

**COMPLIANCE WITH PERMIT-RELATED SUBSTANTIVE REGULATORY  
REQUIREMENTS FOR FERNALD ENVIRONMENTAL MANAGEMENT PROJECT  
REMEDIAL ACTIONS**

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LETTER



Department of Energy  
 Fernald Environmental Management Project  
 P. O. Box 398705  
 Cincinnati, Ohio 45239-8705  
 (513) 648-3155

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Mr. James A. Saric, Remedial Project Director  
 U.S. Environmental Protection Agency  
 Region V - 5HRE-8J  
 77 W. 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:

**COMPLIANCE WITH PERMIT-RELATED SUBSTANTIVE REGULATORY REQUIREMENTS FOR FERNALD ENVIRONMENTAL MANAGEMENT PROJECT REMEDIAL ACTIONS**

In recent discussions between the Department of Energy (U.S. DOE), Fernald Environmental Restoration Management Corporation (FERMCO) and the regulators, it was agreed that it would be advantageous for the DOE to clarify how it intended to satisfy its obligations related to permitting during remedial actions. In reviewing the scope of anticipated remedial actions at the Fernald Environmental Management Project (FEMP), the DOE believes there are permit-related issues in four general areas: air emissions, point-source waste water discharges, construction and operation of an on-site waste disposal facility, and fill and dredging of wetlands. The purpose of this letter is to describe the DOE's proposed identification of those activities requiring a permit and a methodology for identification of and compliance with substantive requirements for activities not requiring permit approval. Further, this letter requests the concurrence of the U.S. Environmental Protection Agency (U.S. EPA) and the Ohio Environmental Protection Agency (OEPA) with the proposed strategies.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Information System, Section 121(e)(1) states that no Federal, State, or local permit will be required for the portion of any removal or remedial action conducted entirely on-site, where such remedial action is selected and carried out according to Section 121. This does not, however, exempt that project from complying with the substantive requirements that would have been imposed by such permits.

Specifically, it is the U.S. DOE's position that an air permit is not required for the construction, modification, or operation of any equipment, facility, or activity directly involved in implementing the remedies selected in the Record of Decision (ROD) for Operable Units 1 through 5 (OU1 through 5) or any removal actions. For example, no air permits will be required for emissions associated with operation of the OU4 Vitrification Plant or the OUI dryers. Modification of existing air permits will not be required for use of already in-place equipment in implementing a selected operable unit remedy or removal action. However, any substantive requirements that would have been imposed by such permits or permit modifications will be met. Air Permits to Install (PTI) and Permits to Operate (PTO) will continue to be required for activities not directly associated with a specific remedial activity. These activities will consist primarily of landlord, or site-support activities such as generation of utilities, laboratory and maintenance functions. Permits will not be required for air emissions directly associated with remedial actions.

Off-site waste water discharges associated with the Advanced Waste Water Treatment (AWWT) facility, and any other point-source waste water or storm water discharges to the Great Miami River or Paddy's Run, will continue to be permitted through the National Pollutant Discharge Elimination System (NPDES) process. It is expected that all waste water discharges associated with remedial actions will be provided for in the site's NPDES permit. As appropriate, the DOE will request modification of the NPDES permit to include anticipated remedial waste water discharges.

It is the DOE's position that on-site remedial activities that will result in the fill and/or dredging of on-site wetlands will not require a permit. However, the remedial activity must meet the applicable substantive requirements associated with such a permit. Substantive requirements essentially fall into two categories. First are requirements to avoid, or minimize impacts to, existing wetlands. These requirements will be identified and addressed within design-related documents on an individual operable unit-specific basis. Second, are requirements for compensatory mitigation of actual adverse impacts to wetlands. These requirements will be identified in the Remedial Design Work Plans (RDWP) for individual operable units, but will be implemented as part of the OU5 remedial action.

Finally, it is the DOE's position that a permit related to the construction and operation of an on-site waste disposal facility is not required. The associated substantive requirements will be explicitly addressed in the remedial design for the facility.

Based upon the approved ROD, identification of substantive requirements of applicable permit regulations and any other Applicable or Relevant and Appropriate Standards, Limitations, Criteria, and Requirements (ARAR) will be included in the RDWP for each operable unit. These substantive requirements will then become criteria for the actual design. As a project continues through the design process (e.g., 30/60/90 percent design), the specific implementation of the substantive requirements will be defined. These more specific details will be incorporated into the Preliminary (30 percent) and Pre-Final (90 percent) design packages submitted to the U.S. EPA and OEPA for

approval. Specifically, the appropriate design submittals will explicitly identify substantive requirements (estimated emission and discharge rates, specific control and operating methodologies, emission and discharge limits, monitoring methodologies, etc.) and detail how they are addressed within the project design. The remedial design deliverables will include a "permitting crosswalk" in which all substantive permit-related requirements are identified along with a description of where in the design package the particular requirement is specifically addressed.

Rather than submit individual package to the several U.S. EPA and OEPA offices and other potential regulatory agencies that may have an interest in reviewing a design document, the FEMP proposes to submit each design package to the addressees of this letter. Approval of the design documentation by these two offices will constitute approval from the respective agency that implementation of the approval design will constitute compliance with all substantive permit requirements.

If you or your staff have any questions, please contact Johnny Reising at (513) 648-3139.

Sincerely,



fa Jack R. Craig  
Fernald Remedial Action  
Project Manager

FN:Reising

cc:

K. H. Chaney, EM-423/GTN  
B. Skokan, EM-423/GTN  
G. Jablonowski, USEPA-V, 5HRE-8J  
J. Kwasniewski, OEPA-Columbus  
P. Harris, OEPA-Dayton  
M. Proffitt, OEPA-Dayton  
S. McClellan, PRC  
R. Cohen, GeoTrans  
F. Bell, ATSDR  
R. Owen, ODOH  
R. D. George, FERMCO/52-2  
T. Hagen, FERMCO/65-2  
C. Little, FERMCO  
M. Yates, FERMCO/9  
AR Coordinator, FERMCO