



Department of Energy

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FEB 11 2005

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

DOE-0158-05

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

Dear Mr. Saric and Mr. Schneider:

EXTENSION REQUEST – COMPREHENSIVE LEGACY MANAGEMENT & INSTITUTIONAL CONTROLS PLAN

- References:
- 1) Letter, William J. Taylor to J. Saric, T. Schneider and B. Kurey, "Request – Comprehensive Legacy Management & Institutional Controls Plan," dated October 26, 2004
 - 2) Letter, J. Saric to J. Reising, "Legacy Management and Institutional Control Plan Extension," dated November 15, 2004

Per the Department of Energy (DOE) extension request and subsequent U.S. Environmental Protection Agency (USEPA) approval referenced above, DOE had planned to submit the next version of the Comprehensive Legacy Management and Institutional Controls Plan (LMICP) on February 28, 2005. The USEPA, Ohio Environmental Protection Agency (OEPA) and DOE collectively agreed at the Technical Information Exchange (TIE) meeting held in Dayton, Ohio on January 20, 2005 to postpone submittal of the LMICP until several key issues could be resolved. A listing of the issues discussed at the Dayton TIE meeting, including the proposed path forward for resolution, is enclosed for your information.

As a result of the discussion held at the Dayton TIE meeting, DOE is formally requesting an extension for submittal of the LMICP until April 15, 2005. As outlined in the attached meeting summary, it is DOE's goal to resolve the majority of the outstanding issues prior to the April 15th submittal and incorporate the changes resulting from resolution into the LMICP.

Mr. James A. Saric
Mr. Tom Schneider

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DOE-0158-05

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

Sincerely,


William J. Taylor
Director

FCP:Reising

Enclosure: As Stated

cc: w/enclosure:

J. Reising, OH/FCP
D. Pfister, OH/FCP
G. Stegner, OH/FCP
J. Craig, DOE-LM
J. Powell, DOE-LM
D. Bidwell, FCAB
M. Cullerton, Tetra Tech
G. Jablonowski, USEPA-V, SR-6J
B. Kurey, USFWS
D. Sarno, FCAB
T. Schneider, OEPA-Dayton (three copies of enclosure)
M. Shupe, HIS GeoTrans
M. Albertin, Fluor Fernald, Inc., MS01
K. Alkema, Fluor Fernald, Inc., MS01
J. Chiou, Fluor Fernald, Inc., MS64
T. Hagen, Fluor Fernald, Inc., MS01
B. Hertel, Fluor Fernald, Inc., MS52-5
F. Johnston, Fluor Fernald, Inc., MS52-5
U. Kumthekar, Fluor Fernald, Inc., MS64
L. McHenry, Fluor Fernald, Inc., MS90
D. Nixon, Fluor Fernald, Inc., MS01
D. Powell, Fluor Fernald, Inc., MS64
C. Tabor, Fluor Fernald, Inc., MS12
E. Woods, Fluor Fernald, Inc., MS90
AR Coordinator, Fluor Fernald, Inc., MS78
ECDC, Fluor Fernald, Inc., MS52-7

ENCLOSURE A

TECHNICAL INFORMATION EXCHANGE MEETING ISSUES

Technical Information Exchange Issues

The following list was generated by OEPA in preparation for the Dayton Airport TIE meeting held on January 20, 2005. The list identifies the areas where OEPA has substantial disagreement on the LMICP. Also included in italics is a summary of the discussion held during the TIE meeting and the proposed timing associated with resolving the issue. The specific timing was not discussed during the TIE meeting but is being included in this document for consideration by the Fluor and DOE personnel involved.

- 1) Issues regarding what portions of the document are enforceable and which are not. The some of the RtCs suggest inspection dates/frequency are not enforceable obviously we take exception to that.

This issue seemed to be resolved by DOE and Fluor committing to clarify which document is enforceable in the introductions of both Volume I and Volume II of the LMICP. Specific discussions pointed out that inspections and public participation required under CERCLA will be in enforceable section with public outreach activities that go beyond requirements in Volume 1. This plan is no different than previous plans for activities at Fernald. DOE meets all of the CERCLA requirements but also implements many programs and activities that go far beyond the basic legal requirements. An Executive Summary will be added to the beginning of each volume that will aid in clarification of the purpose of each document. This was largely already being done for the planned February submittal and will be in the next submittal regardless of whether it is delayed or not.

- 2) The confusion added by having a Volume 1 and it containing material that crosses into the regulatory arena. I'm inclined to say we need to split the document and just have Volume 1 be some internal DOE document that we don't deal with and everything else be in the former Volume 2. I'm not sure why we'd review or participate in a document that has no enforceability.

The LMCIP should be kept as a two-volume document with Volume II as the section that spells out the legal/enforceable components under CERCLA requirements and Section I the section that provides all of the activities and programs that DOE will implement that exceed the minimum legal requirements. The specific example that was used involved the requirements for public information and outreach. The CERCLA requirements regarding information availability are outlined in Volume II and are enforceable. There may be additional outreach that the Office of Legacy Management (LM) is willing to do in the near term over and above the CERCLA requirements, but that will not be addressed in the enforceable portion of the document. After some discussion, there did not appear to be significant disagreement with this position and the two-volume format will be maintained.

- 3) The RtCs seem to be confused on the documents view of Ohio authority. Obviously we believe Ohio has the authority and it should be clearly stated in the document. This will probably be something we'll address to our legal counsel once a revised document is submitted.

It was suggested that OEPA send draft language to DOE that they would consider acceptable for inclusion in the LMICP regarding their authority. The timeframe for reaching agreement on the draft language was not discussed. It is expected that mutually agreeable language can be established by the end of February to support submittal of the document by April 15th. This delay in the LMICP submittal would require formal approval by U.S. EPA.

- 4) Creation of an on-site education center/records repository and when/if DOE plans to make a decision.

It is expected that this issue will be negotiated as part of the NRT settlement between DOE and OEPA over the next couple of months.

- 5) Public involvement activities/plan. It is our belief that USEPA guidance requires such public outreach activities and as such this should be included in the enforceable document not in volume 1.

The LM Community Involvement Plan will be attached to the next submittal of the LMICP in Volume 1 regardless of the timing. That is currently being worked into the document for the originally planned February 28, 2005 submittal that will be submitted by April 15th.

- 6) OSDF leak statistical testing procedure.

This issue will require ongoing discussion between Fluor, DOE, USEPA and OEPA over the next 6 months. It is expected that the issue can be resolved by July 31, 2005 for inclusion in the January 2006 version of the LMICP.

- 7) DOE's decision to abandon the Cell #1 monitoring without any involvement of the agencies in the decision and the reference to some report that we've not seen.

Fluor and DOE agreed to work with LM to determine whether the monitoring equipment may be utilized post closure. OEPA stated that if the equipment will not be used post closure, it should be properly abandoned on the cell. It is expected that this issue can be resolved by the end of February to support submittal of the document by April 15th. This delay in the LMICP submittal would require formal approval by U.S. EPA.

- 8) Need for a more rigorous approach to evaluating and addressing the OSDF vegetative cover consistent with the desing expectations.

Fluor and DOE are to suggest language for inclusion in the LMICP identifying how we believe success will be measured. The goal would be to simply state that it is our goal to have native grasses on the cells and that we would evaluate this goal at a predetermined time point (say five years after the initially seeding is completed)

and decide whether we are going in right direction or how it needs to be fixed. It was agreed that the evaluation of the vegetative cover would not be required in the near term for most of the cells, but rather post closure to determine whether the native grasses are progressing as expected by OEPA. It is expected that mutually agreeable language including evaluation schedule, criteria of success, and potential corrective actions can be established by the end of February to support submittal of the document by April 15, 2005. This delay in the LMICP submittal would require formal approval by U.S. EPA.

- 9) The RtC continually refer to a January 2006 submittal of the LMIC. Is the expectation that the next version will not be out until 1/06 following the 2/05 submittal? That wouldn't seem consistent with standard submittal procedures nor appropriate considering DOE says it intends to close the site in 2006. One would expect a final document prior to the stated closure date.

OEPA supports an interim submittal between the planned February 28, 2005 version and the January 2006 version. It was agreed that if key issues could continue to be worked (as proposed above) between the two planned submittal dates, OEPA would consider maintaining the current document schedule. U.S. EPA did indicate support but he also made a comment that a January 2006 version would still need adequate time for comment.

- 10) Will the RtCs be update for submission with February version of the document? Considering some of them are contingent upon whether information is included in the Feb version it would make it easier to review the next submittal.

Once the new language referenced above is developed, there are several responses that will require revision. The RTC document should be updated to support the new April 15, 2005 submittal proposed above. All the open issues and proposed schedule for resolutions will be listed in the cover letter so they wouldn't be commented on again immediately.

- 11) Schedule for D&D and disposal of the infrastructure supporting the aquifer restoration activities will be addressed as part of the up coming discussions regarding groundwater cleanup certification strategy and requirements between Fluor, DOE, USEPA and OEPA. The projected schedule can be included in the January 2006 version of the LMICP.