1304- 0611060002

**Operation and Maintenance (O&M) Plan**
for the
**Implementation of Institutional Controls**
at the
***1998 Mound Plant Property***

U.S. Department of Energy
Miamisburg Closure Project

Phase I Parcel update, Rev. 1 (2/17/04)

**INTRODUCTION:**

This Operation and Maintenance (O&M) Plan provides the details for the implementation of the institutional controls to support Record of Decisions (ROD) issued for the phased disposition of the former U.S. Department of Energy (DOE) Mound Plant located in Miamisburg, Ohio. **Attachment 1** to this O&M Plan is DOE Policy # 454.1, entitled "Use of Institutional Controls," issued on April 9, 2003. This Policy applies to the institutional controls associated with those land parcels that have completed the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) Section 120(h) process for property transfer.

Throughout this document, the term "1998 Mound Plant Property" is used (i.e., in lieu of more generic references to the Mound Plant or the Miamisburg Closure Project) so that it is clear to all readers that the requirements outlined in the O&M Plan apply to a specific geographic area, namely, all properties originally owned by the DOE when the Mound Plant site was an active production facility. A legal description of the DOE property was generated in May 1982 by the firm of Lockwood, Jones & Beals; that legal description describes an area of 305.116 acres "more or less." **(see attachment 2)**. This O&M Plan defines the DOE requirements to implement institutional controls applied to those 305.116 acres of property. The term "1998 Mound Plant Property" is also a convenient way to describe the property subject to of the "Sales Contract by and between the USDOE and the Miamisburg Mound Community Improvement Corporation, executed on January 23, 1998". In that 1998 sales contract, the DOE made a promise to sell all real property contained within the 1982 legal description (excluding certain property improvements [e.g., buildings] that the DOE had to remove as part of the environmental cleanup mission). The sales contract stated that DOE would convey property, via quit claim deed, for "discrete parcels, subject to the CERCLA Section 120(h)" process. Once property has been declared excess to the DOE's needs, it can begin the CERCLA 120(h) process for land transfer, beginning with the identification of a discrete land parcel. **Attachment 3** to this O&M Plan provides a site parcel map. The "'Work Plan for Environmental Restoration of the DOE Mound Site – The *Mound 2000* Approach" (Final, February 1999) describes the process that DOE and its regulators follow to address the environmental issues associated with the restoration of the 1998 Mound Plant Property, DOE's exit from the site, and deletion of the site from the National Priorities List (NPL).

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This O&M Plan for the implementation of institutional controls at the 1998 Mound Plant Property is designed to be a dynamic document, which can be revised, as necessary, with approval of the DOE, the U.S. Environmental Protection Agency (USEPA), the Ohio Environmental Protection Agency (OEPA) and the Ohio Department of Health (ODH), or their successor agencies. DOE is responsible for updating and implementing this O&M Plan, and may initiate revisions as it deems necessary. USEPA, OEPA and ODH must approve all revisions. As the DOE continues to perform environmental remediation activities at the 1998 Mound Plant Property, DOE and its regulators continue to refine plans for post-closure activities that may be warranted in order to maintain protection of human health and/or the environment. This O&M Plan for institutional controls, or other appropriate O&M Plans (e.g., associated with an operational remedy, such as groundwater collection & treatment) should incorporate those post-closure activities that are necessary to support the remedy, including routine maintenance activities (e.g., to maintain the integrity of groundwater monitoring wells). As DOE and its

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regulators solidify these post-closure activities, the activities will be incorporated into the appropriate enforceable document, which could include this O&M Plan for institutional controls.

## SUMMARY OF INSTITUTIONAL CONTROLS

A potential institutional control violations can be discovered by any party and at any time (i.e., not just by DOE, and not just during the DOE annual compliance assessment required under this O&M Plan). Deed restrictions applied to parcels to-date include: 1) Maintenance of industrial/commercial land use; 2) Prohibition against residential use; 3) Prohibition against the use of groundwater; 4) Site access for federal and state agencies for the purpose of maintaining the CERCLA remedy; and 5) Prohibition against the removal of soils from the DOE property (as owned in 1998) without approval from the United States Environmental Protection Agency (USEPA), the Ohio Department of Health (ODH), and the Ohio Environmental Protection Agency (OEPA). The quit claim deeds, from the Records of Decision for the five parcels at the 1998 Mound Plant Property that have completed the CERCLA 120(h) process for property transfer, may be found in **Attachment 4** to this O&M Plan.

This O&M Plan describes those steps that DOE will take to monitor the effectiveness of all institutional controls applied to all land parcels. The DOE reserves for itself, and grants to the State of Ohio and the USEPA, enforcement authority of the deed restrictions, as well as the authority to recoup costs (including legal fees) from a violator of a deed restriction. The quitclaim deed affirms that delays in enforcing, or failure to enforce, the deed restrictions do not constitute a waiver of the deed restriction or the ability to enforce in the future. The deed restrictions remain "attached" to the land parcel through subsequent property transfers. The quit claim deed includes, as an attachment, the "Environmental Summary – CERCLA 120(h) Notice of Hazardous Substances," which is the final document prepared under the Mound 2000 process for transfer of property. As an attachment to the quitclaim deed, the Environmental Summary is a critical piece of information that must be passed on to subsequent property owners to ensure that "corporate memory" is retained on the rationale behind each deed restriction. By recording the quitclaim deed (including the Environmental Summary) with the Montgomery County Recorder's Office, this ensures that future property owners are aware of the deed restrictions associated with the 1998 Mound Plant Property.

It is important to recognize that once DOE determines that an institutional control has been violated, the DOE will refer the matter to the U.S. Department of Justice (DOJ) for action. The DOJ may take immediate action (e.g., damages, injunction), or the DOJ may delay action (e.g., pending the results of further investigation by DOE), or the DOJ may take no action. In the event that a third party believes that DOJ's action is insufficient, the State of Ohio and the USEPA also have the authority to take legal action against the DOE through the ROD or, secondarily, against the property owner through the enforcement authority over the deed restrictions granted via the quit claim deed.

This O&M Plan applies to the institutional controls that comprise all, or part of, the remedy for all land parcels at the 1998 Mound Plant Property that have completed the CERCLA 120(h) process for property transfer. Additional remedies (e.g., Operable Unit 1 groundwater collection & treatment system, Phase I Parcel groundwater monitoring plan) associated with one or more land parcels are currently described in other, enforceable documents that are separate from this

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O&M Plan for Institutional Controls. As the environmental remediation proceeds at the 1998 Mound Plant Property, as a whole, the DOE will likely pursue consolidation of such remedy-specific enforceable documents under the umbrella of a single "site-wide" O&M Plan.

As a part of DOE's requirement to perform a five-year review of the effectiveness of CERCLA remedies, DOE must evaluate whether there are opportunities to optimize the long-term performance of the remedy or reduce life-cycle costs. The DOE has engaged in several technology demonstrations at the 1998 Mound Plant Property, in order to select the most appropriate remedial design. Each technology demonstration results in a decision, by DOE, to either employ that technology or to search for an alternative method to attain the remedial objective. For purposes of this O&M Plan for the implementation of institutional controls, specific technologies to monitor and enforce institutional controls are not prescribed in the parcel RODs. DOE continues to review technologies that may aid in the detection of institutional control violations, and the results of these reviews are published in a lessons learned report. DOE also documents the effectiveness of the institutional controls in a publicly available report that is prepared in accordance with a later section of this O&M Plan.

**ANNUAL COMPLIANCE ASSESSMENT:**

The following procedure provides additional details on the annual reviews to be conducted by the DOE (or its designee). An assessment of the effectiveness of the institutional controls (annual compliance assessment) applied to the 1998 Mound Plant Property will be conducted annually, culminating in a report to the USEPA, OEPA and ODH no later than June 13 of the year in which the review was conducted. A copy of DOE's final report is available to the public. The DOE may petition to change the frequency of this review period, after the DOE's Environmental Restoration mission is complete at the 1998 Mound Plant Property. The DOE may also, at any time, conduct a review of the institutional controls if there is reason to believe a degradation of any control has occurred.

**MODIFICATION OF THIS O&M PLAN:**

As situations dictate, any of the agencies (i.e., DOE, USEPA, OEPA, ODH) may request, in writing, of all others that a modification to this O&M Plan is warranted. The other parties shall respond within 30 days of the written request. Resolution of any dispute as a result of the request will be made in accordance with the Dispute Resolution section of this O&M Plan. DOE's report to the regulators on the effectiveness of the institutional controls will list any such requests, and note any changes that occurred to the O&M Plan since the previous reporting period as a result of any requests for modifications.

**DISPUTE RESOLUTION:**

If a dispute arises between the USEPA, or the OEPA/ODH and the DOE, Section XXII, "Resolution of Disputes," of the July 15, 1993 Federal Facilities Agreement (FFA) will be implemented. The OEPA will represent all State agencies during the dispute resolution process. The FFA defines the DOE, USEPA and OEPA responsibilities and authorities. At some point in

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time, if the FFA is terminated, it will be necessary to enter into a new legally binding agreement between DOE, the USEPA and the State of Ohio. However, for now, the FFA (including its Dispute Resolution clause) is the governing document for all DOE-EM activities undertaken at the 1998 Mound Plant Property.

**REVIEW OF EFFECTIVENESS OF O&M PLAN:**

Every five (5) years, the effectiveness of this O&M Plan for Institutional Controls shall be assessed by the DOE in consultation with the USEPA, OEPA and ODH. Any violations of institutional controls in particular, instances of egregious violations or repeated violations by the same party may indicate that a modification to the O&M Plan is warranted. The timing of the 5-year review of the effectiveness of the O&M Plan should be consistent with the CERCLA 5-year review of the remedy(s) associated with the 1998 Mound Plant Property, as a whole. As stated previously, any of the agencies (i.e., DOE, USEPA, OEPA, ODH) may request, in writing, of all others that a modification to this O&M Plan is warranted.

**PROCESS TO DETERMINE IF AN INSTITUTIONAL CONTROL HAS BEEN VIOLATED:**

Attachment 5 provides a logic diagram of the process DOE will follow in order to determine if an institutional control has been violated. The following narrative is structured to walk the reader through the flowchart step by step.

PERFORM VISUAL INSPECTION OF PROPERTY, DISCUSS WITH LOCAL GOVERNMENT OFFICES AND PERFORM RECORDS REVIEW

The DOE, or its designated agent, will perform a visual inspection of the property to determine if: (1) new facilities have been constructed; (2) obvious improvements have been made to the property; and/or (3) property usage has changed. This inspection shall be conducted by utilizing a site inspection supported with aerial photographs and other visual aids (e.g., drawings, maps, photographs taken from ground-level), as necessary. In the event that a preliminary review by DOE of each parcel, performed prior to the formal DOE inspection conducted in the presence of the USEPA, OEPA and ODH, indicates that a new series of aerial photographs would add little value to the inspection report, the DOE may request the regulators' permission to use historical aerial photographs for the formal inspection. An example where the use of historical aerial photos would be considered acceptable is if it is readily apparent that no soil has been removed from the 1998 Mound Plant Property, no new groundwater wells have been installed, and land use has remained consistent with an Industrial/Commercial use scenario. The DOE will not perform digitized aerial surveys on an annual basis; however, such surveys may be an important part of the five-year reviews required by CERCLA, or in order to confirm that an institutional control has been violated. Non-digitized aerial surveys would generally be conducted in the years in which a digitized survey is not conducted.

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The DOE will contact the USEPA, OEPA and ODH thirty (30) days in advance (or as otherwise agreed to) of the formal on-site inspection. The ODH has regulatory authority over radioactive contaminants in the soil; the OEPA is the lead regulator on everything else. The previous inspection should provide the basis for determining the nature and extent of property improvements or changes in land use. All findings will be documented in a report prepared by DOE.

At a minimum, the DOE, or its designated agent, will contact the offices of the City of Miamisburg Engineer and Planner at 10 N. First Street, Miamisburg, Ohio, to obtain information regarding building, street opening and occupancy permits as well as zoning variances issued for properties that fall within the boundaries of the 1998 Mound Plant Property.

Miamisburg City Engineer: (937) 847-6531
Miamisburg City Planner: (937) 847-6532

The DOE may contact organizations other than the City of Miamisburg as a part of the formal inspection process. For example, the DOE may also contact: (1) the landowner to determine if he/she requires property occupants or visitors to comply with all institutional controls associated with that property (e.g., a landowner may choose to include parcel-specific deed restrictions in a property lease executed with a third party or tenant); (2) Montgomery County Combined Health District to determine if landowners have filed a permit to install a private water system;(3) OEPA Drinking and Groundwater Division to determine if landowners have installed a groundwater well system that serves 25 people for more than 60 days a year; or (4) Ohio Division of Natural Resources, Division of Water, to determine if landowners (or agents acting on their behalf, such as well-drilling companies) have filed Water Well Log Reports. The above list is not meant to be all-inclusive; rather, it is provided to show that there are a variety of sources of publicly available information that could be a useful part of DOE's inspection process for individual land parcels.

**Attachment 6** to this O&M Plan is a sample of the checklist that DOE will complete during the formal inspection of each parcel with the USEPA, OEPA and ODH. The checklist may be revised, as appropriate, for individual land parcels to best capture and document the data required to determine if all institutional controls are effective.

IS THERE INDICATION OF A POTENTIAL VIOLATION OF INSTITUTIONAL CONTROLS?

After all of the above data has been compiled, a review will be conducted by the DOE (or its agent), to determine if additional detailed information is required. If there is no indication of a potential violation of institutional controls, a report will be compiled and submitted by the DOE to the USEPA, OEPA and ODH.

DISCUSS WITH LANDOWNER

If there is an indication that a potential violation of an institutional control may have occurred, or if additional information is required to ensure compliance with the deed restrictions, the DOE (or its agent) will contact the landowner (and local property management staff, if the property owner

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is located offsite) to obtain a better understanding of what activities are conducted on the property in order to determine if those activities were in violation of any institutional control. Additionally, DOE should determine if the necessary building, street opening or occupancy permits were obtained from the City of Miamisburg for each property improvement. If permits were issued for the improvements, copies should be reviewed by the DOE. If soil has been relocated to another portion of the 1998 Mound Plant property, and documentation exists of that relocation, DOE should review that documentation as part of its discussion with the landowner. However, the landowner(s), or any other party(s), are not required to document the movement of soil throughout the 1998 Mound Plant Property. All of the above contacts and records reviews should be documented in DOE's report.

IS USE CONSISTENT WITH INSTITUTIONAL CONTROLS IN THE ROD?

After discussions with the landowner and reviews of available documentation, a decision will be made by the DOE regarding the status of compliance with the institutional controls listed in each parcel's ROD. Each parcel may have slightly different deed restrictions, based on its location in the 1998 Mound Plant Property. Refer to **Attachment 4** of this O&M Plan for the quitclaim deed from the ROD for all land parcels that have completed the CERCLA 120(h) process for property transfer to-date. As stated previously, it is imperative to consult individual parcel RODs to have a full understanding of all deed restrictions associated with a particular parcel. If DOE determines that the landowner has failed to comply with the deed restrictions applied to his property, the DOE will refer the matter to the DOJ for enforcement. The DOE will also notify USEPA, OEPA and ODH upon referral of the matter to DOJ.

WAS SOIL REMOVED FROM THE 1998 MOUND PROPERTY?

If, during the assessment of the status of the institutional controls, it is determined that soil was removed from the 1998 Mound Plant Property, the DOE will contact both OEPA and the ODH, or their successor agencies, to determine if regulatory approval had been granted for the removal of that soil. **Attachment 7** to this O&M Plan provides the protocol that the OEPA, ODH and USEPA will follow, upon DOE's request (made on behalf of a landowner) for permission to remove soil from the 1998 Mound Plant Property. If DOE discovers that soil has been removed from the 1998 Mound Plant Property without approval from the State of Ohio and USEPA, DOE will refer the matter to DOJ for enforcement. DOE will also notify the OEPA, ODH and USEPA upon referral of the matter to DOJ. In addition, DOE will attempt to locate the soil that is known to have been removed from the Mound Site and evaluate the impact.

**Attachment 8** to this O&M Plan provides the protocol that the USEPA and OEPA will follow; upon DOE's request (made on behalf of a landowner) to install a groundwater well on the 1998 Mound Plant Property. In a manner similar to the above-described process to request removal of soil, if the DOE discovers that a groundwater well has been installed, without prior approval from the USEPA and OEPA, DOE will refer the matter to the DOJ for enforcement, and will also provide courtesy notifications to the USEPA, OEPA and ODH of the referral. Regardless of whether the landowner knowingly or unknowingly, or directly or indirectly, allowed a violation of an institutional control to occur, the DOE will refer the matter to the DOJ for enforcement action. Violations that appear to be egregious, or that occur repeatedly by the same

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party, may warrant both correction of the violation as well enforcement of a penalty in order to discourage repeat violations.

NOTIFY DEPARTMENT OF JUSTICE AND USEPA, OEPA AND ODH

If referral to the DOJ is warranted (as discussed above), DOE will initiate telephone contact as soon as possible with the Dayton Office of the U.S. Attorney General (AG). This verbal contact will be followed up with a written request by DOE for the AG's review and action; copies of DOE's written request will be provided to USEPA, OEPA, and ODH. DOE's referral to the AG will seek initiation of any legal and/or equitable action against the violator.

PREPARE REPORT AND SUBMIT TO USEPA, OEPA AND ODH

After the review of the effectiveness of the institutional controls has been completed, a short report will be generated by DOE and submitted to the USEPA, OEPA and ODH. This report must render a decision concerning the effectiveness of the institutional controls, as well as contain a description of the actions taken, summary of findings, a list of personnel contacted and summary of discussion topics. The report should also include a summary table of any institutional control violation and its resolution. Over time, such a table will help to identify any repeat violations, indicating that a different management approach to institutional controls may be warranted. The report should also summarize documents reviewed (e.g., permits) and include visual aids, as appropriate (e.g., photos, drawings, maps). An outline of the report is provided as **Attachment 9** to this O&M Plan. The report will be due by the 13th of June annually (unless a change in review and reporting frequency is petitioned by the DOE and approved by the USEPA, OEPA and ODH).

**EXPANSION OF SCOPE DEFINED IN O&M PLAN:**

Since the remedy for all parcels transferred to-date has been institutional controls in the form of deed restrictions, this O&M Plan describes only those DOE actions required to monitor, maintain and enforce the institutional controls. If the remedy for land parcels include components other than, or in addition to, institutional controls (e.g., monitored natural attenuation engineered control such as a groundwater pump & treat remedy, monitored natural attenuation), O&M requirements for those remedies will be described in an enforceable document that is separate from this O&M Plan for Institutional Controls. At site closure, DOE will combine all O&M requirements for engineered and institutional controls into a single, enforceable "site-wide" O&M Plan.

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**PUBLIC EDUCATION PROGRAM:**

In the interest of prevention and protectiveness, a DOE Public Education Program related to the institutional controls is a necessary part of this O&M Plan. At a minimum, DOE should place announcements in local newspapers on an annual basis, reminding landowners and all Miamisburg residents the institutional controls applied to land parcels that comprise the original DOE 1998 Mound Plant Property. The public announcement should specifically include a description of each deed restriction and the areas of the 1998 Mound Plant Property to which

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each restriction applies, the rationale behind each restriction, the consequence to any party that violates a deed restriction, and the names/phone numbers of individuals within DOE that can answer specific questions/address any concerns landowners or city residents may have.

There may be additional components of the DOE Public Education Program, however, these components are outlined in the "Long-Term Stewardship Plan for the U.S. DOE Miamisburg Closure Project" (Rev. 0 dated January 28, 2003). This O&M Plan describes only those components that the DOE is required to implement in order to monitor, maintain and enforce the institutional controls, and which are enforceable by the USEPA, OEPA and ODH.

**USEPA GUIDANCE ON O&M PLAN COMPONENTS:**

The USEPA, Office of Solid Waste and Emergency Response (OSWER), Guidance # 9200.1-37FS, EPA 540-F-01-004, dated May 2001, lists thefollowing typical elements in an O&M Plan. The following elements have been selected from that list as appropriate for the future "site-wide" O&M Plan at the time of site closure :

(1) Designation of the organizational unit of the government responsible for O&M;

(2) Identification of the available State funding mechanisms for O&M activities;

(3) Milestone dates for State assumption of O&M responsibilities;

(4) Criteria for determination of Operational and Functional (O&F);

(5) Description and duration of O&M activities;

(6) Summary of O&M staffing needs (including training and certification requirements);

(7) Summary of O&M performance standards;

(8) Contingency plan for handling abnormal occurrences;

(9) Safety requirements for O&M activities;

(10) Equipment and material requirements:

(11) Estimates of annual O&M costs;

(12) Reporting requirements;

(13) Conditions for O&M termination;

(14) Description of site use and disposition of facilities following completion of O&M;

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(15) Strategy for modifying existing site health and safety plan (HASP) ad quality assurance project plan (QAPP); and

(16) Access and property issues.

As stated previously, as the environmental remediation proceeds at the 1998 Mound Plant Property, the DOE will consolidate of all remedy-specific O&M Plans under the umbrella of a single, enforceable site-wide O&M Plan. At that time, the above-listed elements from the USEPA's OSWER Guidance # 9200.1-37FS will be fully-considered by DOE, and its regulators, in order to determine which elements should be included in (or excluded from) , based upon each component's relevance to the CERCLA remedies associated with the 1998 Mound Plant Property.

DOE's newly-formed Office of Legacy Management (LM) will play and active role in DOE's development of the single, enforceable "site-wide" O&M Plan. The development process will include an evaluation of all components contained in the above OSWER Guidance. Some of the Guidance components will likely fall outside the scope of the site-wide O&M Plan, however, will be addressed in other DOE documents. For example, DOE-LM is preparing a Long Term Surveillance &Maintenance (LTSM) Plan for each site that will require long term stewardship. The LTSM Plan will include enforceable requirements (such as this O&M Plan for Institutional Controls) as well as non-enforceable requirements (e.g., cost estimates, staffing plans) and/or other best management practices designed to facilitate DOE's maintenance and enforcement o;f all CERCLA remedies at the 1998 Mound Plant Property.

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**Attachment 1**

**DOE Policy 454.1**
**"Use of Institutional Controls"**

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United States Government **Department of Energy**

# memorandum

DATE: April 18, 2003

RA~~6~ Office of Environmental Policy and Guidance (EH-41): Ostrowski:6-4997

SUBJECT: **DOE** P 454.1, *Use of Institutional Controls*

TO: **Distribution**

On April 9, 2003, the Deputy Secretary approved DOE P 454.1, *Use of Institutional Controls.* The primary purpose of this DOE policy is to establish a consistent framework for the use of institutional controls throughout the DOE complex. DOE P 454.1 supports the environmental management systems approach established under DOE Order 450.1, *Environmental Protection Program,* and demonstrates a senior-level management commitment to the implementation of institutional controls. A copy of this policy is available at: www.directives.doe.gov.

The Office of Environmental Policy and Guidance plans to develop guidance for implementation of DOE P 454.1 and will coordinate this effort with program and field offices. If you have any questions concerning this policy please contact Colleen Ostrowski of my staff (colleen.ostrowski@eh.doe.gQY~ telephone: 202-586-4997).

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Andy Lawrence
Director
Office of Environmental Policy and Guidance

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# U.S. Department of Energy
# Washington, D.C.

POLICY

**DOE P 454.1**

Approved: 4-9-03

SUBJECT: **USE OF INSTITUTIONAL CONTROLS**

PURPOSE AND SCOPE:

This Policy delineates how the Department of Energy (DOE), including the National Nuclear Security Administration, will use institutional controls in the management of resources, facilities and properties under its control and to implement its programmatic responsibilities. The Policy will guide site-specific and programmatic decisions on DOE's own planning, maintenance and implementation of institutional controls, and address responsibilities related to DOE's role as a steward of Federal lands and properties, and identify activities that DOE needs to accomplish.

DOE uses a wide range of institutional controls as part of efforts to:
.appropriately limit access to, or uses of, land, facilities and other real and personal properties;
.protect the environment (including cultural and natural resources); .maintain the physical safety and security of DOE facilities; and
.prevent or limit inadvertent human and environmental exposure to residual contaminants and other hazards.

The purpose of this Policy is to ensure that DOE programs:
.reaffirm a DOE-wide commitment to use institutional controls effectively; .establish a consistent approach to the implementation, delegation, documentation,
maintenance and reevaluation of institutional controls as an integral part of missions and operational activities;
.integrate the use of well-designed, effective, and reliable institutional controls with other tools to manage, monitor, and transfer lands and real and personal property under DOE control; and
.apply institutional controls in a cost-effective way and maximize the use of low- maintenance institutional controls to the extent possible. 1

The Office of Environment, Safety and Health is responsible for developing guidance for the implementation of this Policy, and will coordinate this effort with Headquarters and field offices. DOE line management including operations office managers, field office managers, the service center director and lead program secretarial offices have primary responsibility for implementing this Policy for properties under their control, for properties released or transferred from their control or for properties they accept for control or oversight. DOE line management is responsible for ensuring that institutional control needs are addressed as part of relevant

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integrated safety management and environmental management systems. DOE functional offices such as budget, chief information officer, legal, safety, and personal and real property management have staff responsibility for assisting line management with implementation of this policy, and related directives.

This Policy is only intended to improve the internal management of the Department, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Department of Energy. This policy does not alter or amend any institutional control under applicable law or enforceable agreement, and any terms, definitions, or implementation of this policy do not expand or modify the scope of requirements or authorities of existing laws and regulations.

BACKGROUND:

DOE is a responsible Federal land manager and steward of natural and cultural resources at DOE sites. DOE uses institutional controls to manage lands, facilities, materials and resources under its jurisdiction. In certain circumstances these institutional controls may be authorized by, or required as part of the decision process established by, various laws such as the Nuclear Waste Policy Act; the Atomic Energy Act; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation and Liability Act, or cultural resource management statutes. In other cases there are no specific statutory requirements, but DOE has decided to use institutional controls to supplement active remediation, pollution control, public and resource protection, physical security, or to bolster the integrity of engineered remedies.

Institutional controls may include administrative or legal controls, physical barriers or markers, and methods to preserve information and data and inform current and future generations of ! hazards and risks. Because of the different needs and objectives for institutional controls and tHe different types used throughout DOE, the term "institutional controls" is used in a broader context in this Policy than it may be used in internal and external regulatory requirements or policies established under individual statutes. This broader application of the term is necessary to encompass the diverse institutional controls used throughout DOE in a consistent yet flexible, policy framework. Additionally, differences among the various types of DOE facilities often lead to systematic tailoring of institutional controls.

DOE uses institutional controls as components in - .protection of waste disposal operations, .conduct of normal operations and site security, .maintenance of storage facilities,
.conduct of restoration and cleanup programs, and .management of natural and cultural resources.

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POLICY:

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In situations where unrestricted use or unrestricted release of property is not desirable, practical, or possible, institutional controls are necessary and important to DOE efforts to fulfill its programmatic responsibilities to protect human health and the environment (including natural and cultural resources). It is DOE policy to use institutional controls as essential components of a defense-in-depth strategy that uses multiple, relatively independent layers of safety to protect human health and the environment (including natural and cultural resources). This strategy uses a graded approach to attain a level of protection appropriate to the risks involved. DOE will use a graded approach to determine what types and levels of protective measures (e.g., physical, administrative, etc.) should be used.

The Department will implement institutional controls, along with other mitigating or preventive measures as necessary, to provide a reasonable expectation that if one control temporarily fails, other controls will be in place, or actions will be taken, to mitigate significant consequences of the failure. Institutional controls are not to be used to circumvent or substitute for permanent solutions when such solutions are reasonably achievable. Institutional controls will not be applied, or will be terminated, when DOE determines that such controls are not necessary or required.

**Implementation** Goals:

DOE will apply and implement institutional controls in an integrated manner to ensure that: .the purpose for controls is identified clearly, need for the controls is well established and
has been considered early in planning processes consistent with integrated safety management, and both purpose and need are documented and made available to the public as appropriate and allowed by law;
.mechanisms are in place to ensure controls are effective, implemented as planned, properly maintained, inventoried, periodically reevaluated, and modified as necessary to reflect changes in conditions, needs or technological advancements;
.where multiple institutional control needs or goals exist at the same site, the institutional controls address relevant requirements or goals in an integrated cost effective and protective manner;
.actions are taken to maintain long-term site stability, minimize reliance on institutional controls, and keep maintenance requirements for such controls as low as practicable; and
.decisions to terminate or reduce controls (e.g., because of mitigating actions, scientific advances, natural attenuation, or changes in policy or programmatic needs) are documented and publicly available, as appropriate.

DOE will maintain the institutional controls as long as necessary to perform their intended protective purposes and seek sufficient funds.

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**Property** Issues:

The need for institutional controls on real and personal property may be related directly to the property that requires control (e.g., the presence of residual contamination, waste or cultural resources) or may be an indirect result of a requirement associated with neighboring activities (e.g., land is required to be under DOE control because of conditions specified in a DOE disposal authorization or because the land is used as a buffer in a safety analysis). Institutional controls may be necessary for property that DOE will retain indefinitely, for property under consideration for transfer, and for property that has actually been transferred.

Before DOE authorizes transfer of property, there will be a reasonable expectation that: .all necessary institutional controls can be maintained after the transfer, and .the new owner (whether a DOE or non-DOE entity) understands and is capable of
meeting its institutional control responsibilities.

DOE will determine whether responsibility for required institutional controls on transferred property can be maintained by subsequent owners consistent with applicable law. If this implementation responsibility cannot be reliably assured, then DOE will retain necessary responsibility and authority for the institutional controls, including continued ownership of the property if necessary. The respective responsibilities of DOE and the new owner for any required institutional controls will be documented and communicated to all directly involved parties at the time of transfer. Before accepting property from non-DOE entities, DOE will determine whether it can accept continuing responsibility for previously or newly established institutional controls.

For properties that it does not own or directly control (e.g., uranium mill tailings remedial action properties needing controls to restrict access to ground water), DOE will arrange for appropriate institutional controls, to the extent that DOE is required to take such actions. Actions to ensure that these institutional controls are durable may involve coordination with State, local, or tribal governments and other entities having jurisdiction over the properties, or where appropriate, the use of DOE authorities for the protection of public health and safety, the environment, and national security.

BY ORDER OF THE SECRETARY OF ENERGY:

KYLE E. McSLARROW Deputy Secretary

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**Attachment 2**

**1982 Legal description of the "1998 Mound Plant Property"**

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1) LEGAL DESCRIPTION

Situate in the State of Ohio, County of Montgomery, in the City of Miamisburg, being a part of section 30 and fractional sections 35 and 36, To\vn 2, Range 5, Miami Rivers Survey (M.R.S.), and being all of city lots numbered 2259,2290,4777,4778,4779,6127 and 6128, and part of 'out lot 6 lying within the corporation limits of the City of Miamisburg, being all of the tracts of land conveyed to the United States of America by instruments as recorded in Deed Book 1214 pages 10, 12, 15, and 17, Deed Book 1215, page 347, Deed Book 1214 page 248, Deed Book .1246 page 45, Deed Book 1258 page 74, Deed Book 1258 page 56, Deed Book 1256 page 179, Micro-Fiche 81-376AO1, and Micro-Fiche 81-323A11 of the Deed Records of said County; and being more particularly bounded and described with bearings referenced to the Ohio State Plane CoordInate System, South Zone, as follows:

Beginning at a spike found (0.5' deep) and reset in concrete, being the Southwest comer of said section 30 and the Southeast corner of fractional section 3,6, said point being in the center of Benner Road (40 feet *RJW)* and being referenced North 84°, 28', 10'1 West 3102.92 feet from a spike found (0.5' deep) at the intersection of the centerline of Mound

Road (60 feet R/W) with the centerline of said Benner Road in said Miami Township, and being the true point of beginning for the land herein described; thence along the

centerline of Benner road South 66° 32' 35" West 958.79 feet to a railroad spike found and reset in concrete; thence continuing along said centerline of Benner Road South 73 ° 18' 20" West 31.01 feet to a railroad spike found and reset in concrete, being a point in the East right-of-way line of the abandoned Miami and Erie Canal; thence leaving Benner Road and with said East right-of-way line for the following four courses: North 14° 05' 35" West 62.14 feet to an iron pin found; thence north 14° 11' 50" West 440.75 feet to an iron pin found; thence North 14° 47' 30" West 259.93 feet to an iron pin found; thence North 14045' 50" West 546.20 feet to an iron pin found and reset in concrete in the East right-of way line of the Consolidated Railway Corporation; thence with said Conrail right-of-way line for the follo'rving 10 courses: North 750 00' 55" East 85.04 feet to an iron pin found and reset in concrete; thence North 37° 16' 35" East 96.65 feet to an iron pin set in concrete; thence North 800 28' 05" East 66.00 feet to an iron pin found and reset in concrete; thence North 09° 31' 55" West 499.80 feet to a concrete monument found; thence North 090 26' 35" West 696.85 feet to an iron pin set in concrete; thence North 00 48' 25" West 616.81 feet to a concrete monument found; thence North 840 43' 35" East 75.08 feet to an iron pin set in concrete; thence along the arc of a curve to the right having a radius of3669.83 feet, being concentric with and 150 feet distant, measured Eastwardly at right angles, from the centerline between main tracks of said railroad; for a distance of 744.94 feet to a concrete monument set, the chord of said curve bears North 030 17' 05" East 743.66 feet; thence South 84° 39' 20" East 150.34 feet to a concrete monument set; thence along the arc of a curve to the right having a radius of 3519.83 feet, being concentric with and 300 feet-distant, measured Eastwardly at right angles, from 'the centerline between main tracks of said railroad, for a distance of 1640.97 feet to; a

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concrete monument found, the said chord of said curve bears North 22° 36' 55" East 1626.15 feet, thence leaving said railroad right-of-way line South 84° 14' 50" East 102.31 feet to a concrete monument found; thence South 050 37' 45" West 90.03 feet to a concrete monument found; thence North 65°35' 50" East 809.36 feet to an iron pipe found and being referenced South 05° 47' 45" West 130.89 feet from a concrete monument found at the Northwest comer of said section 30 and the Northeast comer of fractional section 36; thence South 850 04' 55" East 1023.90 feet to a concrete monument found; thence NQrth 06053' 15" East 231.00 feet to a concrete monument found on the West right-of-way line of Mound Road (60 feet R/W); thence South 840 38' 15" East 30.00 feet to an iron pin set in the centerline of Mound Road; thence South 060 53' 15" West 100.00 feet to an iron pin set; thence South 840 38' 15" East 193.40 feet to a concrete monument set; thence along the centerline of Mound Road South 050 32' 40" West 2709.36 feet to a railroad spike found; thence leaving said Mound Road North 850 28' 20" West 111.00 feet to an iron pipe found; thence South 07° 06' 55" East 714.44 feet to a concrete monument found; thence South 830 59' 35" East 34.19 feet to a concrete monument found; thence South 040 42' 45" West 2010.06 feet to a railroad spike found (0.2' deep) and reset in concrete located in the center of Benner Road; thence along the centerline of Benner Road North 840 29' 45" West 1333.66 feet to the true point of beginning containing 305.116 acres more or less, and subject to all legal highways and easements of record.

(This description based upon an actual field survey of the described land conducted May, 1982. The description was prepared by Lockwood, Jones & Beals, Dayton, Ohio)

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**Attachment 3**

**Map of the "1998 Mound Plant Property"**

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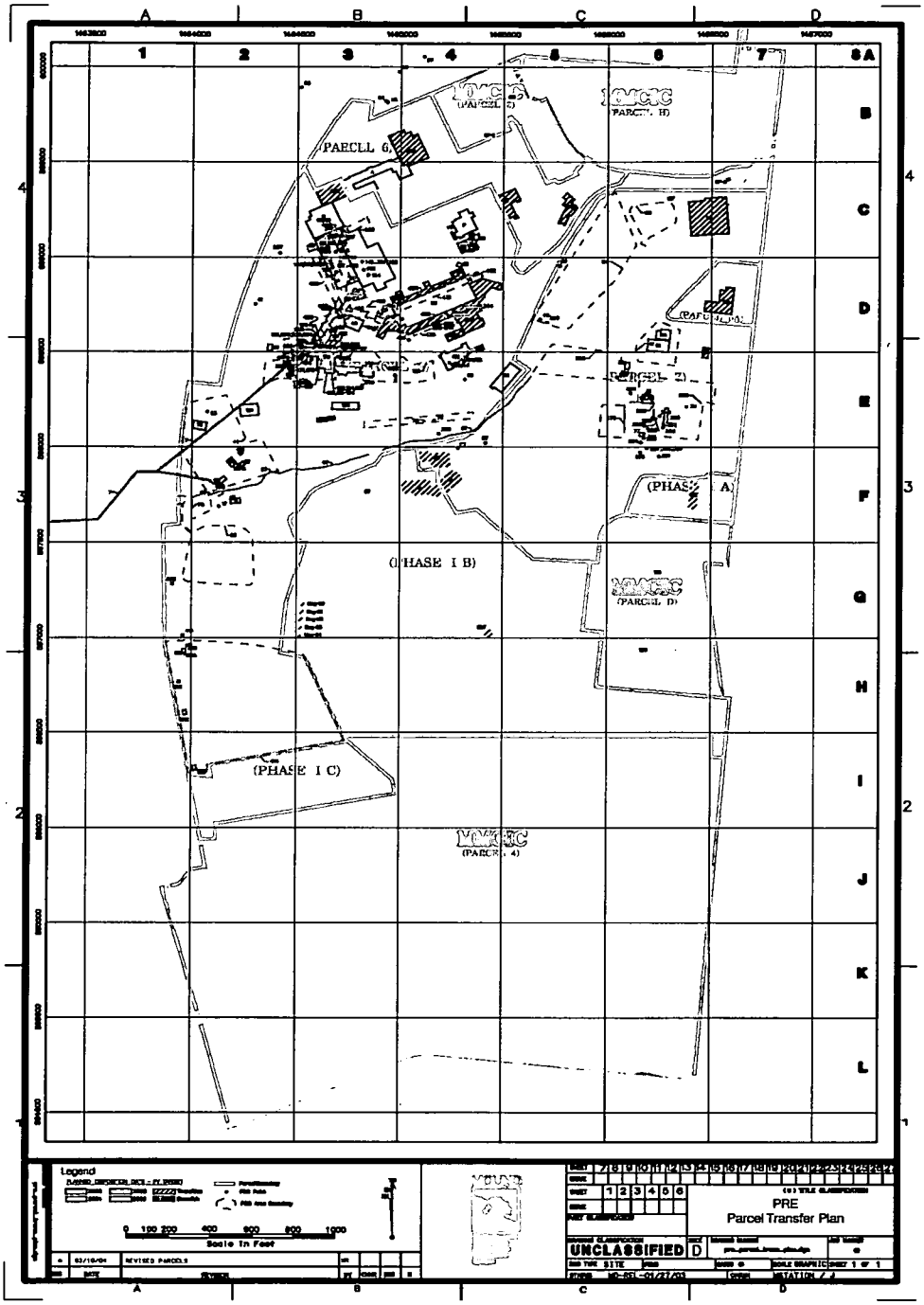


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**Attachment 4**

**Quit Claim Deeds from RODs**
**for parcels that have completed the**
**CERCLA 120(h) process for property transfer**

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**Parcel D Quit Claim Deed: ROD signed 3/15/99**
***(revised per 1/14/99 conference call)***

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Department of Energy (hereinafter sometimes called "Grantor"), under and pursuant to the authority of the Atomic Energy Act, Section 161 (g) (42 U.S.C. §2201(g) for the sum of Ten Dollars ($10.00), the covenants contained herein, and other good and valuable consideration, duly paid by the Miamisburg Mound Community Improvement Corporation, a non-profit corporation subsisting under the laws of Ohio and recognized by the Secretary of Energy as the agent for the community wherein the former Mound Facility is located (hereinafter sometimes called "Grantee"), the receipt of which is hereby acknowledged, hereby QUITCLAIMS unto Grantee its successors and assigns, subject to the reservations, covenants, and conditions hereinafter set forth, all of its right, title, and interest in the following described premises, together with all improvements thereon and appurtenances thereto (collectively hereinafter referred to as the "Premises"), situated in the City of Miamisburg, County of Montgomery, and State of Ohio, more particularly described in Exhibit A attached hereto and made a part hereof. Prior Deed Reference: Volume Page .

RESERVING UNTO Grantor, the United States Environmental Protection Agency (USEPA) and the State of Ohio, acting by and through the Director of the Ohio Environmental Protection Agency (Ohio EPA) or the Ohio Department of Health (ODH), their successors and assigns, an easement to, upon or across the Premises in conjunction with the covenants of Grantor and/or Grantee in paragraphs numbered 1.1-1.3, 4.2 and 4.3 of this Deed **and as otherwise needed for purposes of any response action, including but not limited to, environmental investigation or remedial action on the Premises or on property in the vicinity thereof, including the right of access to, and use of, to the extent permitted by applicable law, utilities at reasonable cost to Grantor.**

This Deed and conveyance is made and accepted without warranty of any kind, either express or implied, except for the warranty in paragraph 4.3 of this Deed, and is expressly made under and subject to all reservations, restrictions, rights, covenants, easements, licenses, and permits, whether or not of public record, to the extent that the same affect the Premises.

1. The parties hereto intend the following restrictions and covenants to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns or any other person acquiring an interest in the Premises, for the benefit of Grantor, USEPA and the State of Ohio, acting by and through the Director of the Ohio EPA or ODH, their successors and assigns.

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1.1 Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of that described in instruments recorded at Deed Book 1214, pages 10, 12, 15, 17 and 248; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56 and 74; Deed Book 1256, page 179; Micro-Fiche 81-376A01; and Micro-Fiche 81-323A11 of the Deed Records of Montgomery County, Ohio **(and as illustrated in the CERCLA 120(h) Summary, Notices of Hazardous Substances Release Block D, Mound Plant, Miamisburg, Ohio dated January, 1999) without prior written approval** from the Ohio Department of Health (ODH), or a successor agency.

1.2 Grantee covenants not to use, or allow the use of, the Premises for any residential or farming activities, or any other activities which could result in the chronic exposure of children under eighteen years of age to soil or groundwater from the Premises. Restricted uses shall include, but not be limited to:

(1) single or multifamily dwellings or rental units;
(2) day care facilities;
(3) schools or other educational facilities for children under eighteen years of age; and
(4) community centers, playgrounds, or other recreational or religious facilities for children under eighteen years of age.

1.3 Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the Ohio Environmental Protection Agency.

2. Grantor assumes no liability for damages for personal injury, illness, disability, or death to Grantee, or to its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction, or to any other person, including members of the general public, arising from, or incident to the purchase of the Premises or transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with materials therefrom, whether Grantee, its successors or assigns has or have properly warned, or failed properly to warn, the individual(s) injured.

3. The Grantor hereby grants to the State of Ohio and reserves and retains for itself, its successors and assigns an irrevocable, permanent, and continuing right to enforce the covenants of this Quit Claim Deed through proceedings at law or in equity, including resort to an action for specific performance, as against and at the expense of Grantee, its successors and assigns, including reasonable legal fees, and to prevent a violation of, or recover damages from a breech of, these covenants, or both. Any delay or forbearance in enforcement of said restrictions and covenants shall not be deemed to be a waiver thereof.

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4. Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1930, as amended (42 U.S.C. §9620(h)(3)), the following is notice of hazardous substances, the description of any remedial action taken, and a covenant concerning the Premises.

4.1 **Notice of Hazardous Substance**: Grantor has made a complete search of its files and records concerning the Premises. Those records indicate that the hazardous substances listed in Exhibit "B," attached hereto and made a part hereof, have been stored for one year or more or disposed of on the Premises and the dates that such storage/disposal took place.

4.2 **Description of Remedial Action Taken**:
The Institutional Controls are set forth as covenants in Sections 1 - 1.3 of this Deed.

4.3 Covenant. Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken, and any additional remedial action found to be necessary after the date of this Deed regarding hazardous substances existing prior to the date of this Deed shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

5. Unless otherwise specified, all the covenants, conditions, and restrictions to this Deed shall be binding upon, and shall inure to the benefit of the assigns of Grantor and the successors and assigns of Grantee.

**IN WITNESS WHEREOF,** the United States of America, acting by and through its Secretary of the Department of Energy, has caused these presents to be executed this day of , 1999.

UNITED STATES OF AMERICA

WITNESSETH:

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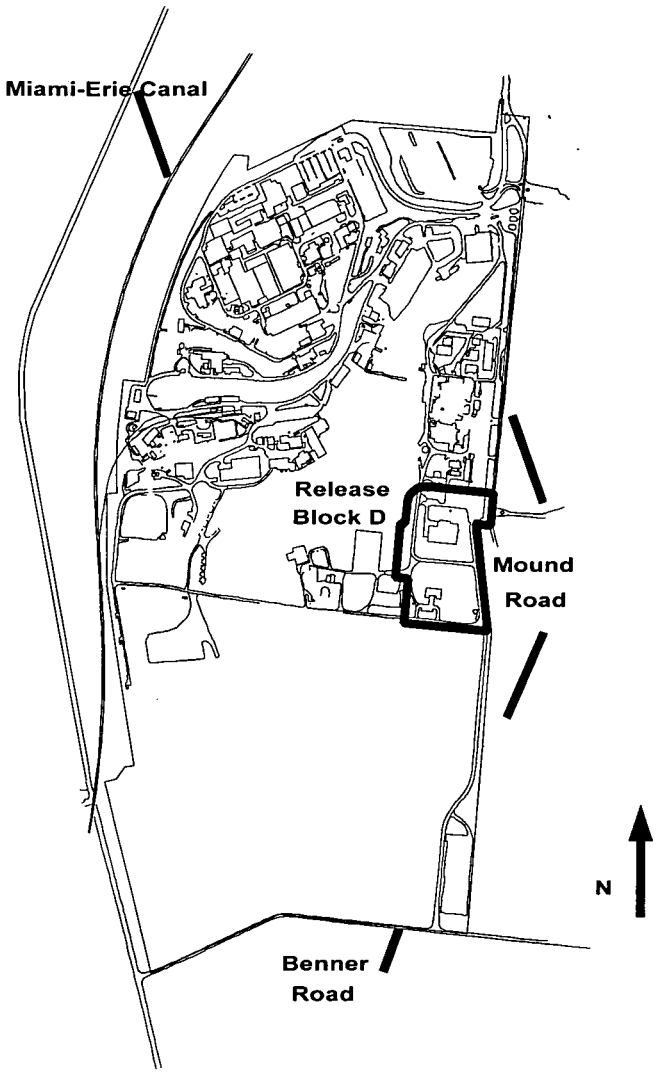
Parcel D Map: ROD signed 3/15/99

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**Parcel H Quit Claim Deed: ROD signed 7/22/99**

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Department of Energy (hereinafter sometimes called "Grantor"), under and pursuant to the authority of the Atomic Energy Act of 1954, Section 161 (g) (42 U.S.C. §2201(g), the covenants contained herein, and other good and valuable consideration, duly paid by the Miamisburg Mound Community Improvement Corporation, a non-profit corporation subsisting under the laws of Ohio and recognized by the Secretary of Energy as the agent for the community wherein the former Mound Facility is located (hereinafter sometimes called "Grantee"), the receipt of which is hereby acknowledged, hereby QUITCLAIMS unto Grantee its successors and assigns, subject to the reservations, covenants, and conditions hereinafter set forth, all of its right, title and interest, together with all improvements thereon and appurtenances thereto, in the following described premises, commonly known as Parcel H:

Situate in the State of Ohio, County of Montgomery, being in the City of Miamisburg, being part of Section 30, Range 5, Township 2, lying in the Miami Rivers Survey (M.R.S.), and being part of city lots numbered 2259 within the Corporation Limits of the City of Miamisburg, and being more particularly bounded and described with bearings referenced to the Ohio State Coordinate System, South Zone, as follows:

Beginning at a concrete monument, being the North East corner of Section 36 and the North West corner of Section 30, and being the point of beginning for the land herein described, thence S 5 47' 45" W 130.89 feet to an iron pin being the TRUE POINT OF BEGINNING; thence S 85 03' 12" E 1023.90 feet to a concrete monument, thence N 6 54' 59" E 231.00 feet to a concrete monument, thence S 84 36' 50" E 30.00 feet to a iron pin, thence S 6 54' 54" W 100.00 feet to a iron pin, thence S 84 36' 37" E 193.40 feet to a concrete monument, thence S 5 34' 19" W 571.986 feet along the center line of Mound Road to a point, thence S 90 0' 0" W 72.86 feet to a point, thence S 51 28' 1.6" W 48.51 feet to a point, thence S 83 32' 4" W 97.29 feet to a point, thence S 63 48' 53" W 98.67 feet to a point, thence N 89 55' 58" W 173.02 feet to a point, thence N 83 49' 39" W 244.21 feet to a point, thence along the arc of a curve to the right having a radius of 360.67 feet for a distance of 353.12 feet to a point, thence N 25 03' 02" W 214.48 feet to a point, thence S 64 03' 10" W 37.94 feet to a point, thence N 64 35' 31" W 56.61 feet to a point, thence N 25 43' 03" W 160.76 feet to a point, thence N 65 33' 00" E 35.05 feet to a point, thence N 5 31' 01" E 57.67 feet to a iron pin being the true point of beginning containing 14.29 acres more or less, and subject to all legal highways and easements of record. Prior Deed Reference: Deed Book _____, Page __.

RESERVING UNTO Grantor, the United States Environmental Protection Agency (USEPA) and the State of Ohio, acting by and through the Director of the Ohio Environmental Protection Agency (OEPA) or the Ohio Department of Health (ODH), their successors and

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assigns, an easement to, upon or across the Premises in conjunction with the covenants of Grantor and/or Grantee in paragraphs numbered 1.1-1.3, 3.2 and 3.3 of this Deed and as otherwise needed for purposes of any response action as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, including but not limited to, environmental investigation or remedial action on the Premises or on property in the vicinity thereof, including the right of access to, and use of, to the extent permitted by applicable law, utilities at reasonable cost to Grantor. Grantee understands that any such response action will be conducted in a manner so as to attempt to minimize interfering with the ordinary and reasonable use of the Premises.

This Deed and conveyance is made and accepted without warranty of any kind, either express or implied, except for the warranty in paragraph 3.3 of this Deed, and is expressly made under and subject to all reservations, restrictions, rights, covenants, easements, licenses, and permits, whether or not of public record, to the extent that the same affect the Premises.

1. The parties hereto intend the following restrictions and covenants to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns or any other person acquiring an interest in the Premises, for the benefit of Grantor, USEPA and the State of Ohio, acting by and through the Director of OEPA or ODH, their successors and assigns.

   1.1 Excepting those soils **Commencing** at an iron pin found on the southerly projection of the centerline of Mound Road, said point also being the northeast corner of a 164.13 Acre tract of land as described in Deed Book 1246, Page 45 of the Deed Records of Montgomery County and being the **TRUE POINT OF BEGINNING,** thence South 06E 38' 48" West, 100.00 feet to an iron pin found; thence South 84E 42' 56" East, 193.40 feet to an iron pin found; thence South 05E 33' 53" West, 571.98 feet to a point on the centerline of Mound Road; thence due West, 72.93 feet to a point; thence South 51E 28' 10" West, 9.97 feet to a point on the proposed westerly right-of-way of Mound Road; thence along the proposed westerly right-of-way of Mound Road, North 06E 34' 20" West, 299.85 feet to a point; thence North 04E 05' 41" West, 185.03 feet to a point; thence along the proposed westerly right-of-way of Mound Road, North 06E 34' 20" West, 75.76 feet to a point; thence along the proposed westerly right-of-way of Mound Road, on a curve to the right for a distance of 130.93 feet with a radius of 923.62 feet and a central angle of 08E 07' 19" and a chord distance of 130.82 feet and a chord bearing of North 02E 30' 42" West to a point; thence along the existing westerly right-of-way of Mound Road, on a non-tangent curve to the right for a distance of 6.10 feet with a radius of 360.00 feet and a central angle of 00E 58' 18" and a chord distance of 6.10 feet and a chord bearing of North 12E 20' 00" West to a point; thence South 89E 52' 28" East, 18.27 feet to the **POINT OF BEGINNING.**

   Containing 82,149.70 square feet, 1.886 acres more or less, and subject to all legal highways, easements, and agreements of record. Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of that described in instruments recorded at Deed Book **(1214, pages 10, 12, 15, 17 and 248; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56**

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**and 74; Deed Book 1256, page 179; Micro-Fiche 81-376A01; and Micro-Fiche 81-323A11)** of the Deed Records of Montgomery County, Ohio (and as illustrated in the CERCLA 120(h) Summary, Notices of Hazardous Substances Release Block H, Mound Plant, Miamisburg, Ohio dated _____, 1999) without prior written approval from ODH and OEPA, or successor agencies.

1.2 Grantee covenants not to use, or allow the use of, the Premises for any residential or farming activities, or any other activities which could result in the chronic exposure of children under eighteen years of age to soil or groundwater from the Premises. Restricted uses shall include, but not be limited to:

(1) single or multifamily dwellings or rental units;
(2) day care facilities;
(3) schools or other educational facilities for children under eighteen years of age; and
(4) community centers, playgrounds, or other recreational or religious facilities for children under eighteen years of age.

Grantor shall be contacted to resolve any questions which may arise as to whether a particular activity would be considered a restricted use.

1.3 Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

2. The Grantor hereby grants to the State of Ohio and reserves and retains for itself, its successors and assigns an irrevocable, permanent, and continuing right to enforce the covenants of this Quitclaim Deed through proceedings at law or in equity, including resort to an action for specific performance, as against and at the expense of Grantee, its successors and assigns, including reasonable legal fees, and to prevent a violation of, or recover damages from a breach of, these covenants, or both. Any delay or forbearance in enforcement of said restrictions and covenants shall not be deemed to be a waiver thereof.

3. Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1930, as amended (42 U.S.C. §9620(h)(3)), the following is notice of hazardous substances, the description of any remedial action taken, and a covenant concerning the Premises.

3.1 **Notice of Hazardous Substance**: Grantor has made a complete search of its files and records concerning the Premises. Those records indicate that the hazardous substances listed in Exhibit "B," attached hereto and made a part hereof, have been stored for one year or more or disposed of on the Premises and the dates that such storage/disposal took place.

3.2 **Description of Remedial Action Taken**:
Institutional Controls are established. The Institutional Controls are set forth as

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covenants in Sections 1.1, 1.2, and 1.3 of this Deed.

3.3 **Covenant:** Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken, and any additional remedial action found to be necessary after the date of this Deed regarding hazardous substances existing prior to the date of this Deed shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

4. Unless otherwise specified, all the covenants, conditions, and restrictions to this Deed shall be binding upon, and shall inure to the benefit of the assigns of Grantor and the successors and assigns of Grantee.

**IN WITNESS WHEREOF,** the United States of America, acting by and through its Secretary of the Department of Energy, has caused these presents to be executed this
day of , 1999.

UNITED STATES OF AMERICA

WITNESSETH:

State of Ohio )
County of Montgomery ) SS.

Before me, a Notary Public in and for said State and County, appeared this day of , 1999, _____, who acknowledged that she is the Manager of the Ohio Field Office for the United States Department of Energy, with full authority to execute the foregoing on behalf of the United States of America, and who acknowledged the above to be her signature and her free act and deed.

SEAL

Notary Public

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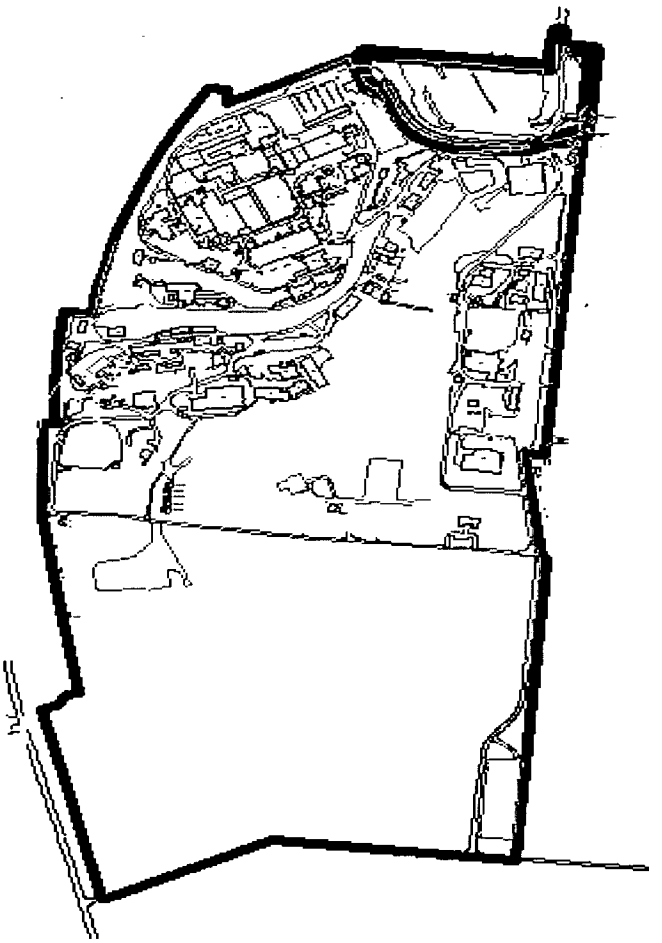
Parcel H Map: ROD signed 7/22/99

## 2Release Block H



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**Parcel 4 Quit Claim Deed: ROD signed 3/12/01**

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Department of Energy (hereinafter sometimes called "Grantor"), under and pursuant to the authority of the Atomic Energy Act of 1954, Section 161 (g) (42 U.S.C §2201(g)), in consideration of the covenants contained herein, and other good and valuable consideration, duly paid by the Miamisburg Mound Community Improvement Corporation, a non-profit corporation subsisting under the laws of Ohio and recognized by the Secretary of Energy as the agent for the community wherein the former Mound Facility is located (hereinafter sometimes called "Grantee"), the receipt of which is hereby acknowledged, hereby QUITCLAIMS unto Grantee its successors and assigns, subject to the reservations, covenants, and conditions hereinafter set forth, all of its right, title and interest, together with all improvements thereon and appurtenances thereto, in the following described real property (hereinafter the "Premises), commonly known as Parcel 4:

Situated in the Southwest Quarter of Section 30, Town 2, Range 5, MRs, the Southeast Quarter of Section 36, Town 2 Range 5, MRs, Northeast Quarter Section 36, Town 2, Range 5, MRs., City of Miamisburg, County of Montgomery, State of Ohio, being part of a 79.74 acre tract conveyed to the United States of America, as recorded in Microfiche No. 81-376A01 of the Deed Records of Montgomery County, Ohio, said 79.74 acre tract being comprised of a 24.197 acre tract and known as Lot Numbered 6128 of the consecutive numbered lots of the City of Miamisburg, also a 35.50 acre tract known as Lot Numbered 6127 of the consecutive numbered lots of the City of Miamisburg, and a 24.24 acre tract known as Lot Numbered 4777 of the consecutive numbered lots of the City of Miamisburg, also being part of a 42.56 acre tract conveyed to the United States of America, as recorded in Microfiche No. 81-323A11 of the Deed Records of Montgomery County, Ohio, said 42.56 acre tract being comprised of a 46.313 acre tract known as Lot Numbered 4778 of the consecutive numbered lots of the City of Miamisburg, said 42.56 acre tract being all the remainder of an 80 acre tract as conveyed from Ray C. Dunaway and Thelma Mae Dunaway to Oak Knoll Development and Investment Co., Inc., as recorded in Microfiche No. 71-513B06 of the Deed Records of Montgomery County, Ohio, being a new division of 94.838 acres from said 79.74 acre and 42.56 acre tracts and being more fully described in Exhibit A attached hereto and incorporated herein.

RESERVING UNTO Grantor, the United States Environmental Protection Agency (USEPA) and the State of Ohio, acting by and through the Director of the Ohio Environmental Protection Agency (OEPA) or the Ohio Department of Health (ODH), their successors and assigns, an easement to, upon or across the Premises in conjunction with the covenants of Grantor and/or Grantee in paragraphs numbered 1.1-1.3, 3.2 and 3.3 of this Deed and as otherwise needed for purposes of any response action as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, including but not limited to, environmental investigation or remedial action on the Premises or on property in the vicinity thereof, including the right to access to, and use of, to the extent permitted by applicable law, utilities at reasonable cost to Grantor. Grantee understands that any such response action will be conducted in a manner so as to attempt to minimize interfering with the ordinary and reasonable use of the Premises.

This Deed and conveyance is made and accepted without warranty of any kind, either express or implied, except for the warranty in paragraph 3.3 of this Deed, and is expressly made under and subject to all reservations, restrictions, rights, covenants, easements, licenses, and permits, whether or not of public record, to the extent that the same affect the Premises.

1. The parties hereto intend the following restrictions and covenants to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns or any other person acquiring an interest in the Premises, for the benefit of Grantor, USEPA and the State of Ohio, acting by and through the Director of OEPA or ODH, their successors and assigns.

   1.1 Excepting those soils in the area 35 feet wide and 2,354.38 feet long bounded on the south by the centerline of Benner Road as described above, Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of that described in instruments recorded at Deed Book 1214, pages 10, 12, 15, 17 and 248; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56 and 74; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56 and 74; Deed Book 1256, page 179; Micro-Fiche 81-376A01; and Micro-Fiche 81-323A11 of the Deed Records of Montgomery County, Ohio (and as illustrated in the CERCLA 120(h) Summary, Notices of Hazardous Substances Release Parcel 4, Mound Plant, Miamisburg, Ohio dated _____) without prior written approval from the Ohio Department of Health (ODH), or a successor agency.

   1.2 Grantee covenants not to use, or allow the use of, the Premises for any residential or farming activities, or any other activities which could result in the chronic exposure of children under eighteen years of age to soil or groundwater from the Premises. Restricted uses shall include, but not be limited to:

(1) single or multifamily dwellings or rental units;
(2) day care facilities;
(3) schools or other educational facilities for children under eighteen years of age; and
(4) community centers, playgrounds, or other recreational religious facilities for children under eighteen years of age.

   Grantor shall be contacted to resolve any questions which may arise as to whether a particular activity would be considered a restricted use.

   1.3 Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

2. The Grantor hereby grants to the State of Ohio and reserves and retains for itself, its successors and assigns an irrevocable, permanent, and continuing right to enforce the covenants of this Quitclaim Deed through proceedings at law or in equity, including resort to an action for specific performance, as against and at the expense of Grantee, its successors and assigns, including reasonable legal fees, and to prevent a violation of, or recover damages from a breach of, these covenants, or both. Any delay or forbearance in enforcement of said restrictions and covenants shall not be deemed to be a waiver thereof.

3. Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42U.S.C. §9620(h)(3)), the following is notice of hazardous substances, the description of any remedial action taken, and a covenant concerning the Premises.

   3.1 **Notice of Hazardous Substance**: Grantor has made a complete search of its files and records concerning the Premises. Those records indicate that the hazardous substances listed in Exhibit "B", attached hereto and made a part hereof, have been stored for one year or more or disposed of on the Premises and the dates that such storage/disposal took place.

   3.2 **Description of Remedial Action Taken:** Institutional Controls are established. The Institutional Controls are set forth as covenants in Sections 1.1, 1.2, and 1.3 of this Deed.

   3.3 **Covenant:** Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken, and any additional remedial action found to be necessary after the date of this Deed regarding hazardous substances existing prior to the date of this Deed shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property I is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

4. Unless otherwise specified, all the covenants, conditions, and restrictions to this Deed shall be binding upon, and shall inure to the benefit of the assigns of Grantor and the successors and assigns of Grantee.

**IN WITNESS WHEREOF**, the United States of America, acting by and through its Secretary of the Department of Energy, has caused these presents to be executed this _____day of _____, 2001.

UNITED STATES OF AMERICA

_____

WITNESSETH:

_____

_____

State of Ohio )
County of Montgomery ) SS.

Before me, a Notary Public in and for said State and County, appeared this ____ day of _____, 2001, _____, who acknowledged that she is the Manager of the Ohio Field Office for the United States Department of Energy, with full authority to execute the foregoing on behalf of the United States of America, and who acknowledged the above to be her signature and her free act and deed.

_____
Notary Public

Parcel 4 Map: ROD signed 3/12/01

DAYTON - CINCINNATI PIKE
SOUTH DIXIE DRIVE
BENNER
ROAD

**Parcel 3 Quit Claim Deed: ROD signed 8/28/01**

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Department of Energy (hereinafter sometimes called "Grantor"), under and pursuant to the authority of the Atomic energy Act of 1954, Section 161 (g) (42U.S.C. §2201(g)), in consideration of the covenants contained herein, and other good and valuable consideration, duly paid by the Miamisburg Mound Community Improvement Corporation, a non-profit corporation subsisting under the laws of Ohio and recognized by the Secretary of Energy as the agent for the community wherein the former Mound Facility is located (hereinafter sometimes called "Grantee"), the receipt of which is hereby acknowledged, hereby QUIT CLAIMS unto Grantee its successors and assigns, subject to the reservations, covenants, and conditions hereinafter set forth, all of its right, title and interest, together with all improvements thereon and appurtenances thereto, in the following described real property (hereinafter the "Premises), commonly known as Parcel 3:

Situated in the State of Ohio, County of Montgomery and being parts of City of Miamisburg Lot Number 2259 and 2290, also being part of Sections 30, Fractional Town 2, Range 5 East M.R.S. and Fractional Section 36, Fractional Town 2, Range 5 East M.R.S. and being a portion previously conveyed to USA as described in Deed Book 1246, Page 45 and also being a portion previously conveyed to USA as described in Deed Book 1214, Page 12 and also being a portion previously conveyed to USA as described in Deed Book 1256, Page 179 containing 5.581 acres, more or less, and being more fully described in Exhibit A attached hereto and incorporated herein.

RESERVING UNTO Grantor, the United States Environmental Protection Agency (USEPA) and the State of Ohio, acting by and through the Director of the Ohio Environmental Protection Agency (OEPA) or the Ohio Department of Health (ODH), their successors and assigns, an easement to, upon or across the Premises in conjunction with the covenants of Grantor and, or Grantee in paragraphs numbered 1.1-1.3, 3.2 and 3.3 of this Deed and as otherwise needed for purposes of any response action as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, including but not limited to, environmental investigation or remedial action on the Premises or on property in the vicinity thereof, including the right of access to, and use of, to the extent permitted by applicable law, utilities at reasonable cost to Grantor. Grantee understands that any such response action will be conducted in a manner so as to attempt to minimize interfering with the ordinary and reasonable use of the Premises.

This Deed and conveyance is made and accepted without warranty of any kind, either expressed or implied, except for the warranty in paragraph 3.3 of this Deed, and is expressly made under and subject to all reservations, restrictions, rights, covenants, easements, licenses, and permits, whether or not of public record, to the extent that the same affect the Premises.

1. The parties hereto intend the following restrictions and covenants to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns or any other person acquiring an interest in the Premises, for the benefit of Grantor, USEPA

and the State of Ohio, acting by and through the Director of OEPA or ODH, their successors and assigns.

1.1 Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of that described in instruments recorded at Deed Book (1214, pages 10, 12, 15, 17 and 248; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56 and 74; Deed Book 1256, page 179; Micro-Fiche 81-376A01; and Micro-Fiche 81-323A11) of the Deed Records of Montgomery County, Ohio (and as illustrated in the Parcel 3 Environmental Summary, Notices ofHazardous Substances, Mound Plant, Miamisburg, Ohio dated_____ without prior written permission approval from ODH and OEPA, or successor agencies.

1.2 Grantee covenants not to use, or allow the use of the Premises for any residential or farming activities, or any other activities which could result in the chronic exposure of children under eighteen years of age to soil or groundwater from the Premises. Restricted uses shall include, but not be limited to:

(1) single or multi family dwellings or rental units;
(2) day care facilities;
(3) schools or other educational facilities for children under eighteen years of age; and
(4) community centers, playgrounds, or other recreational or religious facilities for children under eighteen years of age.

Grantor shall be contacted to resolve any questions which may arise as to whether a particular activity would be considered a restricted use.

1.3 Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

2. The Grantor hereby grants to the State of Ohio and reserves and retains for itself, its successors and assigns an irrevocable, permanent, and continuing right to enforce the covenants of this Quitclaim Deed through proceedings at law or in equity, including resort to an action for specific performance, as against and at the expense of Grantee, its successors and assigns, including reasonable legal fees, and to prevent a violation of, or recover damages from a breach of, these covenants, or both. Any delay or forbearance in enforcement of said restrictions and covenants shall not be deemed to be a waiver thereof.
3. Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9620(h)(3)), the following is notice of hazardous substances, the description of any remedial action taken, and a covenant concerning the Premises.

3.1 **Notice of Hazardous Substance:** Grantor has made a complete search of

its files and records concerning the Premises. Those records indicate that the hazardous substances listed in Exhibit "B," attached hereto and made a part hereof, have been stored for one year or more or disposed of on the Premises and the dates that such storage/disposal took place.

3.2 **Description of Remedial Action Taken:** Institutional Controls are established. The Institutional Controls are set forth as covenants in Sections 1.1, 1.2, and 1.3 of this Deed.

3.3 **Covenant:** Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken, and any additional remedial action found to be necessary after the date of this Deed regarding hazardous substances existing prior to the date of this Deed shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

4. Unless otherwise specified, all the covenants, conditions, and restrictions to this Deed shall be binding upon, and shall inure to the benefit of the assigns of Grantor and the successors and assigns of Grantee.

**IN WITNESS WHEREOF,** the United States of America, acting by and through its Secretary of the Department of Energy, has caused these presents to be executed this _____day of _____, 2001.

UNITED STATES OF AMERICA

_____

WITNESSETH:

_____

_____

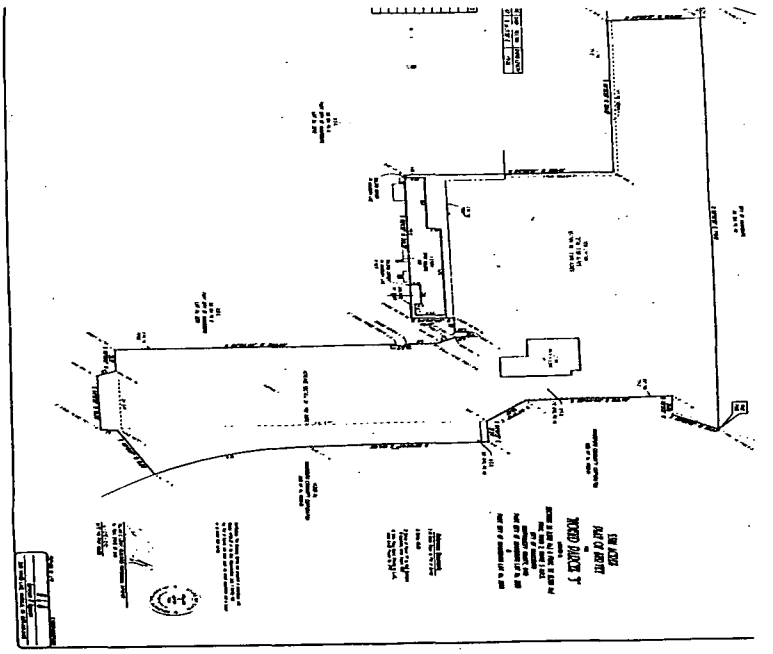
State of Ohio )
County of Montgomery ) SS.

Before me, a Notary Public in and for said State and County, appeared this _____day of _____, 2001, _____, who acknowledged that she is the Manager of the Ohio Field Office for the Unites States Department of Energy, with full authority to execute the foregoing on behalf of the Unites States of America, and who acknowledged the above to be her signature and her free act and deed.

SEAL

_____
Notary Public

Parcel 3 Map: ROD signed 8/28/01



## QUIT CLAIM DEED

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Department of Energy (hereinafter sometimes called "Grantor"), under and pursuant to the authority of the Atomic Energy Act of 1954, Section 161 (g) (42U.S.C. §2201(g)), in consideration of the covenants contained herein, and other good and valuable consideration, duly paid by the Miamisburg Mound Community Improvement

Corporation, a not-for-Profit corporation subsisting under the laws of Ohio and recognized by the Secretary of Energy as the agent for the community wherein the former Mound Facility is located (hereinafter sometimes called "Grantee"), the receipt of which is hereby acknowledged, hereby QUIT CLAIMS unto Grantee its successors and assigns, subject to the reservations, covenants, and conditions hereinafter set forth, all of its right, title and interest, together with all improvements thereon and appurtenances thereto, in the following described real property (hereinafter the "Premises), commonly known as Phase I Parcel IA:

Situated in the Northwest Quarter of Section 30, Town 2, Range 5, M.R.S., City of Miamisburg, County of Montgomery, State of Ohio, being part of a 87.28 acre tract conveyed to the United States of America, as recorded in Deed Book volume 1214, Page 12 of the Deed Records of Montgomery County, Ohio, said 87.28 acre tract being comprised of a 59.75 acre tract, also a 19.40 acre tract, also a 9.97 acre tract, also a 0.78 acre tract and a 0.78 acre tract all known as Lot Numbered 2259 of the consecutive numbered lots of the City of Miamisburg, being a new division of 2.542 acres from said 87.28 acre tract and being more full bounded and described in Exhibit A attached hereto and incorporated herein.

RESERVING UNTO Grantor, the United States Environmental Protection Agency (USEPA) and the State of Ohio, acting by and through the Director of the Ohio Environmental Protection Agency (OEPA) or the Ohio Department of Health (ODH), their successors and assigns, an easement to, upon or across the Premises in conjunction with the covenants of Grantor and/or Grantee in paragraphs numbered 1.1-1.3, 3.2 and 3.3 of this Deed and as otherwise needed for purposes of any response action as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, including but not limited to, environmental investigation or remedial action on the Premises or on property in the vicinity thereof, including the right of access to, and use of, to the extent permitted by applicable law, utilities at reasonable cost to Grantor. Grantee understands that any such response action will be conducted in a manner so as to attempt to minimize interfering with the ordinary and reasonable use of the Premises.

This Deed and conveyance is made and accepted without warranty of any kind, either expressed or implied, except for the warranty in paragraph 3.3 of this Deed, and is expressly made under and subject to all reservations, restrictions, rights, covenants, easements, licenses, and permits, whether or not of public record, to the extent that the same affect the Premises.

1. The parties hereto intend the following restrictions and covenants to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns or any other person acquiring an interest in the Premises, for the benefit of Grantor, USEPA and the State of Ohio, acting by and through the Director of OEPA or ODH, their successors and assigns.

1.1 Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of that described in instruments recorded at Deed Book (1214, pages 10, 12, 15, 17 and 248; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56 and 74; Deed Book 1256, page 179; Micro-Fiche 81-376A01; and Micro-Fiche 81-323A11) of the Deed Records of Montgomery County, Ohio (and as illustrated in the Phase I Parcel Environmental Summary, Notices of Hazardous Substances, Mound Plant, Miamisburg, Ohio dated_____ without prior written approval from ODH, OEPA, and USEPA, or successor agencies.

1.2 Grantee covenants not to use, or allow the use of the Premises for any residential or farming activities, or any other activities, which could result in the chronic exposure of children under eighteen years of age to soil or groundwater from the Premises. Restricted uses shall include, but not be limited to:

(1) single or multi family dwellings or rental units;
(2) day care facilities;
(3) schools or other educational facilities for children under eighteen years of age; and
(4) community centers, playgrounds, or other recreational or religious facilities for children under eighteen years of age.

Grantor shall be contacted to resolve any questions, which may arise as to whether a particular activity would be considered a restricted use.

1.3 Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

2. The Grantor hereby grants to the State of Ohio and reserves and retains for itself, its successors and assigns an irrevocable, permanent, and continuing right to enforce the covenants of this Quitclaim Deed through proceedings at law or in equity, including resort to an action for specific performance, as against and at the expense of Grantee, its successors and assigns, including reasonable legal fees, and to prevent a violation of, or recover damages from a breach of, these covenants, or both. Any delay or forbearance in enforcement of said restrictions and covenants shall not be deemed to be a waiver thereof.

3. Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9620(h)(3)),

the following is notice of hazardous substances, the description of any remedial action taken, and a covenant concerning the Premises.

3.1 **Notice of Hazardous Substance:** Grantor has made a complete search of its files and records concerning the Premises. Those records indicate that the hazardous substances listed in Exhibit "B," attached hereto and made a part hereof, have been stored for one year or more or disposed of on the Premises and Exhibit B also shows the dates that such storage/disposal took place.

3.2 **Description of Remedial Action Taken:** Institutional Controls are established. The Institutional Controls are set forth as covenants in Sections 1.1, 1.2, and 1.3 of this Deed.

3.3 **Covenant:** Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken, and any additional remedial action found to be necessary after the date of this Deed regarding hazardous substances existing prior to the date of this Deed shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

4. Unless otherwise specified, all the covenants, conditions, and restrictions to this Deed shall be binding upon, and shall inure to the benefit of the assigns of Grantor and the successors and assigns of Grantee.

**IN WITNESS WHEREOF,** the United States of America, acting by and through its Secretary of the Department of Energy, has caused these presents to be executed this _____day of _____, 2003.

UNITED STATES OF AMERICA

_____

State of Ohio )
County of Montgomery ) SS.

Before me, a Notary Public in and for said State and County, appeared this _____day of _____, 2003, _____, who acknowledged that he is the Manager of the Ohio Field Office for the United States Department of Energy, with full

authority to execute the foregoing on behalf of the United States of America, and who acknowledged the above to be his signature and his free act and deed.

SEAL

_____
Notary Public

Prepared by: Randolph T. Tormey
1 Mound Rd., Miamisburg, Oh 45343
(937) 865-3025
OH Atty. Regis. 0007803

## QUIT CLAIM DEED

The UNITED STATES OF AMERICA, acting by and through the Secretary of the Department of Energy (hereinafter sometimes called "Grantor"), under and pursuant to the authority of the Atomic energy Act of 1954, Section 161 (g) (42U.S.C. §2201(g)), in consideration of the covenants contained herein, and other good and valuable consideration, duly paid by the Miamisburg Mound Community Improvement Corporation, a not-for-Profit corporation subsisting under the laws of Ohio and recognized by the Secretary of Energy as the agent for the community wherein the former Mound Facility is located (hereinafter sometimes called "Grantee"), the receipt of which is hereby acknowledged, hereby QUIT CLAIMS unto Grantee its successors and assigns, subject to the reservations, covenants, and conditions hereinafter set forth, all of its right, title and interest, together with all improvements thereon and appurtenances thereto, in the following described real property (hereinafter the "Premises), commonly known as Phase I Parcel IB and IC:

Situate in Section 30 and 36, Town 2, Range 5, M.Rs., City of Miamisburg, County of Montgomery, State of Ohio, being part of a 87.28 acre tract conveyed to the United States of America, as recorded in Deed Book Volume 1214, Page 12 of the Deed Records of Montgomery County, Ohio, said 87.28 acre tract being comprised of a 59.75 acre tract, also a 19.40 acre tract, also a 9.97 acre tract, also a 0.78 acre tract and a 0.78 acre tract all known as Lot Numbered 2259 of the consecutive numbered lots of the City of Miamisburg, also being part of a 79.74 acre tract conveyed to the United States of America, as recorded in Microfiche No. 81-376A01 of the Deed Records of Montgomery County, Ohio, said 79.74 acre tract being comprised of a 24.197 acre tract and known as Lot Numbered 6128 of the consecutive numbered lots of the City of Miamisburg, also a 35.50 acre tract known as Lot Numbered 6127 of the consecutive numbered lots of the City of Miamisburg, and a 24.24 acre tract known as Lot Numbered 4777 of the consecutive numbered lots of the City of Miamisburg, also being part of a 20.46 acre tract conveyed to the United States of America, as recorded in Deed Book Volume 1215, Page 347 and part of a 17.58 acre tract conveyed to the United States of America, as recorded in Deed Book Volume 1214, Page 248, all of the Deed Records of Montgomery County, Ohio, said 20.46 acre tract and 17.58 acre tract being known as Lot Numbered 2290 of the consecutive numbered lots of the City of Miamisburg, being a new division of 42.882 acres from said 87.28 acre tract, 79.74 acre tract, 20.46 acre tract and 17.58 acre tract and being more fully bounded and described in Exhibit A attached hereto and incorporated herein:

Situate in Section 36, Town 2, Range 5, MRs., City of Miamisburg, County of Montgomery, State of Ohio, being part of a 79.74 acre tract conveyed to the United States of America, as recorded in Microfiche No. 81-376A01 of the Deed Records of Montgomery County, Ohio, said 79.74 acre tract being comprised of a 24.197 acre tract and known as Lot Numbered 6128 of the consecutive numbered lots of the City of Miamisburg, also a 35.50 acre tract known as Lot Numbered 6127 of the consecutive numbered lots of the City of Miamisburg, and a 24.24 acre tract known as Lot Numbered 4777 of the consecutive numbered lots of the City of Miamisburg, also being part of a

42.56 acre tract conveyed to the United States of America, as recorded in Microfiche No. 81-323A11 of the Deed Records of Montgomery County, Ohio, said 42.56 acre tract being comprised of a 46.313 acre tract known as Lot Numbered 4778 of the consecutive numbered lots of the City of Miamisburg, said 42.56 acre tract being all the remainder of an 80 acre tract as conveyed from Ray C. Dunaway and Thelma Mae Dunaway to Oak Knoll Development and Investment Co., Inc., as recorded in Microfiche No. 71-513B06 of the Deed Records of Montgomery County, Ohio, being a new division of 6.568 acres from said 79.74 acre tract and 42.56 acre tract and being more fully described in Exhibit B attached hereto and incorporated herein.

RESERVING UNTO Grantor, the United States Environmental Protection Agency (USEPA) and the State of Ohio, acting by and through the Director of the Ohio Environmental Protection Agency (OEPA) or the Ohio Department of Health (ODH), their successors and assigns, an easement to, upon or across the Premises in conjunction with the covenants of Grantor and/or Grantee in paragraphs numbered 1.1-1.3, 3.2 and 3.3 of this Deed and as otherwise needed for purposes of any response action as defined under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, including but not limited to, environmental investigation or remedial action on the Premises or on property in the vicinity thereof, including the right of access to, and use of, to the extent permitted by applicable law, utilities at reasonable cost to Grantor. Grantee understands that any such response action will be conducted in a manner so as to attempt to minimize interfering with the ordinary and reasonable use of the Premises.

This Deed and conveyance is made and accepted without warranty of any kind, either expressed or implied, except for the warranty in paragraph 3.3 of this Deed, and is expressly made under and subject to all reservations, restrictions, rights, covenants, easements, licenses, and permits, whether or not of public record, to the extent that the same affect the Premises.

5. The parties hereto intend the following restrictions and covenants to run with the land and to be binding upon the Grantee and its successors, transferees, and assigns or any other person acquiring an interest in the Premises, for the benefit of Grantor, USEPA and the State of Ohio, acting by and through the Director of OEPA or ODH, their successors and assigns.

1.1 Grantee covenants that any soil from the Premises shall not be placed on any property outside the boundaries of that described in instruments recorded at Deed Book (1214, pages 10, 12, 15, 17 and 248; Deed Book 1215, page 347; Deed Book 1246, page 45; Deed Book 1258, pages 56 and 74; Deed Book 1256, page 179; Micro-Fiche 81-376A01; and Micro-Fiche 81-323A11) of the Deed Records of Montgomery County, Ohio (and as illustrated in the Phase I Parcel Environmental Summary, Notices of Hazardous Substances, Mound Plant, Miamisburg, Ohio dated_____

without prior written approval from ODH, OEPA, and USEPA, or

successor agencies.

1.2 Grantee covenants not to use, or allow the use of the Premises for any residential or farming activities, or any other activities which could result in the chronic exposure of children under eighteen years of age to soil or groundwater from the Premises. Restricted uses shall include, but not be limited to:

(1) single or multi family dwellings or rental units;
(2) day care facilities;
(3) schools or other educational facilities for children under eighteen years of age; and
(5) community centers, playgrounds, or other recreational or religious facilities for children under eighteen years of age.

Grantor shall be contacted to resolve any questions which may arise as to whether a particular activity would be considered a restricted use.

1.3 Grantee covenants not to extract, consume, expose, or use in any way the groundwater underlying the premises without the prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

6. The Grantor hereby grants to the State of Ohio and reserves and retains for itself, its successors and assigns an irrevocable, permanent, and continuing right to enforce the covenants of this Quitclaim Deed through proceedings at law or in equity, including resort to an action for specific performance, as against and at the expense of Grantee, its successors and assigns, including reasonable legal fees, and to prevent a violation of, or recover damages from a breach of, these covenants, or both. Any delay or forbearance in enforcement of said restrictions and covenants shall not be deemed to be a waiver thereof.

7. Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9620(h)(3)), the following is notice of hazardous substances, the description of any remedial action taken, and a covenant concerning the Premises.

3.1 **Notice of Hazardous Substance:** Grantor has made a complete search of its files and records concerning the Premises. Those records indicate that the hazardous substances listed in Exhibit "B," attached hereto and made a part hereof, have been stored for one year or more or disposed of on the Premises and Exhibit B also shows the dates that such storage/disposal took place.

3.2 **Description of Remedial Action Taken:** Institutional Controls are established. The Institutional Controls are set forth as covenants in Sections 1.1, 1.2, and 1.3 of this Deed.

3.3 **Covenant:** Grantor covenants and warrants that all remedial action necessary for the protection of human health and the environment with respect to any hazardous substances remaining on the property has been taken, and any additional remedial action found to be necessary after the date of this Deed regarding hazardous substances existing prior to the date of this Deed shall be conducted by Grantor, provided, however, that the foregoing covenant shall not apply in any case in which the presence of hazardous substances on the property is due to the activities of Grantee, its successors, assigns, employees, invitees, or any other person subject to Grantee's control or direction.

8. Unless otherwise specified, all the covenants, conditions, and restrictions to this Deed shall be binding upon, and shall inure to the benefit of the assigns of Grantor and the successors and assigns of Grantee.

**IN WITNESS WHEREOF,** the United States of America, acting by and through its Secretary of the Department of Energy, has caused these presents to be executed this _____day of _____, 2003.

UNITED STATES OF AMERICA

_____

State of Ohio )
County of Montgomery ) SS.

Before me, a Notary Public in and for said State and County, appeared this _____day of _____, 2003, _____, who acknowledged that he is the Manager of the Ohio Field Office for the United States Department of Energy, with full authority to execute the foregoing on behalf of the United States of America, and who acknowledged the above to be his signature and his free act and deed.

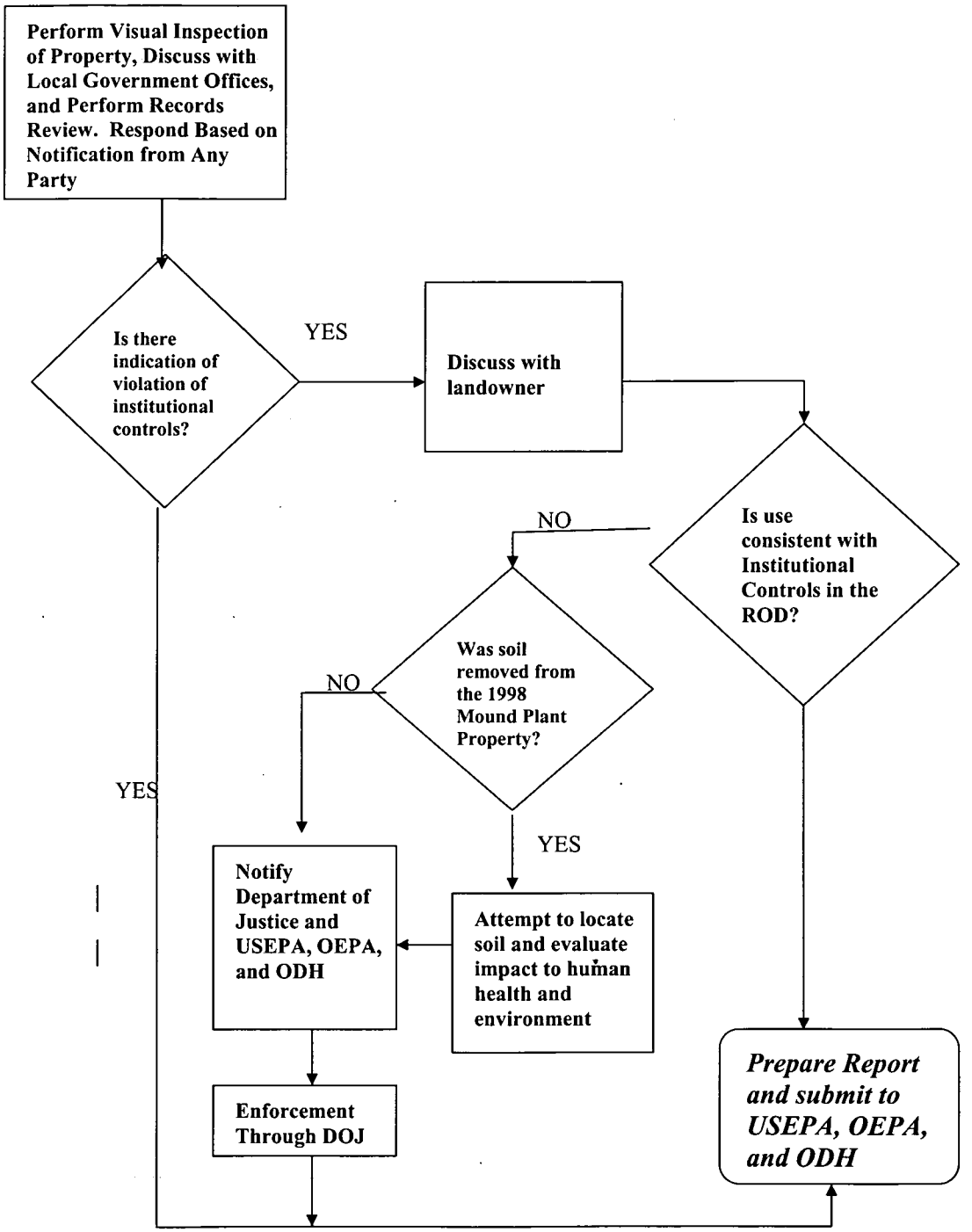
SEAL

_____
Notary Public

Prepared by: Randolph T. Tormey
1 Mound Rd., Miamisburg, Oh 45343
(937) 865-3025

**Attachment 5**

**Flow Chart of Process to Determine if Institutional Controls Have Been Violated**


Perform Visual Inspection of Property, Discuss with Local Government Offices, and Perform Records Review. Respond Based on Notification from Any Party
Is there indication of violation of institutional controls?
YES
Discuss with landowner
Is use consistent with Institutional Controls in the ROD?
NO
Was soil removed from the 1998 Mound Plant Property?
NO
YES
YES
Notify Department of Justice and USEPA, OEPA, and ODH
Attempt to locate soil and evaluate impact to human health and environment
Enforcement Through DOJ
Prepare Report and submit to USEPA, OEPA, and ODH

Deleted: YES

**Attachment 6**

**Sample Checklist for Inspection of Parcels**

**CHECKLIST**
for
**Review of Effectiveness**
of
**Institutional Controls**

Date(s) Performed:

Review led by: Phone #:

Participants:

Parcel reviewed:

Summary of property improvements since DOE's sale of parcel or since the previous Review (whichever is most recent). For example, have buildings been demolished or erected? Has surface water flow been modified? Has landscaping been done?

Evidence of Soil removal from the "1998 Mound Plant Property"? Yes ( ) No ( )

Evidence of (non-DOE) Groundwater use? Yes ( ) No ( )

Evidence of land use other than "Industrial" (e.g., residential)? Yes ( ) No ( )

Signage/Markers in good repair (if applicable)? Yes ( ) No ( )

Fencing in good repair (if applicable)? Yes ( ) No ( )

| | |
|---|---|
| Groundwater Monitoring Wells maintained properly? | Yes ( ) No ( ) |
| Air Monitoring Stations maintained properly (if applicable)? | Yes ( ) No ( ) |
| Containment system(s) in good repair (if applicable)? | Yes ( ) No ( ) |
| Site Surveillance equipment in good repair (if applicable?) | Yes ( ) No ( ) |
| Other equipment associated with maintenance of the Institutional Controls in good repair (if applicable)? | Yes ( ) No ( ) |

Summary of items discovered during previous Review (and disposition of same):

Date of previous Review:

| | | |
|---|---|---|
| Item # 1: | Corrected? | Yes ( ) No ( ) |
| Item # 2: | Corrected? | Yes ( ) No ( ) |
| Item # 3: | Corrected? | Yes ( ) No ( ) |
| Item # 4: | Corrected? | Yes ( ) No ( ) |

Personnel interviewed during the physical walk-over of parcel, or during review of documentation associated with the parcel:

List of Documents reviewed (e.g., street opening permits or construction permits approved by the City of Miamisburg, engineering drawings for improvements to property, aerial photographs, maps):

Based upon the review of the above-listed Documents, were property improvements covered by the appropriate approvals (e.g., construction permit approved by City? movement of soil or use of groundwater approved by the regulators?).

Yes ( ) No ( )

Miscellaneous items noted during review:

Recommendations:

Conclusion:

Checklist prepared by: _____ Date: _____

U.S. Department of Energy

**Attachment 7**

**OEPA and ODH Protocol for Request to Remove Soil**

## MOUND PLANT
## POST CLOSURE STEWARDSHIP

## SOIL REMOVAL PROHIBITION
## OHIO EPA AND ODH
## PROTOCOL FOR REQUEST TO REMOVE SOIL
## AUGUST 2002

Process to obtain State approval for removal of soil quantities from the Mound Plant

Statement of intent:

The soil at the 306-acre Mound Plant, previously owned by DOE, was cleaned up to be protective for industrial/commercial use only. The State wishes to prevent potentially contaminated soil volumes from transport offsite for unrestricted use. Information about the cleanup process, background levels, and toxicology data is contained in or referenced in the Mound 2000 Residual Risk Evaluation Methodology, January1997.

State law prohibits deposition of soil with radioactive contamination above background limits into sanitary landfills.
Reference: **Ohio Revised Code Chapter 3748.10 (B)**

State law also regulates solid and hazardous waste disposal.
Reference: **Ohio Revised Code Chapter 3734**

Process for approval of offsite transport of soil from the former Mound Plant:

Please provide the following information about the soil quantity that you would like to transport offsite. Information should be provided in writing to Ohio EPA, Ohio Department of Health/Bureau of Radiation Protection and the USEPA Region V for each instance of proposed soil volume transport.

1. Proposed volume of soil.
2. Location onsite where soil removal is proposed.
3. Depth of proposed excavation.
4. Process history and/or past sampling results of the soil from the removal area. List contaminants of concern from past events and cleanup levels if applicable.
5. Preferred disposition of soil.

A. For disposal to a licensed low-level radioactive waste facility, no further information is required.

B. For any other disposition, please describe the location of proposed soil disposition, including address. Describe sampling protocol that will be used to verify that contamination levels do not exceed radiological background levels. Describe sampling protocols that will be used to verify that the soil does not contain hazardous constituents.

6. Notify DOE when an approval is granted.

**Attachment 8**

**USEPA and OEPA Protocol for Approval to Use Groundwater**

MOUND PLANT
POST CLOSURE STEWARDSHIP

**GROUND WATER PROHIBITION**
**USEPA AND OHIO EPA**
**PROTOCOL FOR APPROVAL TO USE**

AUGUST 2002

Example of quitclaim deed language for the ground water prohibition taken from the Parcel 4 ROD:

> Grantee covenants not to extract, consume, expose or use in any way the groundwater underlying the premises without prior written approval of the United States Environmental Protection Agency (Region V) and the OEPA.

Example of language taken from the Selected Remedy section of the Parcel 4 ROD

> The deed restrictions include:
> Prohibition against the use of groundwater

Although the deed recorded at the county for some parcels at Mound includes a provision allowing the installation of groundwater wells at the site in the future with the approval of the US EPA and Ohio EPA, the Records of Decision for these parcels state that groundwater should not be used at all in the future at the Mound site and that the installation of wells should
be prohibited. Since this determination was reached based upon modeled potential future contamination concentrations in the Buried Valley Aquifer (conservative estimates that cannot be disproved), this approval, if requested, will not be granted by US EPA or Ohio EPA.

For previously released parcels and those parcels yet to be released, consideration will be given for the use of the ground water through the existing Mound production wells and distribution system. This consideration will be based upon a written request to the US EPA and Ohio EPA. It is the intention that this consideration will extend up until such time as the parcel is connected to the municipal water supply. There is no intention to grant ground water usage, for any purpose, after municipal water supply hookup.

**Attachment 9**

***Outline of DOE Report on Effectiveness of Institutional Controls***

**Outline of DOE Report on Effectiveness of Institutional Controls**

1. Brief description and history of site.
2. Brief description of selected remedy and status of remedy.
3. Effectiveness and achievement of objectives of remedy.
4. Any monitoring results and analysis of same.
5. Summary table of institutional controls violations discovered to-date.
6. Conclusions.
7. Recommendations.
8. Persons performing review and credentials.

**NOTE:** Outline above constitutes minimum required information, however, actual report format is at the discretion of the DOE.