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February 5, 2004

Mr. William Taylor  
U.S. DOE FEMP  
P.O. Box 398705  
Cincinnati, OH 45329-8705

**RE: COMMENTS - DRAFT INSTITUTIONAL CONTROLS PLAN**

Dear Mr. Taylor:

Ohio EPA has reviewed DOE's Comprehensive Legacy Management Plan and Institutional Control Plan Volume 2 DRAFT 20013-PL-0001 Rev. A, submitted on November 14, 2003. Ohio EPA's comment's are enclosed.

If there are any questions, please contact me at (937) 285-6466 or Donna Bohannon at (937) 285-6543.

Sincerely,



Thomas A. Schneider  
Fernald Project Manager  
Office of Federal Facilities Oversight

- cc: Jim Saric U.S. EPA
- Terry Hagen, Fluor Daniel Fernald
- Michelle Cullerton, Tetrattech
- Ruth Vandegrift, ODH
- Mark Schupe, HSI Geotrans

**COMPREHENSIVE LEGACY MANAGEMENT AND  
INSTITUTIONAL CONTROL PLAN VOLUME 2**

**Comments:**

1. Commenting Organization: OEPA Commentor: OFFO  
 Section #: General Pg.#: Line #: Code: C  
 Original Comment #:

Comment: The plan generally lacks in sufficient detail to allow successful implementation of IC at Fernald. Without the required attachments it is difficult to determine the adequacy of the plan. The next revision should include all the referenced attached documents as well as much more specificity with regard to IC and individuals responsible for their implementation.

2. Commenting Organization: OEPA Commentor: OFFO  
 Section #: General Pg.#: Line #: Code: C  
 Original Comment #:

Comment: The Institutional Controls outlined in this plan are vague and subject to wide interpretation. The document does not provide a clear definition of some of the important terms used in describing the IC. Terms such as "limiting access" and "preventing unauthorized use" need to be described in detail for any reader unfamiliar with the intent of this document.

3. Commenting Organization: OEPA Commentor: OFFO  
 Section #: General Pg.#: Line #: Code: C  
 Original Comment #:

Comment: It is disappointing to note in reviewing the document that DOE appears to have forgotten or ignored the years of stakeholder involvement in development of long term stewardship ideals for the Fernald site. The document fails to even reference multiple documents, some developed by DOE and some by the Fernald Citizens Advisory Board (FCAB), that directly relate to long term stewardship of the site. DOE should incorporate the ideals developed and recommended by the FCAB into the IC Plan. Those recommendations, as requested by DOE of the FCAB, will help ensure the long term protectiveness of the Fernald site remedies if implemented.

4. Commenting Organization: OEPA Commentor: OFFO  
 Section #: General Pg.#: Line #: Code: C  
 Original Comment #:

Comment: Ohio EPA strongly supports the FCAB's recommendations for community based stewardship. FCAB recommendations #00-4, #2001-03, and #2002-03 all refer to the need for DOE to establish an on-site education facility as part of it's long term stewardship program for the site. Ohio EPA concurs with the recommendations and believes having this information on site and easily accessible to the public acknowledges that DOE is being responsible to the community. Records should include historical information, past remedial

Ohio EPA's Cts on Comp LM & IC Pln Vol2  
February 5, 2004

activities, and any information collected after Fernald is closed. In addition, historical information should be in a form that is understandable by all stakeholders in the community including those unfamiliar with the Fernald site. DOE installed a similar facility at the Weldon Springs site as part of their CERCLA cleanup activities/responsibility.

5. Commenting Organization: OEPA Commentor: OFFO  
Section #: General Pg.#: Line #: Code: C

Original Comment #:

Comment: This document should include a site map illustrating the land-use and any future land-use plans.

6. Commenting Organization: OEPA Commentor: OFFO  
Section #: General Pg.#: Line #: Code: C

Original Comment #:

Comment: How will the designated burial sites for the Native Americans be maintained? Are there tribal or other federal regulations that apply?

7. Commenting Organization: OEPA Commentor: OFFO  
Section #: 1.0 Pg.#: 1 Line #: Code: C

Original Comment #:

Comment: The document should include specific reference to and appropriate citations for all RODs, ESDs and ROD Amendments implemented at the Fernald site.

8. Commenting Organization: OEPA Commentor: OFFO  
Section #: 1.0 Pg.#: 1 Line #: Code: C

Original Comment #:

Comment: Revise the text to state "Ecological restoration is being implemented in hopes of achieving settlement..." The current language suggests an agreement has been reached and restoration is a component to that agreement, though no agreement exists.

9. Commenting Organization: OEPA Commentor: OFFO  
Section #: 1.0 Pg.#: 1 Line #: Code: C

Original Comment #:

Comment: DOE references the 2002 NRRP though that document has never been released for public review. The other Trustees, Ohio EPA and USFWS, have never received a submittal of this document and obviously have not reviewed it. If DOE insists on continuing to reference it, each reference should specifically state the document has not been reviewed by the Trustees and is likely unacceptable to them. Additionally the NRRP cited in the References section is not the same referenced in the text.

10. Commenting Organization: OEPA Commentor: OFFO

Ohio EPA's Cts on Comp LM & IC Pln Vol2  
February 5, 2004

Section #: 1.0 Pg.#: 2 Line #: Code: C

Original Comment #:

Comment: This section does not address the 23 acres set aside for determination in DOE's *Environmental Assessment for Proposed Final Land Use At The Fernald Environmental Management Project Rev. 1 June 1999*. This document and the associated Response to Public Comments document commit DOE to determine in 2004 the selected final use for this portion of the site. The submittal should be revised to reflect all the commitments made by DOE in these documents and include a citation for these documents and the *Finding of No Significant Impact* issued by DOE in June 1999.

11. Commenting Organization: OEPA Commentor: OFFO

Section #: 1.0 Pg.#: 2 Line #: Code: C

Original Comment #:

Comment: The document should be revised to be consistent with and incorporate the plans set forth in DOE's *June 2002 Master Plan For Public Use Of The Fernald Environmental Management Project*. Additionally the Master Plan should be appropriately cited as a reference.

12. Commenting Organization: OEPA Commentor: OFFO

Section #: 1.0 Pg.#: 2 Line #: Code: C

Original Comment #:

Comment: This section should include a list of the facilities and their purpose which DOE proposes to remain onsite after Fernald is closed.

13. Commenting Organization: OEPA Commentor: OFFO

Section #: 1.1 Pg.#: 2 Line #: Code: C

Original Comment #:

Comment: First paragraph, first sentence. Define the "post closure of Legacy Management period" as noted in this sentence.

14. Commenting Organization: OEPA Commentor: OFFO

Section #: 1.1 Pg.#:2 Line #: Code: C

Original Comment #:

Comment: First paragraph, second sentence. Please provide the full reference to the USEPA IC guidance document. As indicated, this USEPA document is a guidance document and does not "require" but suggests ways to implement, monitor and enforce ICs. This document may want to reference and follow DOE policy 454.1, Use of Institutional Controls.

15. Commenting Organization: OEPA Commentor: OFFO

Ohio EPA's Cts on Comp LM & IC Pln Vol2  
February 5, 2004

Section #: 1.2 Pg.#: 3 Line #: Code: C

Original Comment #:

Comment: An explanation of the different IC's, administrative and physical, which exist at and for the Fernald site should be listed here in this plan. For example, deed restrictions, interagency agreements, MOU, etc.

16. Commenting Organization: Ohio EPA Commentor: OFFO

Section #: 2.1.1 Pg #: 5 Line #: na Code: C

Original Comment #:

Comment: The document should include specific information regarding the points of contact, including names, their locations and how they will be contacted.

17. Commenting Organization: OEPA Commentor: OFFO

Section #: 2.1.2 Pg.#: 5 Line #: Code: C

Original Comment #:

Comment: This paragraph states that there's the possibility of DOE transferring management or leasing the property to another party. It is DOE's responsibility as the PRP to maintain the property through perpetuity. Any actions to transfer the property is governed by CERCLA and would require a ROD Amendment.

18. Commenting Organization: OEPA Commentor: OFFO

Section #: 2.1.2 Pg.#: 5 Line #: Code: C

Original Comment #:

Comment: Included in the I.C. Plan, should be a list of any deed restrictions, interagency agreements, cooperative agreements, MOUs, etc., as stated in Section 1.4.5 of the LM Plan.

19. Commenting Organization: OEPA Commentor: OFFO

Section #: 2.1.3 Pg.#: 5-6 Line #: Code: C

Original Comment #:

Comment: This document should have a plan or outline on how the state regulators roles will play out in the inspections and surveillance of the site property. This is also mentioned in the LM plan and this information should be included in the IC Plan as well.

20. Commenting Organization: Ohio EPA Commentor: OFFO

Section #: 2.1.3.3 Pg #: 6 Line #: na Code: C

Original Comment #:

Comment: The document states that inspection of site property and infrastructure will be conducted on a quarterly basis. Ohio EPA is concerned that a quarterly inspection may not be sufficient and additional inspections may be needed. It is our experience that physical controls are subject to damage and vandalism, especially immediately after

Ohio EPA's Cts on Comp LM & IC Pln Vol2  
February 5, 2004

erection, therefore more inspections may be needed.

21. Commenting Organization: Ohio EPA Commentor: OFFO  
Section #: 2.1.3.3 Pg #: 6 Line #: na Code: C  
Original Comment #:

Comment: The document should include a checklist of items to be inspected similar to that developed for the OSDF. The checklist should be included in the next revision of the document.

22. Commenting Organization: Ohio EPA Commentor: OFFO  
Section #: 2.2 Pg #: 6 Line #: na Code: C  
Original Comment #:

Comment: Primary and Secondary points of contact and numbers should be specified in the document.

23. Commenting Organization: Ohio EPA Commentor: OFFO  
Section #: 2.2.3 Pg #: 6 Line #: na Code: C  
Original Comment #:

Comment: ICs for the OSDF should include corner and mid point granite monuments establishing the boundaries of engineered barrier. These monuments should specify the disposal facility and contents, etc in a similar manner to those placed at UMTRA disposal sites.

24. Commenting Organization: OEPA Commentor: OFFO  
Section #: Table 2-2 Pg #: 8 Line #: Code: C  
Original Comment #:

Comment: Under the Scope column, in the Deed Restriction row, there is an implication that a deed with deed restrictions will exist. Please provide the deed restriction language for inclusion into this document.

25. Commenting Organization: OEPA Commentor: OFFO  
Section #: 3.0 Pg #: 9 Line #: Code: C  
Original Comment #:

Comment: The language in this title and section 3.1 requires clarification as the ICs will not prevent exposure to residual contaminants but will ensure exposure is below acceptable limits. No controls other than exclusion would prevent exposure.

26. Commenting Organization: OEPA Commentor: OFFO  
Section #: 3.0 Pg #: Line #: Code: C  
Original Comment #:

Comment: The IC Plan does not specify how or if there is a plan to cover institutional

Ohio EPA's Cts on Comp LM & IC Pln Vol2  
February 5, 2004

control failures and who (i.e., regulators, community, etc.) will be notified when there is an occurrence.

27. Commenting Organization: Ohio EPA Commentor: OFFO  
Section #: 3.1.1 Pg #: 9 Line #: NA Code: C  
Original Comment #:

Comment: The plan must provide a clear list of prohibited activities as well as an example of the signs to be used to educate the public on prohibited activities. The prohibitions should be consistent with the documents previously cited in these comments (e.g., EA, Master Plan for Use) but left out of the IC Plan. All prohibited activities necessary to ensuring the protectiveness of the remedy must be listed (e.g. no soil/media removal from the site, etc).

28. Commenting Organization: Ohio EPA Commentor: DSW  
Section #: 3.1.1 Pg #: 9 Line #: NA Code: C  
Original Comment #:

Comment: This states that "...fishing and hunting...will be prohibited on site." It was my understanding that FWS as a NRT agreed that no signs would be posted that specifically permitted hunting or fishing, but also that nothing would be stated that specifically prohibited hunting and fishing as well. It would seem that this statement requires the concurrence of FWS as a NRT.

29. Commenting Organization: Ohio EPA Commentor: DSW  
Section #: 3.1.2 Pg #: 9 Line #: NA Code: C  
Original Comment #:

Comment: This section refers to a permit requirement for the groundwater remedy discharge to the GMR. There are two types of permits that are required for surface water at the site. One is an NPDES permit for any point discharge from the site to waters of the state. The second is a Permit to Install (PTI) for the construction of or significant modification to any water treatment system on the site. So although it is true that there is a permit requirement for the groundwater remedy discharge to the GMR, the requirement is not restricted only to that remedy. The Surface Water Discharge section should describe the permit requirements but not limit the description to that single discharge.

30. Commenting Organization: OEPA Commentor: OFFO  
Section #: 3.1.2 Pg.#: 9 Line #: Code: C  
Original Comment #:

Comment: The surface water discharges to the GMR should include the SW drainage patterns as stated in the IC Plan outline.

31. Commenting Organization: Ohio EPA Commentor: OFFO

Ohio EPA's Cts on Comp LM & IC PIn Vol2  
February 5, 2004

Section #: 3.1.3 Pg #: 10 Line #: NA Code: C

Original Comment #:

Comment: Any periodic updates or changes to the OMMP will require regulatory review and approval as well as potentially permit modifications. The document should be revised to reflect this.

32. Commenting Organization: OEPA

Commentor: OFFO

Section #:/Section 3.2.1

Pg.#:

Line #:

Code: C

Original Comment #:

Comment: Section should be revised to include the fact that stormwater drainages and control features around the OSDF are included in the quarterly inspections.

33. Commenting Organization: Ohio EPA

Commentor: DSW/OFFO

Section #: Table 3-1

Pg #: 13

Line #: Surface Water

Code: C

Original Comment #:

Comment: The control is to "Inspect surface water drainages and discharge to ensure water is not being impacted by other means, and that drainages are functioning properly". Although a visual inspection can detect erosion, incision, or physical changes, there is no provision of monitoring of the water on some frequency to ensure the quality of the water. Some provision should be made to grab water samples and have them analyzed from all surface waters on the site at some specified frequency. This frequency should be reasonable and could diminish over time.

34. Commenting Organization: OEPA

Commentor: OFFO

Section #: Table 3-2/Section 3.2.1

Pg.#:

Line #:

Code: C

Original Comment #:

Comment: On Table 3-2, routine inspections on the OSDF are stated to be conducted semiannually. This conflicts with Section 2.1.3.3 which states that the site property and infrastructure will be conducted on a quarterly bases. OSDF should be inspected no less than the rest of the site because it carries the bulk of the risk. Additionally quarterly is the current OSDF inspection frequency.

35. Commenting Organization: Ohio EPA

Commentor: OFFO

Section #: Table 3-1

Pg #: 13

Line #: na

Code: C

Original Comment #:

Comment: Provide additional information regarding groundwater monitoring. The information in Table 3-1 is inadequate and requires more information than can be relayed in a table.

36. Commenting Organization: Ohio EPA

Commentor: OFFO

Section #:Table 3-2

Pg #: 15

Line #: na

Code: C

Ohio EPA's Cts on Comp LM & IC Pln Vol2  
February 5, 2004

Original Comment #:

Comment: Any maintenance conducted as a result of site inspections requires an additional follow-up inspection one month after the repair. This document should also include the agency/contractor who will be performing maintenance functions.

37. Commenting Organization: Ohio EPA Commentor: OFFO

Section #: Table 3-2 Pg #: 15 Line #: na Code: C

Original Comment #:

Comment: The table states that the monitoring schedule may be revised through the CERCLA five year review process. Does this preclude any changes prior to the first and subsequent five year reviews?

38. Commenting Organization: OEPA Commentor: OFFO

Section #: 4.1.2 Pg #: Line #: Code: C

Original Comment #:

Comment: This section would appear to be completely inconsistent with the needs of the community and the recommendations of the Fernald Citizens Advisory Board. Simply maintaining monitoring data at/near the site will be insufficient to answer the many questions new and existing residents will continue to raise about the Fernald site and cleanup. At a minimum, DOE should maintain the Administrative Record at the site to provide the public with documentation supporting the cleanup decisions implemented and how they were implemented. A failure to maintain adequate information and information in a format that is readily accessible to the public, will likely result in continuous public questioning of DOE's remedy and calls for renewed investigations/cleanups of the site. DOE would be well served by incorporating the recommendations from the FCAB and specifically the FCAB generated report, *Telling the story of Fernald, Community Based Stewardship and public access to information* October 2002 regarding long-term stewardship at the site.

39. Commenting Organization: OEPA Commentor: OFFO

Section #: 4.3 Pg #: Line #: Code: C

Original Comment #:

Comment: The document should commit DOE to submitting an annual report documenting the site inspections, monitoring data, IC effectiveness and other relevant information.