

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
SEP - 7 2000

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Fernald Environmental Management Project
7400 Willey Road
Hamilton, Ohio 45013

United States Department of Energy : Director's Final
Fluor Fernald, Inc. : Findings & Orders:

Respondents

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the United States Department of Energy ("Respondent DOE") and its co-operator, Fluor Fernald, Inc., ("Respondent Fluor") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") in Ohio Revised Code ("ORC") Sections 3734.02(G) and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon the Respondents DOE and Fluor, their agents, assigns, successors in interest. No change in ownership or operation of the Facility will in any way alter the Respondents' responsibilities under these Orders, except as described herein.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as in ORC Chapter 3734. and the regulations promulgated thereunder. The following terms are defined as:

- a. "Integrated Environmental Monitoring Plan" ("IEMP"), as approved by Ohio EPA on July 10, 1997 and any subsequent modifications to this plan shall consist of environmental monitoring activities to be carried out throughout the

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By Conrad Fischer 9-7-00

remedial action, including groundwater monitoring activities, which must verify adequate capture of all Fernald Facility Environmental Management Project ("FEMP") related contamination above the Operable Unit 5 Record of Decision ("ROD") specified final remediation levels.

- b. "Alternate Program" shall consist of the portions of the IEMP that pertain to groundwater characterization and monitoring as specified in Orders No. 1, 2, and 3 of these Orders.
- c. "Site" shall mean FEMP, including all areas within the property boundary of the facility and any other areas that received or potentially received or released hazardous waste or hazardous waste constituents or where hazardous waste and hazardous waste constituents have migrated from FEMP.

IV. FINDINGS OF FACT

The Director of Ohio EPA has determined the following findings of fact:

1. Respondent DOE owns and operates a former industrial facility located approximately twenty (20) miles northwest of Cincinnati, Ohio in Hamilton and Butler Counties ("Facility"). Respondent Fluor is the prime contractor for Respondent DOE and co-operator of the Facility. The Site is presently listed on U.S. Environmental Protection Agency's ("U.S. EPA") National Priorities List ("NPL") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. Sections 9601 et. seq. Respondents are investigating and remediating environmental contamination at the Site.
2. Each Respondent is a "person" as defined in ORC Sections 1.59 and 3734.01 and Ohio Administrative Code ("OAC") rule 3745-50-10(A)(86).
3. Respondent DOE generates "hazardous waste" as that term is defined by ORC Section 3734.01 and OAC rule 3745-51-03.

4. Respondent DOE notified U.S. EPA on August 8, 1980 of its hazardous waste activity at the Facility and was issued U.S. EPA Identification Number OH6890008976.
5. Respondent DOE submitted "Part A" and "Part B" of its hazardous waste installation and operation permit application pursuant to OAC rule 3745-50-41. The most recent revision of Respondent DOE's "Part B" permit application was submitted May 31, 2000.
6. There are land-based units at the Facility for which Respondents are required to implement a groundwater monitoring program described in OAC rules 3745-65-90 through 3745-65-94. Respondent DOE implemented a Resource Conservation and Recovery Act ("RCRA"), as amended, groundwater monitoring program in 1985 pursuant to OAC rule 3745-65-90.
7. The Respondents have conducted a groundwater monitoring investigation as part of its Remedial Investigation and Feasibility Study ("RI/FS") under CERCLA.
8. An objective of the CERCLA process is to characterize the nature, rate and extent of groundwater contaminant migration to the extent necessary to select and implement response action(s). This process will ensure characterization and remediation of groundwater for the entire Site, including the areas potentially affected by the land-based units identified in Finding No. 6, above.
9. During a May 7, 1993 meeting and in a May 12, 1993 letter, Respondent DOE asked Ohio EPA to approve an alternate RCRA groundwater monitoring program, as described in the Remedial Investigation Work Plans and Addenda for the Facility, to replace the existing groundwater monitoring program at the Facility.
10. Ohio EPA and the Respondents desire to avoid duplication and to integrate the groundwater monitoring activities required by OAC rules 3745-65-90 through 3745-65-94 with the site-wide RI/FS groundwater characterization as described in the Respondents' approved RI/FS Work Plans and Addenda. In order to facilitate integration and avoid duplication, Ohio EPA will review

and approve portions of CERCLA documents for purposes of ascertaining adequacy of the groundwater monitoring program.

11. Respondent DOE, through a federal assistance award administered under 10 CFR Part 600, has agreed to provide Ohio EPA with equipment and other support to electronically access environmental data for the Site through the use of the Intergraph System.
12. Pursuant to ORC Section 3734.02(G), the Director by order may exempt any person generating, storing, treating, or disposing of hazardous wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license, comply with the manifest system or with the requirements of ORC Chapter 3734.
13. On September 10, 1993, the Director issued Final Findings and Orders to Respondent DOE which facilitated the integration of Respondent DOE's RCRA groundwater monitoring obligations with the ongoing Comprehensive Environmental Response Compensation and Liability Act (CERCLA) investigation at the FEMP.
14. In accordance with the orders, Respondent DOE submitted to Ohio EPA the OU5 RI report which described the nature and extent of groundwater contamination. Ohio EPA approved the document on February 17, 1995.
15. The Record of Decision (ROD) for OU5 was issued on January 31, 1996. Ohio EPA acknowledges that through the United States Environmental Protection Agency approval of the OU5 RI Report, Respondents have met the groundwater assessment requirements of OAC rules 3745-65-90(B) through 3745-65-94; however, until the land based units are closed and the groundwater is cleaned to the final remediation levels, continual assessment of groundwater conditions are required by OAC rule 3745-65-90 (A).
16. On July 31, 1996, Respondent DOE submitted an IEMP to Ohio EPA. The IEMP described environmental monitoring activities to be carried out throughout the remedial action, including groundwater monitoring activities, which must verify adequate capture of all FEMP related contamination above the ROD specified final remediation levels.

17. The IEMP describes a process of continual assessment and revision of the IEMP with continual U.S. Environmental Protection Agency (U.S. EPA) / Ohio EPA participation.
18. In a September 25, 1997 letter, Respondent DOE asked Ohio EPA to modify the September 10, 1993 Final Findings and Orders to approve the IEMP for the facility to replace the groundwater monitoring program at the Facility described in the September 10, 1993 Orders.
19. If the Respondents conduct the monitoring activities identified in the IEMP in accordance with the Orders herein, it is unlikely that the public health and safety, or the environment will be adversely affected.

V. ORDERS

1. The Respondents shall comply with the groundwater monitoring requirements in OAC rules 3745-65-90 (A) and the groundwater sampling requirements of OAC rule 3745-65-92(A).
2. The Respondents are exempt from complying with the remainder of the groundwater monitoring requirements in OAC rules 3745-65-90 through 3745-65-94 provided that Respondents comply with these Orders.
 - a. The Respondents will implement groundwater monitoring activities in accordance with the IEMP. 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 annual review and a two-year revision cycle to accommodate the initiation of new projects and completion of others. Any changes made to the IEMP must be approved by Ohio EPA.
 - b. The Respondents shall provide Ohio EPA electronic access to the environmental databases for the Site.
3. Unless otherwise agreed to in writing, Respondent DOE will submit reports to Ohio EPA, as described and scheduled in the IEMP, to provide an operational assessment of the aquifer restoration system and an assessment

of the restoration progress. Respondent DOE will submit said reports to Ohio EPA's Office of Federal Facilities Oversight (OFFO) unless otherwise directed by Ohio EPA. In addition, Respondents will participate in meetings as requested by Ohio EPA.

4. The Respondents, by their acceptance of this exemption, agree to comply with all conditions of the exemption and acknowledge that the Respondents' failure to so comply may result in revocation of this exemption and further legal action by Ohio EPA.
5. The issuance of these Orders terminates the Director's Final Findings and Orders issued to Respondent DOE on September 10, 1993.

VI. MODIFICATIONS

These Orders may be modified by the Director upon written notification to the Respondents. The notification shall set forth the nature and basis of any modifications. Respondents reserve the right to appeal modifications made to these Orders by the Director.

VII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other authorized administrative, legal or equitable action as deemed appropriate and necessary against the Respondents for noncompliance with these Orders. Nothing herein shall be construed as an admission by Respondents or otherwise restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

In addition, no provision in this Order shall be interpreted to require obligation or payment of funds by Respondent DOE in violation of that portion of the Anti-Deficiency Act which is codified at 31 U.S.C. Sec. 1341. In the event that Respondent Fluor is unable to comply with the requirements and obligations of these Orders due to the lack of timely and/or adequate funding under its contract with Respondent DOE, the Parties agree that

Respondent Fluor shall not be required to provide funding itself, or obtain funding from other sources, in order to complete performance or comply with these orders. Noncompliance with the requirements of these Orders, whether or not the result of funding insufficiency, may, at the sole discretion of Ohio EPA, result in the revocation of the exemption provided herein. The Parties agree that Ohio EPA shall not revoke this exemption without at least thirty (30) days prior written notice to the Respondents.

VIII. TERMINATION AND SATISFACTION

These Orders shall terminate: (1) when Respondent DOE demonstrates in writing and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed and Ohio EPA's Division of Hazardous Waste Management acknowledges, in writing, Ohio EPA's acceptance of this demonstration and certification; or (2) upon written notification by Ohio EPA to Respondents that the Respondents are no longer required to maintain the groundwater monitoring systems at the FEMP.

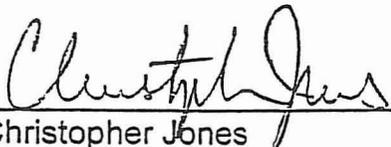
As to Respondent Fluor, all obligations and requirements of these Orders shall cease as of the effective date of the termination of its contract with the U.S. Department of Energy pertaining to the Facility; provided, however, that this section of the Orders does not absolve Respondent Fluor from any liability for any violation which occurs prior to the termination of said contract.

The certification required under this Section shall be signed by a responsible official of the Respondents. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

IX. SIGNATORIES

Each signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED:



Christopher Jones
Director

September 7, 2000

Date

X. WAIVER

The Respondents agree that these Orders are lawful and reasonable. The Respondents, by acceptance of these Orders, agree to comply with all conditions of these Orders and acknowledge the Respondents' failure to do so may result in further legal action by Ohio EPA.

The Respondents hereby waive the right to appeal or otherwise challenge the issuance of these Orders. Nothing in these Orders shall affect the Respondents' rights to seek administrative or judicial review of other final actions by the Director pursuant to ORC section 3745.04 or other applicable law.

Ohio EPA and the Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondents retain the right to intervene and participate in such appeal in support of these Orders. In such event, the Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

IT IS SO AGREED:

U.S. Department of Energy

Susan K. Beecher

By:

July 24, 2000

Date

Manager

Title

Ohio Environmental Protection Agency

Christopher Jones

Christopher Jones
Director

September 7, 2000

Date

X. WAIVER

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IT IS SO AGREED:

Fluor Fernald, Inc.


By: _____
President & CEO
Title

8/3/00
Date

Ohio Environmental Protection Agency


Christopher Jones
Director

September 7, 2000
Date

Holmes, Renee

From: Frances Kovac [Frances.Kovac@epa.state.oh.us]
Sent: Friday, September 22, 2000 10:27 AM
To: Renee.Holmes@fernald.gov
Cc: John.Ebersole@ohio.doe.gov
Subject: Fernald

~~** Confidential **~~

Renee:

As you requested, please be advised that the Director's Final Findings and Orders journalized on September 7, 2000, terminate the Final Findings and Orders on September 10, 1993, and terminate all of DOE's obligations under those Orders, except as might be otherwise provided therein. Please do not hesitate to contact me if you have any questions.

Frances M. Kovac
Staff Attorney

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