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Department of Energy
Office of Legacy Management

January 20, 2011

Mr. Timothy Fischer
U.S. Environmental Protection Agency
Region V-SRF-6J
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Dear Mr. Fischer:

Subject: Fernald Preserve Administrative Record/Information Repository – Proposal to Transition to an On-Line Version

I have received your e-mail dated October 13, 2010 describing several issues that need to be addressed prior to eliminating the hard copy of the Administrative Record/Information Repository (currently housed in the Delta Building) in lieu of the digitized copy that is available on the Department of Energy Office of Legacy Management (DOE-LM) internet. This letter serves to address the issues you have raised and includes the DOE-LM proposed path forward.

For the purposes of this discussion the Administrative Record and Information Repository, both a requirement under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), is referred to as a combined Public Environmental Information Center (PEIC) which is currently located in hard copy format at the Delta Building. As you know, the hard copy of the PEIC has been digitized and is also available on-line at <http://www.lm.doe.gov/CERCLA>

The issues raised in your e-mail (in bold font) are addressed point by point followed by the DOE-LM specific proposal.

Describe and affirm that DOE has a centrally located copy of the Administrative Record (AR)

Published guidance by USEPA and by DOE indicate that an AR can be closed once all remedial decisions have been made, there is no on-going litigation, and other site specific considerations have been addressed such as on-going activity and community interest. The last of the decision documents approved was the Final Remedial Action for Operable Unit 3 approved September 1996. With no pending litigation and little community interest, it is the position of DOE-LM that the AR at Fernald is no longer required being near the site. The official record copy of the AR resides in the DOE, Legacy Management Records Storage Facility in Morgantown, WV.

2597 B 3/4 Road, Grand Junction, CO 81503

99 Research Park Road, Morgantown, WV 26505

1000 Independence Ave., S.W., Washington, DC 20585

11025 Dover St., Suite 1000, Westminster, CO 80021

10995 Hamilton-Cleves Highway, Harrison, OH 45030

955 Mound Road, Miamisburg, OH 45342

232 Energy Way, N. Las Vegas, NV 89030

REPLY TO: Harrison Office

The AR is a part of the information repository that DOE-LM is committed to maintaining in electronic format in addition to the official paper copy.

Document the low level of public interest in the local repository

A log is kept at the Delta Building for visitors to the PEIC sign in with their name and date of visit. Since October 29, 2006 when the Fernald Preserve entered into Legacy Management, there have been four members of the public that have visited the PEIC. The last visit was April 11, 2007.

Include an analysis that the 113 (g) and (h) time frames have lapsed

CERCLA Section 113 (United States Code 42, Chapter 103, Subchapter I, Section 9613) addresses civil proceedings. CERCLA Section 113(g) deals with the period of time that certain actions may be brought; the most pertinent of which relate to natural resource damage claims (Section 113(g)(1)) and actions for recovery of costs (Section 113(g)(2)).

Natural resource damage claims were commenced, litigated, and eventually settled on November 11, 2008 with the Consent Decree between the State of Ohio and DOE. Natural resource damage claims must commence within 3 years of the date of the discovery of loss, or in the case of federal facilities, within three years of the completion of remedial actions. These time frames are not applicable given the November 11, 2008 Consent Decree.

For cost recovery claims related to remedial actions these claims must commence within 6 years after initiation of physical on-site construction of the remedial action. Cost recovery is not at issue at Fernald

CERCLA Section 113(h) addresses the timing of judicial reviews, but really speaks to federal court jurisdiction under federal law with respect to challenges to removal or remedial actions. No time frames are specified.

Given the status of the remedial actions completed and on-going under the September 1991 Amended Consent Agreement and the settlement of natural resource damage claims in November 2008, all applicable time frames for civil proceeding under CERCLA Section 113(g) & (h) have lapsed.

The following addresses the issues you raised comparing a hard copy of the PEIC versus an on-line version. An important underlying assumption when evaluating these issues is that support from a record professional is likely required regardless of whether one is using the hard copy or the on-line version. Currently, if a member of the public wants to access documents at the PEIC, this person would need a records person to first understand the desired document, perform a search of the database, and retrieve the document from the appropriate binder identified in the database.

Describe the computer based system, including:

There are two separate modes for the public to use available computer systems to ensure that information is retrievable. The first is the one available to the public at their home at our website <http://www.lm.doe.gov/CERCLA>. This web site will be enhanced by including a linked index. The second mode allows in person browsing through the work stations located at the Delta Building (current location of the PEIC) and at the Visitors Center. The paper copy would be removed and replaced by a workstation, and a person available to either guide the requestor or perform the document retrieval and printing for the requestor.

(a) How a viewer can determine which documents in the system are parts of the AR

Documents in the PEIC and online are classified as pre-record of decision and post record of decision. Pre-record of decision documents as well as the actual records of decision constitute the administrative record.

(b) How viewers who are unfamiliar with or otherwise unwilling to use the computer based system would access the AR

Currently the PEIC is open Monday through Thursday from 8:00 am to 4:00 pm or by appointment. Assistance will continue to be available to members of the public during these times at Delta and additionally when the Fernald Preserve Visitors Center is open. We will continue to make information available on site at request, in person, telephone, or written.

(c) What would happen to the existing local hard copy of the AR? DOE may want to consider storing it nearby while keeping a hard copy of the docket in the museum so that DOE can quickly retrieve hard copies if necessary for viewers described in (b) above.

DOE-LM does not plan to retain the current hard copy of the PEIC and will destroy these copies once concurrence on the path forward is received. As part of DOE-LM's proposal to eliminate the paper copy of the PEIC, DOE-LM plans to have two work stations; one located at the Delta Building and one already located in the Resource Room of the Visitors Center. A hard copy index of all available documents will be located at each work station.

(d) How would a viewer obtain a copy of a document in the computer based system?

Depending on the viewer's specific need they could print using their own work station/printer and the web based access, visit the Delta Building or Visitors Center and have the document printed using DOE's printing capability, or request the document be printed and mailed.

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(e) How would DOE furnish timely technical assistance to viewers?

Currently the PEIC is open Monday through Thursday from 8:00 am to 4:00 pm or by appointment. Assistance will continue to be available to members of the public during these times and Wednesday through Saturday from 9:00 am to 5:00 pm at the Fernald Preserve Visitors Center.

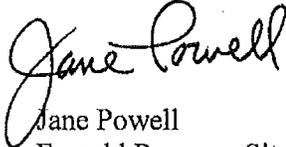
DOE-LM is proposing the following as a replacement for retaining a hard copy of the PEIC:

1. Retain the current on-line version of the PEIC. Contacts have been added to the current web page to assist users of the on-line version.
2. The current location of the PEIC is planned to have a work station dedicated to public use. The Visitor Center resource room is already available to members of the public.
3. Each work station will be equipped with a hard copy index of all documents located in the PEIC. Each work station will be equipped with a computer and internet access for on-line work. A records person will be available to assist anyone that desires support during normal business hours
4. A linked index (already in development) will be established and placed on the LM web page. This index has the capability of directly linking to documents.
5. Hard copies of documents can be requested by the public and/or provided using current printer capabilities. The Fernald staff will continue to being helpful in locating all the sources of information.

DOE believes this path forward meets the requirements and intent of applicable regulations and published guidance, but is superior to the current hard copy of the PEIC. We request your written concurrence on implementing this proposal as soon as possible.

Please call me at (513) 648-3148 or Art Kleinrath at (513) 648-3333 if you have any questions regarding this matter.

Sincerely,



Jane Powell
Fernald Preserve Site Manager
DOE-LM-20.1

cc:

- F. Johnston, Stoller
- A. Kleinrath, DOE
- T. Pauling, DOE
- T. Schneider, OEPA
- Project File (Thru W. Sumner)
- Administrative Records (Thru W. Sumner)