



Department of Energy

Ohio Field Office
Fernald Area Office

P. O. Box 538705
Cincinnati, Ohio 45253-8705
(513) 648-3155



APR 28 1997

DOE-0870-97

Ms. Martha J. Raymond, Department Head
Technical and Review Services
Ohio Historic Preservation Office
567 East Hudson Street
Columbus, Ohio 43211-1030

Dear Ms. Raymond:

PROGRAMMATIC AGREEMENT FOR ARCHAEOLOGICAL INVESTIGATIONS, DEPARTMENT OF ENERGY, FERNALD ENVIRONMENTAL MANAGEMENT PROJECT

The Department of Energy, Fernald Environmental Management Project (DOE-FEMP) has received from the Advisory Council on Historic Preservation a signed Programmatic Agreement for archaeological investigations at the DOE-FEMP. Enclosed is a copy of this agreement.

In accordance with this agreement, the first report to be submitted to your office and the Advisory Council will be due on September 2, 1997. Thereafter, reports will be submitted on an annual basis.

Again, we appreciate your cooperation in reaching this agreement. If you have any questions, please contact Ed Skintik, at (513) 648-3151.

Sincerely,

David R. Kozlowski
Associate Director,
Office of Safety & Assessment

FEMP:Skintik

Enclosure: As Stated

cc w/enc:

D. Carr, FDF
J. Homer, FDF
C. Little, FDF
J. Schomaker, FDF
W. Woods, FDF

**Advisory
Council On
Historic
Preservation**

FERNALD _____
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1100 Pennsylvania Avenue, NW, #809
Washington, DC 20004

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MAR 10 1997

Mr. David Kozowski
Associate Director,
Office of Safety and Assessment
Fernald Area Office
P.O. Box 538705
Cincinnati, OH 45253-8705

REF: Programmatic Agreement for archaeological investigations, Fernald Site.

Dear Mr. Kozowski:

Enclosed is your copy of the executed Programmatic Agreement for the referenced program. By carrying out the terms of the Agreement, you will have fulfilled your responsibilities under Sections 106 and 110 of the National Historic Preservation Act and the Council's regulations. Please forward a copy of the executed Agreement to the Ohio State Historic Preservation Officer.

We appreciate your cooperation in reaching this Agreement.

Sincerely,



Tom McCulloch
Office of Planning and Review

Enclosure

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF ENERGY, FERNALD OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE OHIO HISTORIC PRESERVATION OFFICE
REGARDING ARCHEOLOGICAL INVESTIGATIONS
AT THE
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT**

WHEREAS, the U.S. Department of Energy, Fernald Office (DOE-FEMP), proposes to administer response actions and/or associated activities at the Fernald Environmental Management Project (FEMP) as authorized by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended (42 U.S.C. §§9601, *et seq.*); and

WHEREAS, response actions and/or associated activities include those actions required to fulfill DOE-FEMP's responsibility under CERCLA for the FEMP property for the protection of public health, welfare and/or the environment (e.g., remediation of contaminated soil, installation of new structures; roads, facilities and/or ground intrusive technology demonstrations).

WHEREAS, this Programmatic Agreement will cover the whole of the FEMP property including those designated and bounded subareas that are categorized as follows: (1) have previously been surveyed for historic properties; (2) that are undisturbed/uncontaminated and possess the potential to be surveyed; and (3) excluded from field investigations due to previous disturbance and/or elevated levels of surface contamination (see Attachment A).

WHEREAS, DOE-FEMP will ensure that the terms of this agreement will be carried out for all response actions and/or associated activities conducted at the FEMP, either on or off-property.

WHEREAS, DOE-FEMP has determined that implementation of response actions and/or associated activities at the FEMP property may have an effect on historic properties and has consulted with the Advisory Council on Historic Preservation (Council) and the Ohio Historic Preservation Office (OHPO) pursuant to 36 CFR §800.13 implementing Section 106 of the National Historic Preservation Act (NHPA) [16 §U.S.C. 470 (f)].

NOW THEREFORE, DOE-FEMP, Council, and OHPO agree that the implementation of response actions and/or associated activities at the FEMP shall be administered in accordance with the following stipulations to satisfy DOE-FEMP's NHPA Section 106 responsibility for all response actions and/or associated activities pertaining to the FEMP property.

STIPULATIONS

- A. DOE-FEMP will evaluate all areas impacted by response actions and/or associated activities using the attached map, to determine what historical property investigations will be needed based on the following criteria.
- B. For all subareas within the FEMP property boundaries that contain prior disturbance into the sterile soil layer, or contain levels of surface contamination greater than 1000 dpm/100 cm² (disintegrations per minute per 100 square centimeters) as identified in the attached map, a literature search, examination of aerial photographs, and the application of a predictive model will be conducted. The predictive model will utilize existing archaeological data from the FEMP and surrounding area to determine the likelihood of additional archaeological sites occurring in previously disturbed and contaminated areas as well as any conclusions that can be drawn about spatial distribution, physical characteristics and use of the sites. A report package, containing the results, will be submitted to the OHPO and the Council within 180 days of the signing of this Programmatic Agreement.
- C. For response actions and/or associated activities implemented in those subareas within the FEMP site boundaries that have previously been surveyed and contain no historic properties, DOE-FEMP will submit a list of activities implemented to OHPO annually (refer to Stipulation G). If a previously surveyed area contains eligible historic properties and has the potential of being adversely affected due to the implementation of response actions and/or associated activities, DOE-FEMP will consult with OHPO and, (if applicable) the Council, with regard to the need to conduct Phase III investigations. DOE-FEMP will seek ways to avoid or reduce the adverse affects on the Historic Properties pursuant to 36 CFR 800.5(e).
- D. For response actions and/or associated activities conducted within the FEMP site boundaries within project areas that have not been previously surveyed, not previously disturbed into the sterile soil layer, and/or do not contain levels of surface contamination greater than 1000 dpm/100 cm², DOE-FEMP will determine the extent of historical property investigation as follows (see attached map).
 - D.1 For response actions and/or associated activities within the FEMP site boundaries implemented in project areas that have not been surveyed, DOE-FEMP will identify historic properties through literature review and a Phase I survey and Phase II investigation, if required. If the area surveyed is determined by DOE-FEMP to contain eligible historic properties, efforts to avoid the impacts will be employed. If impacts are avoidable, DOE-FEMP will proceed with the project and attach the survey report to the annual report (refer to Stipulation G).

If avoidance of the historical property is not feasible, DOE-FEMP will submit a report package and recommendation to the OHPO for a thirty (30) day review per NHPA Section 106 guidelines. The report will contain the following information: introduction describing project and delineating project area, environmental overview, cultural

overview, literature review, research design and methods, results of the Phase I survey and Phase II investigation, if conducted, and site descriptions. If OHPO concurs with DOE-FEMP that the property is ineligible, response actions and/or associated activities will proceed as designed; however, if OHPO concurs with DOE-FEMP that there is the potential for eligible historic properties, DOE-FEMP will conduct a Phase II investigation followed by a thirty (30) day review of the results and consultation with OHPO to discuss further actions. In limited circumstances, DOE-FEMP will proceed directly from a Phase I survey to a Phase II investigation in consultation with the OHPO.

- D.2 For response actions and/or associated activities conducted within the FEMP property boundaries within project areas determined not to contain eligible historic properties, DOE-FEMP will proceed with project activities and attach a copy of the Phase I survey and Phase II investigation, if conducted, to the annual report.
- E. For response actions and/or associated activities conducted outside the FEMP site boundaries, DOE-FEMP will consult with OHPO, as needed, and DOE-FEMP will consider the area's historical significance by conducting, as appropriate, a Phase I survey, a literature review, examination of aerial photographs, and the employment of a predictive model.
- E.1 For response actions and/or associated activities outside the FEMP site boundaries implemented in project areas that have not been surveyed, and DOE-FEMP determines that an identification-level survey is needed, DOE-FEMP will identify historic properties through literature review and a Phase I survey and Phase II investigation, if required. If the area surveyed is determined by DOE-FEMP to contain eligible historic properties, DOE-FEMP will implement efforts to avoid impacts to historic properties. If impacts are avoidable, DOE-FEMP will proceed with the project and attach the survey report to the annual report (refer to Stipulation G).

If impact avoidance is not feasible, DOE-FEMP will submit a report package and recommendation to OHPO for a thirty (30) day review containing the following information: introduction describing project and delineating project area, environmental overview, cultural overview, literature review, research design and methods, results of the Phase I survey and Phase II investigation, if conducted, and site descriptions. If OHPO concurs with DOE-FEMP that no eligible properties exist, activities will proceed as designed; however, if OHPO concurs with DOE-FEMP that historic properties exist within the area in question, DOE-FEMP will conduct a Phase II investigation followed by a thirty day (30) review of the results and consultation with OHPO to discuss further actions. In limited circumstances, DOE-FEMP will proceed directly from a Phase I survey to a Phase II investigation upon verbal concurrence from OHPO.

- E.2 For response actions and/or associated activities outside the FEMP property boundaries within project areas determined not to contain eligible historic properties, DOE-FEMP will proceed with project activity and attach a copy of the Phase I survey and Phase II investigation, if conducted, to the annual report containing the results of the literature review, aerial photograph investigations, and the predictive model employed for each project area (refer to Stipulation G).

**Programmatic Agreement Regarding
Archeological Investigations at the FEMP**

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- ~~F. For those projects implemented that affect areas inside and outside the FEMP boundaries simultaneously, DOE-FEMP will follow stipulations D and E of this Agreement.~~
- G. DOE-FEMP will submit report packages to OHPO and Council annually containing the following information for the year: (1) a list of all response actions and associated activities that were initiated; (2) a map showing locations of the response actions and associated activities; (3) a list of response actions and/or associated activities conducted in previously surveyed areas (Stipulation C); (4) identified surveys resulting in no eligible properties (Stipulation D.2 and E.2); (5) identified eligible properties that were avoided when implementing response actions and/or associated activities (Stipulation D.1 and E.1); (6) a list of all Phase I-III reports generated; and (7) a map showing locations of the project areas (for item number 6) and all properties identified. DOE-FEMP will ensure that all applicable Phase I reports generated within the last year and not previously submitted to OHPO for review will be attached to the annual report. The first annual submittal will occur on July 1, 1997 and will be submitted at the beginning of July each year until the conclusion of remediation at which time DOE-FEMP will notify OHPO of the completion of remedial actions at the site.
- H. DOE-FEMP will place this Programmatic Agreement in the Administrative Record for Operable Unit 5 located at the FEMP Public Environmental Information Center, 10845 Hamilton-Cleves Road, Harrison, Ohio 45030 and at any other location to be agreed upon by DOE-FEMP, the Council and OHPO for future use and reference.
- I. In the unlikely event that the implementation of response actions and/or associated activities affect an already identified or previously undiscovered historic property inside or outside the FEMP property boundaries, DOE-FEMP will consult with the Council and OHPO, pursuant to 36 CFR §800.11, to determine an appropriate course of action. DOE-FEMP will avoid, to the extent practicable, and minimize adverse effects to the historic property until consultation has been completed. DOE-FEMP will utilize the existing site procedures to assist in compliance with this stipulation.
- J. DOE-FEMP will curate all artifacts excavated and removed during any Phase I survey, Phase II investigation, Phase III data recovery, and/or resulting from inadvertent discovery to an appropriate curation facility pursuant to guidelines established at 36 CFR 79. DOE-FEMP will remove human remains from a project area to ensure their protection upon initiation of consultation with all appropriate Native American Tribes and groups. Material determined to qualify as 'cultural items' under the Native American Graves Protection and Repatriation Act (NAGPRA) and its implementing regulations (43 CFR Part 10), and which is to be repatriated to an appropriate tribe, shall be done so in accordance with the provisions of the law and the implementing regulations. Cultural items include human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony, as defined in NAGPRA.
- K. Any Party to this Programmatic Agreement may request in writing that it be amended, whereupon the Parties will, in accordance with 36 CFR §800.13, consult to consider such amendment.

**Programmatic Agreement Regarding
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- ~~L. Any Party to this Programmatic Agreement may terminate it by providing thirty (30) days written notice to the other Parties, provided that the Parties agree to consult during the period prior to termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination, DOE-FEMP will comply with 36 CFR §§800.4 through 800.6 regarding individual actions covered by this Programmatic Agreement.~~
- M. If DOE-FEMP and OHPO cannot agree on any provision of this agreement, DOE-FEMP, after determination that the dispute cannot be resolved, shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of such documentation, Council will provide DOE-FEMP with recommendations which DOE-FEMP will take into account in reaching a final decision regarding the dispute. Any recommendation or comment provided by Council will be understood to pertain only to the subject of the dispute; DOE-FEMP's responsibility to carry out all actions under this agreement that are not the subjects of the dispute will remain unchanged.
- N. DOE-FEMP will provide information to the public through DOE-FEMP's Public Involvement program. At any time during implementation of the measures stipulated in this agreement, should an objection to any such measure be raised by a member of the public, DOE-FEMP will take the objection into account and consult as needed with the objecting party, OHPO, the Council, and others as needed to resolve the objection.

**Programmatic Agreement Regarding
Archeological Investigations at the FEMP**

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By-execution of this Programmatic Agreement, the Parties agree that performance by DOE-FEMP of the activities identified herein will fully satisfy DOE-FEMP's responsibilities under Section 106 of the National Historic Preservation Act as those responsibilities pertain to the response and/or associated activities at the FEMP site.

The signatories to this Programmatic Agreement agree that each has the requisite authority to sign on behalf of the represented entity.

Advisory Council on Historic Preservation

By: John W. Steele

Date: 3/6/97

U.S. Department of Energy - Fernald Office

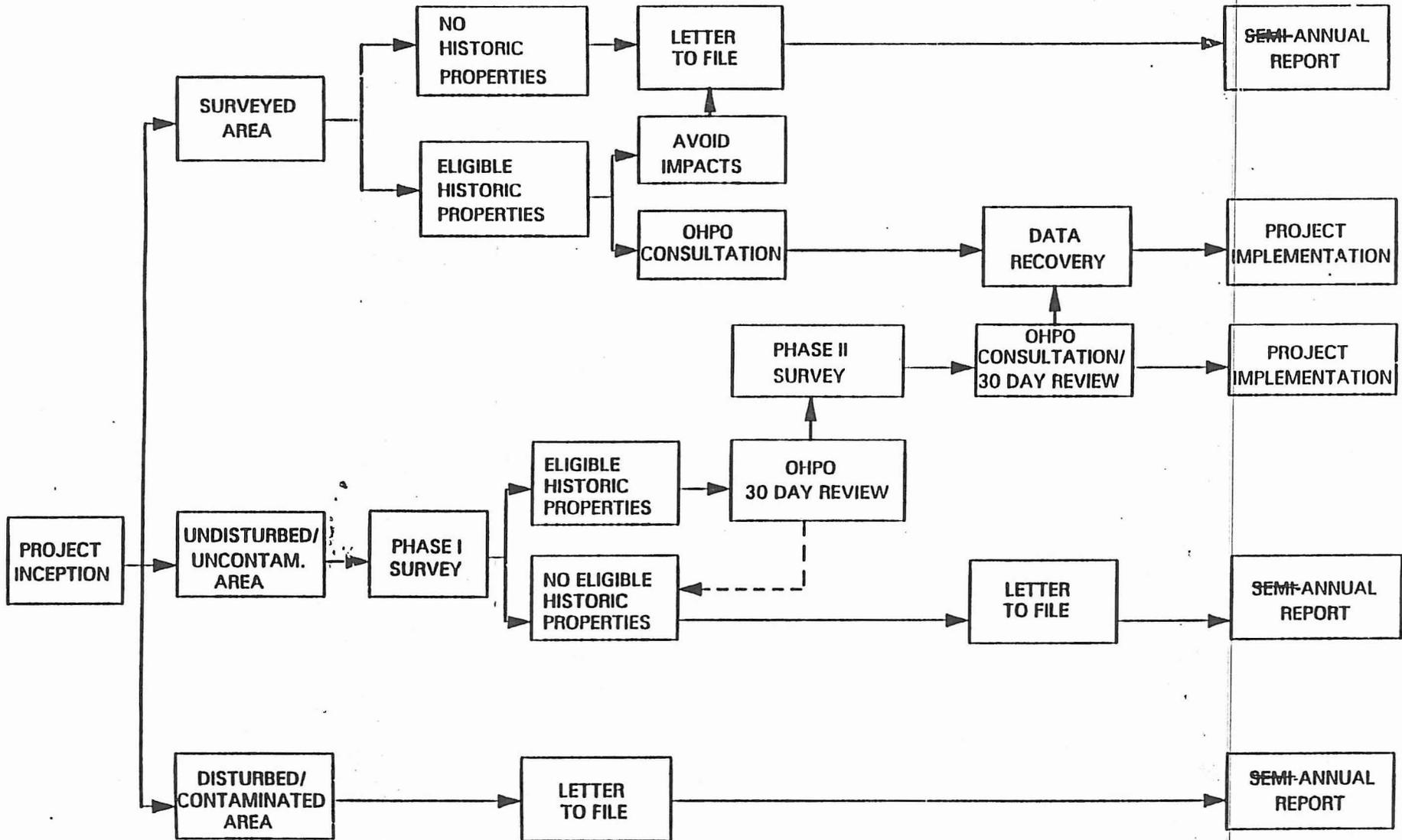
By: Jack R. Craig
Jack R. Craig, Director

Date: 10/2/96

Ohio Historic Preservation Office

By: Martha J. Raymond

Date: 12/17/90



**CULTURAL RESOURCE MANAGEMENT
PROGRAMMATIC AGREEMENT FLOW DIAGRAM
FOR BOTH ON AND OFF PROPERTY PROJECTS**