



1087

Department of Energy

**Ohio Field Office
Fernald Environmental Management Project
P. O. Box 538705
Cincinnati, Ohio 45253-8705
(513) 648-3155**



5381

MAR 29 2004

Mr. James A. Saric, Remedial Project Manager
United States Environmental Protection Agency
Region V, SR-6J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

DOE-0217-04

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

Mr. Bill Kurey
United States Fish & Wildlife Service, Suite H
6950 American Parkway
Reynoldsburg, OH 43068

Dear Mr. Saric, Mr. Schneider, and Mr. Kurey:

TRANSMITTAL OF RESPONSES TO COMMENTS FROM THE UNITED STATES AND OHIO ENVIRONMENTAL PROTECTION AGENCIES ON THE DRAFT INSTITUTIONAL CONTROL PLAN AND EXTENSION REQUEST ON THE REVISED INSTITUTIONAL CONTROL PLAN

- References: 1) Letter, J. Saric to J. Reising, "Technical Review Comments on Draft Institutional Control Plan," dated January 21, 2004
- 2) Letter, T. Schneider to William Taylor, "Comments - Draft Institutional Controls Plan," dated February 5, 2004
- 3) Letter, DOE-0189-04, W. Taylor to J. Saric and T. Schneider, "Extension Request for Response to Comments from the United States Environmental Protection Agency and Ohio Environmental protection Agency on the Draft Institutional Control Plan," dated March 11, 2004

Enclosed for your review are the responses to the United States Environmental Protection Agency (USEPA) and Ohio Environmental Protection Agency (OEPA) Technical Review Comments on the Draft Institutional Control (IC) Plan.

MAR 29 2004

Mr. James A. Saric
Mr. Tom Schneider
Mr. Bill Kurey

-2-

DOE-0217-04

DOE is requesting an extension for submittal of the revised IC Plan until July 2, 2004. The revised IC Plan will have the updated Post Closure Care and Inspection Plan (PCCIP) attached and will provide interim submittals of the Operations and Maintenance Master Plan (OMMP) and the Groundwater/Leak Detection and Leachate Monitoring Plan (G/LD&LMP). Additional information, to become available later in the project, will be required to finalize the OMMP and the G/LD&LMP as discussed below.

DOE-FCP is now formally working with the Office of Legacy Management (LM) on institutional control and legacy management planning. DOE-FCP held a kick-off meeting with the Legacy Management Organization the first week of March 2004. The LM Organization was newly formed in December 2003 and is currently visiting DOE closure sites to define the LM scopes at those sites. LM-50 will be the organization with specific responsibility for the Fernald site and intends to become fully engaged in the planning process for legacy management in the next few months.

We expect much more detail on institutional controls and legacy management planning to become available as LM-50 becomes more engaged in the Fernald planning process. Full involvement of LM is needed to define the level of detail requested in many of the comments received.

Several comments received refer to the support plans that are to be attachments to the IC Plan, specifically the PCCIP, the OMMP, and the G/LD&LMP. The PCCIP is currently being revised and will be attached to the Institutional Plan.

DOE agrees that the OMMP and the G/LD&LMP both need to be revised. DOE will be working with the USEPA and OEPA over the next few months while they finalize the design of the long-term water treatment facility. A revised OMMP will have to be in place to support the start-up of the long-term facility. DOE will be preparing a complete draft of the revised OMMP later this summer or fall, then going through the USEPA and OEPA review cycles at that time so that the plan will be in place prior to the start up of the new facility in early June 2005. An interim submittal of the draft OMMP will be included with the next revision of the Institutional Control Plan, but further revision will be required before the plan can be finalized.

An interim submittal of the G/LD&LMP will also be included with the next revision of the IC Plan. The G/LD&LMP will need to be revised prior to closure to reflect the status and findings at that time. With the individual cells at various stages of completion and baseline sampling still occurring at several cells, a plan prepared now would not be able to serve as the initial post-closure plan and require another revision prior to closure.

MAR 29 2004

DOE-0217-04

Mr. James A. Saric
Mr. Tom Schneider
Bill Kurey, USFWS

-3-

If you have any questions, please do not hesitate to contact Johnny Reising at (513) 648-3139.

Sincerely,


William J. Taylor
Director

FCP:Reising

Enclosures: As Stated

cc w/enclosures:

J. Reising, OH/FCP
G. Stegner, OH/FCP
G. Jablonowski, USEPA-V, SR-6J
D. Bidwell, FCAB
D. Sarno, FCAB
M. Cullerton, Tetra Tech
F. Bell, ATSDR
M. Shupe, HSI GeoTrans
R. Vandegrift, ODH
AR Coordinator, Fluor Fernald, Inc./MS78

cc w/o enclosures:

N. Akgündüz, OH/FCP
D. Pfister, OH/FCP
J. Chiou, Fluor Fernald, Inc./MS64
T. Hagen, Fluor Fernald, Inc./MS1
M. Jewett, Fluor Fernald, Inc./MS52-5
L. Ludwick, Fluor Fernald, Inc./MS90
T. Poff, Fluor Fernald, Inc./MS65-2
D. Powell, Fluor Fernald, Inc./MS64
E. Woods, Fluor Fernald, Inc./MS90
ECDC, Fluor Fernald, Inc./MS52-7

000003

**RESPONSES TO
U.S. AND OHIO ENVIRONMENTAL PROTECTION AGENCY
COMMENTS ON THE
DRAFT COMPREHENSIVE LEGACY MANAGEMENT AND
INSTITUTIONAL CONTROL PLAN, VOLUME 2**

**FERNALD CLOSURE PROJECT
FERNALD, OHIO**

MARCH 2004

U.S. DEPARTMENT OF ENERGY

000004

5. Commenting Organization: U.S. EPA Commentor: Saric
 Section #: NA Page #: NA Line #: NA Code: C
 Original General Comment #: 5
 Comment: DOE must provide a comprehensive list of the Land Use Controls and/or any land use restrictions across the site.
 Response: Agree.
 Action: An explanation of land use controls or land use restrictions will be included in the text to the extent that information is available.
6. Commenting Organization: U.S. EPA Commentor: Saric
 Section #: NA Page #: NA Line #: NA Code: C
 Original General Comment #: 6
 Comment: DOE must add language that DOE cannot modify or terminate LUCs without EPA concurrence.
 Response: Land use controls will be defined in the Institutional Control Plan (IC Plan). The IC Plan will be an enforceable document and will not be modified without EPA concurrence.
 Action: EPA's role in approving changes to the IC Plan will be clarified in the document.

SPECIFIC COMMENTS

7. Commenting Organization: U.S. EPA Commentor: Saric
 Section #: 1.0 Page #: 1 Line #: Not Applicable (NA) Code: C
 Original Specific Comment #: 1
 Comment: The introduction to the Draft IC Plan defines the five operable units (OU) at the Fernald Closure Project (FCP) site. The introduction to the IC Plan should include background information on (1) the expected residual risk associated with the site and (2) the intended future land use at the site. The IC Plan should be revised to also summarize information on institutional controls that is presented in the OU 2 and OU 5 records of decision (ROD).
 Response: Agree.
 Action: Text will be revised to include background information on the expected residual risk and the proposed plans for future land use. The information included in the OU 2 and OU 5 RODs will also be included.
8. Commenting Organization: U.S. EPA Commentor: Saric
 Section #: 2.1.1 Page #: 5 Line #: NA Code: C
 Original Specific Comment #: 2
 Comment: Section 2.1.1 discusses proprietary controls and points of contact for the FCP site. The text should be revised to include (1) information on the types of proprietary controls (such as covenants and easements) that may be implemented at the site and (2) describe how the proprietary controls will be monitored and enforced.
 Response: Additional detail can be added to the degree it is available at this time. The DOE Office of Legacy Management (DOE-LM), specifically the LM-50 organization, will be the point of contact for Fernald. There may be additional points of contact with other groups working for LM-50. DOE-FCP had a series of kick-off meetings with DOE-LM in early March and they are becoming more engaged in stewardship planning at the site. Further detail will become available in the next few months. Specific points of contact may not be completely defined. DOE will issue a revision to the IC Plan based on the comments received. DOE will issue an additional version of the IC Plan in 2005 prior to Closure. Some details such as specific points of contact will not be available until further discussions with DOE-LM occur.
 Action: Text will be revised to include as much information that is available at this time on proprietary controls for the FCP and their enforcement.

9. Commenting Organization: U.S. EPA
 Section #: 2.1.2
 Original Specific Comment #: 3
 Comment: Section 2.1.2 discusses governmental controls for the FCP site. The text should be revised to include (1) information on the types of governmental controls (such as zoning restrictions) that may be implemented at the site and (2) describe how the governmental controls will be monitored and enforced.
 Response: Governmental controls will be defined to the degree possible as discussions progress with LM-50. Zoning restrictions will not be applicable to the site since it is Federal property. The use of easements should not be needed on the FCP property since it will remain in Federal ownership. The use of covenants needs to be further evaluated with EPA. Proprietary controls will include continued federal ownership, establishment of points of contact, and limiting access to authorized personnel only. DOE-LM will be responsible for monitoring and enforcement of proprietary controls. Over the next few months more detail will be provided by DOE- LM.
 Action: Text will be revised to include as much information as possible on governmental controls for the FCP and their enforcement.
10. Commenting Organization: U.S. EPA
 Section #: 2.1.3.1
 Original Specific Comment #: 4
 Comment: Section 2.1.3.1 discusses informational devices that will be implemented along the perimeter of the FCP site. The text should be revised to include (1) information on the types of informational devices (such as registries and deed notices) that may be implemented and (2) describe how the informational devices will be monitored and enforced.
 Response: At a minimum, signs will be posted on the perimeter of the site with site restrictions and points of contact identified. It will also be appropriate to ensure the site is part of the "Call Before You Dig" Program and site specific information is available as part of that program. Additional detail on other types of informational devices will be provided, if it is available. The enforcement of site restrictions will require active monitoring of the site on some frequency. Further detail on how this will be implemented will be provided to the degree possible. Specific detail not available at this time will be included in a later version of this plan issued prior to the closure date.
 Action: Text will be revised to include as much information as possible on informational devices that will be posted along the perimeter that is available.
11. Commenting Organization: U.S. EPA
 Section #: 2.1.3.2
 Original Specific Comment #: 5
 Comment: Section 2.1.3.2 discusses the security of site facilities and infrastructure. The text should be revised to describe the facilities and infrastructure that are expected to remain on site.
 Response: Site facilities and infrastructure will be secured and locked to the degree necessary to protect the aquifer restoration program. Facilities required to support ongoing Aquifer Restoration will be monitored and maintained by operations personnel on a regular basis. Remaining site infrastructure (e.g., roads, gates) will also be periodically inspected and monitored to ensure that inappropriate use is not occurring. Specific detail on exactly who will conduct inspections and at what frequency will be provided to the degree it is available at this time. Further detail will become available as discussions progress with DOE-LM.
 Action: Text will be revised to include as much information that is available on the infrastructure that will remain on site.

16. Commenting Organization: U.S. EPA
 Section #: 3.1.1 Page #: 9 Commentor: Saric Line #: NA Code: C
 Original Specific Comment #: 10
 Comment: Section 3.1.1 discusses FCP site inspections and states that a list of prohibited activities will be posted at multiple locations at the site. The text should be revised to identify the prohibited activities. Also, the text should be revised to (1) provide more detail on the scope of the inspections and (2) describe potential corrective actions that may result from the inspections.
 Response: Agree.
 Action: The text will be revised to include as much information on the prohibited activities that is available. In addition, further detail will be added regarding the scope of the inspection, if available. Potential corrective actions will be included in the discussion as well.
17. Commenting Organization: U.S. EPA
 Section #: 3.1.2 Page #: 9 Commentor: Saric Line #: NA Code: C
 Original Specific Comment #: 11
 Comment: Section 3.1.2 discusses surface water discharge. The text should be revised to discuss the scope and frequency of monitoring at the Parshall Flume.
 Response: The monitoring requirements, both the scope and frequency, for the Parshall Flume are described in the Integrated Environmental Monitoring Plan (IEMP). Currently the IEMP, Revision 3 describes environmental monitoring requirements for calendar years 2003 and 2004 (including Parshall Flume monitoring requirements- Section 4). The IEMP will be revised (Revision 4) later in 2004 to describe monitoring requirements for calendar years 2005 and 2006 and will again included the monitoring requirements for the Parshall Flume. For additional information, please refer to Comment Response # 12.
 Action: The revisions of the IEMP will be included as part of the Institutional Control Plan. Note that the IEMP, Revision 4 will be submitted during October 2004 and will define monitoring to be conducted during calendar year 2005 and 2006.
18. Commenting Organization: U.S. EPA
 Section #: 3.1.3 Page #: 9 Commentor: Saric Line #: NA Code: C
 Original Specific Comment #: 12
 Comment: The OMMP document referenced must be revised and approved by U.S. EPA. Currently the OMMP does not adequately address post-closure groundwater activities. This document must include all necessary post-closure activities relating to groundwater to ensure the monitoring program is functioning properly and the remedy is being implemented as designed. Further, the concept of periodic reviews of the OMMP must be changed to a specific commitment on behalf of DOE to review and update the OMMP.
 In the third paragraph of section 3.1.3 the first should be changed to read A...remedy has been certified as complete, by DOE and approved by EPA, the well infrastructure will be decommissioned and dispositioned as necessary.
 Response: Groundwater monitoring activities are described in the IEMP as required by the September 7, 2000, OEPA Director's Final Findings and Orders (DFOs). The DFOs (Order 2a) states that "The IEMP will remain in effect throughout the duration of remedial activities as determined by Ohio EPA. Accordingly, the IEMP will function as an iterative document with the annual review and a two-year revision cycle..." The DFOs also state that "These Orders shall apply to and be binding upon the Respondents DOE and Fluor, their agents, assigns, successors in interest." Furthermore, the DFOs state that, "...this plan shall consist of environmental monitoring activities to be carried out throughout the remedial action, including groundwater monitoring activities, which must verify adequate capture of all Fernald Facility Environmental Management related contamination above the Operable Unit 5

26. Commenting Organization: U.S. EPA
 Section #: 3.1.1
 Original Specific Comment #: 20
 Comment: The language states that "FCP site inspections will be conducted on a quarterly basis to ensure there are no ..." Insert "DOE will conduct" at the beginning of the first sentence that begins "FCP site inspections will be..."
 Response: Agree.
 Action: Text will be revised as indicated.
27. Commenting Organization: U.S. EPA
 Section #: 3.2.1
 Original Specific Comment #: 21
 Comment: The first sentence does not identify who will do the semi-annual site inspections, etc.
 Response: DOE will perform the semi-annual inspections of the OSDF site. The Grand Junction Office, as part of the Office of Legacy Management (DOE-LM), has been identified as the organization that will perform the semi-annual inspections of the OSDF. Further details will not be available until further discussions with DOE-LM occur.
 Action: DOE will be identified in the text as the group that will conduct the inspections will be included.
28. Commenting Organization: U.S. EPA
 Section #: 3.2.1
 Original Specific Comment #: 22
 Comment: In the last sentence of the third full paragraph, the language does not identify who will take "appropriate actions" to address any identified problems. The following language should be added: DOE will notify EPA and the State via e-mail or telephone as soon as practicable, but no later than two weeks after discovery of any activity that is inconsistent with the IC objective or use restrictions or any action that may interfere with the effectiveness of the ICs.
- The following language should be added wherein DOE will notify EPA of any IC breaches and DOE's plan for correcting them. Any activity that is inconsistent with the IC objectives or use restrictions, or any other action that may interfere with the effectiveness of the ICs will be addressed by DOE as soon as practicable, but in no case will the process be initiated later than 10 days after the DOE becomes aware of the violation. The DOE will notify EPA and the State regarding how the DOE has addressed or will address the breach within 10 days of sending EPA and the State notification of any activity that is inconsistent with the IC objective or use restrictions or any action that interferes with the effectiveness of ICs.
- Response: Agree.
 Action: Text will be revised as indicated.
29. Commenting Organization: U.S. EPA
 Section #: 4.3
 Original Specific Comment #: 23
 Comment: The second full paragraph, first sentence, who will do annual reporting should be explicitly identified.
 Response: (I do not think we should make this commitment.- they ask WHO not where - the IEMP and annual reports discuss environmental monitoring not all institutional controls - if this is the case then you will have to add something to Chapter 8 of the IEMP when it is revised this year.) The Grand Junction Office will be the entity responsible for conducting inspections, monitoring and maintenance. The LM-50 organization, out of the Office of Legacy Management (DOE-LM), will be responsible to ensure that annual reporting to the

Response: DOE is aware of the recommendations by stakeholders regarding community-based stewardship at the site. DOE will continue to keep stakeholders involved in the stewardship planning at the site and will keep stakeholders involved during Legacy Management. DOE is in agreement that Stakeholders should be involved to ensure Legacy Management. DOE may not be able to provide everything that is being requested in the exact form that it is being requested at the FCP. Further detail on how Stakeholders will be involved in Legacy Management will be provided as discussions with DOE-LM continue.

Action: Further detail relating to the public recommendations and public involvement in Legacy Management planning will be incorporated into the text.

36. Commenting Organization: OEPA

Commentor: OFFO

Section #: General

Pg.#:

Line #:

Code: C

Original Comment #: 4

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 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.

Response: The Legacy Management Plan (LM Plan) does include the provision of a facility that can provide information and educational material to the public. The facility that DOE is considering is a utilitarian type facility rather than the more elaborate facility included in the FCAB recommendations. The LM Plan does state that records will be available on or near the site for public access. As stated in the previous comment, DOE does support the concept of community-based stewardship and will keep stakeholders involved during stewardship planning and during legacy management.

Action: Further detail regarding public access to records will be included to the extent possible.

37. Commenting Organization: OEPA

Commentor: OFFO

Section #: General

Pg.#:

Line #:

Code: C

Original Comment #: 5

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

Response: Agree.

Action: A "future use" site map will be included with the document.

38. Commenting Organization: OEPA

Commentor: OFFO

Section #: General

Pg.#:

Line #:

Code: C

Original Comment #: 6

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

Response: Although DOE has agreed to make land available for reburials, it is not clear whether native American groups are interested in reburial on the site. If reburial does occur, DOE has informed the Tribes that maintenance of those areas does not fall under DOE's responsibility. The issue of reburial now rests with the Native American Tribes.

Action: None.

69. Commenting Organization: Ohio EPA Commentor: OFFO
 Section #: Table 3-2 Pg #: 15 Line #: NA Code: C
 Original Comment #: 37
 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?
 Response: Monitoring on a more frequent basis can be done at any time (i.e., unscheduled). Monitoring less frequently will require discussion at the time of the 5-year review.
 Action: Will include text associated with the table that states more frequent monitoring is always possible, but a decrease in frequency would require discussion, review and approval at the time of the 5-year review.

70. Commenting Organization: OEPA Commentor: OFFO
 Section #: 4.1.2 Pg.#: Line #: Code: C
 Original Comment #: 38
 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.
 Response: The text refers the reader to the Legacy Management Plan, which address public access to records and information in further detail. Records and information important to Legacy Management will be kept on or near the site. The public will have access to these records. The LM-50 organization will be the point of contact for information pertaining to records. Further detail will be provided as planning with DOE-LM progresses.
 Action: Text will be revised to remove the statement regarding records disposition and will concentrate on public access to records only. Information pertaining to LM-50 will be provided in the text as well.

71. Commenting Organization: OEPA Commentor: OFFO
 Section #: 4.3 Pg.#: Line #: Code: C
 Original Comment #: 39
 Comment: The document should commit DOE to submitting an annual report documenting the site inspections, monitoring data, IC effectiveness and other relevant information.
 Response: DOE does anticipate a required annual report. Information will be made available on an annual basis. The exact process for annual reporting will be defined in a later version of this plan
 Action: DOE will identify that an annual report will be submitted.