upon containers storing mixed waste, i.e., RCRA containers.
4. The audit revealed that during the 8 month period between 1-1-00 and 8-31-00, a total of one hundred and six (106) leaking containers on the Plant 1 Pad were identified (as Type 1) by facility inspections and documented within facility records. Of these; twelve (12) were identified as containing RCRA regulated waste. Of these; seven (7) container leaks were remediated including over packing within 24 hours. The remaining five (5) container leaks were not completely remediated (by over packing) within a 24 hour time period.

These five (5) RCRA containers are identified as follows:

- a. Container #185177 was discovered leaking on June 8, 2000; it had leaked 4 oz. of waste, absorbent material was used to clean up the release and the drum was over packed on June 15, 2000. Complete mitigation of the container leak took seven days.
- b. Container #153993 was discovered leaking on March 3, 2000; it had leaked 1 oz. of waste, absorbent material was used to clean up the release and the drum was over packed on March 6, 2000. Complete mitigation of the container leak took three days.
- c. Container #152395 was discovered leaking on February 17, 2000; it had leaked less than 1 oz. of waste, and the drum was over packed on February 22, 2000. Complete mitigation of the container leak took five days.
- d. Container #510850 was discovered leaking on February 21, 2000; it had leaked less than 1 oz. of waste, and the drum was over packed on August 9, 2000. Complete mitigation for this container took one hundred and sixty nine days.

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- e. Container #500981 was discovered leaking on May 17, 2000; it had leaked less than 1 oz. of waste, absorbent material was used to clean up the release and the drum was over packed on July 17, 2000. Complete mitigation for this container took sixty one days.
5. Following the audit, the facility's operating record procedure for tracking and location of RCRA containerized waste was evaluated by physically locating the over packed containers using SWIFTS database information. This did verify that the over packed containers were replaced in appropriate RCRA storage locations, and that the applicable SWIFTS location information was accurate.
6. Ohio EPA noted that, following overpacking, Container #185177 had been placed in storage on the Plant 1 Pad without being properly labeled as "Hazardous Waste."

#### **CONCLUSION:**

The complaint investigation revealed that there is good evidence that in the high majority of instances, the facility's waste management standard for remediation activity as the result of container leaks is met. However, there are instances where over pack activity does not meet the established standard.

Therefore, as a result of the complaint investigation, the following violations are deemed to have occurred:

#### **VIOLATIONS:**

Based upon Ohio EPA's review of facility records, the following violations were documented. Violation statements are prefaced by the appropriate Ohio Administrative Code, (OAC) regulation, and/or appropriate sections of the 1993 Amended Consent Decree, and/or the facility's Hazardous Waste Part B permit application:

1. 1993 Amended Consent Decree, Paragraph 3.8 (c), and OAC 3745-66-71 Conditions of Containers;

This section of the Amended Consent Decree requires (in part) that for any drums on the Plant 1 Pad that are found to be actually leaking contents, (i.e., Type 1) DOE shall immediately contain the release or spill and shall manage the drum in accordance with OAC 3745-66-71 as soon as possible after detection, but in no event more than 24 hours after discovery.

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1990 Facility Drum Management Plan, Section 5.0;

This plan has regulatory connections to the Amended Consent Decree. Information within Section 5.0 of this plan also indicates over packing of Type 1 containers is to be accomplished within a 24 hour period.

The five (5) containers identified above under Investigation Summary No. 4, were not over packed within 24 hours. DOE-FEMP is therefore in violation of these sections.

Order 9 of the June 6, 1996 Director's Final Findings &Orders, and;

Facility Part B Permit Application, Section F2(c) Remedial Action;

The Order requires (in part) that DOE-FEMP comply with the terms of the facility's hazardous waste Part B permit application. Section F2(c) of the permit application describes repair actions to remediate problems identified during inspections. This section states that "repairs are made in a timely manner so that a situation does not lead to an environmental or human health hazard."

The time required to over pack Container #510850 and Container #500981, identified above under Investigation Summary No. 4, is unnecessarily excessive. DOE-FEMP has failed to comply with Section F2(c) of the permit application.

2. OAC 3745-52-34(A)(3) Accumulation time of hazardous waste;

This regulation requires that containers of hazardous waste be labeled or marked with the words "Hazardous Waste."

Order 9 of the June 6, 1996 Director's Final Findings &Orders, and;

Facility Part B Permit Application, Section D-1a(1) Description of Containers.

The Order requires (in part) that DOE-FEMP comply with the terms of the facility's hazardous waste Part B permit application. Section D-1a(1) includes labeling information consistent with OAC 3745-52-34(A)(3) requirements.

As identified above under Investigation Summary No. 4, Container #185177 was placed in storage on the Plant 1 Pad without being properly labeled as "Hazardous Waste." DOE-FEMP has failed to comply with Section D-1a(1) of the permit application.

NOTE: Facility representatives may be under the assumption that, following over packing activity, there is an allowable time period before containers are to be labeled according to RCRA requirements. This is an incorrect assumption.

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In order to correct these violations, please provide a written response to this office within twenty-one (21) days from the date of this letter, which describes facility actions to address the above violations.

**ADDITIONAL ISSUES:**

1. Ohio EPA acknowledges that strictly radiologically contaminated waste is not subject to regulation under RCRA standards, however, in keeping with environmental protection principles, Ohio EPA prefers that the facility maintain a single waste management ethic for all waste containers regardless of regulatory status. Furthermore, Ohio EPA believes DOE-FEMP to be in agreement with this concept. Ohio EPA notes that in the context of RCRA storage unit requirements, the facility's Plant 1 Pad is experiencing some effects of deterioration due to weather, age, and use factors. Ohio EPA invites facility comment concerning the implications of continued waste container management and storage issues related to overall site remediation priorities.
2. Ohio EPA acknowledges that facility container management activity is currently accountable under multiple regulatory agreements, orders, and regulations. Facility comment in this regard is invited.

Ohio EPA proposes that a meeting be held by the middle of May to discuss the above issues.

Should you have any questions in this matter, please contact me at (937) 285-6090.

Sincerely,



Phillip C. Harris  
Division of Hazardous Waste Management

cc: Terry Hagen, FF  
Linda Neumann, RCRA Compliance, OEPA, CO  
Paul Pardi, OEPA DHWM SWDO  
Tim Poff, FF  
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