



# FULL BOARD MEETING T-214

Tuesday, May 11, 2004

## FINAL MINUTES

The Fernald Citizens Advisory Board met from 6:00 p.m. to 9:00 p.m. on Tuesday, May 11, 2004, in T-214 at the Fernald Closure Project site.

**Members Present:**

Jim Bierer  
Lisa Crawford  
Pam Dunn  
Robert Tabor  
Gene Jablonowski  
Graham Mitchell  
Bill Taylor  
Gene Willeke

**Members Absent:**

French Bell  
Kathryn Brown  
Sandy Butterfield  
Marvin Clawson  
Steve Depoe  
Gary Storer

**Designated Federal Official:**

Gary Stegner

**The Perspectives Group Staff:**

David Bidwell  
Douglas Sarno (by telephone)

**Fluor Fernald Staff:**

Sue Walpole

Approximately 20 spectators also attended the meeting, including members of the public and representatives from the Department of Energy and Fluor Fernald.

**General Announcements and Ex-Officio Comments**

Jim Bierer called the meeting to order. David Bidwell explained that Doug Sarno could not attend the meeting but would participate by telephone.

Bill Taylor stated that despite recent issues regarding the final disposition of silos waste, work at the site has been progressing well. He also announced that DOE would provide a briefing on Silos Project safety authorization at the May 27 FRESH meeting. Dennis Carr stated that overall safety at the site has improved, and he noted that Fernald Atomic Trades had no recordable injuries over the past five months. Dennis announced that the final production building, the pilot plant, had been demolished. Johnny Reising used a recent aerial photograph to illustrate recent progress at the site. Key points included:

- More than 300,000 cubic yards of material have been placed in the OSDF during FY2004.
- Clay liners have been installed for Cells 7 and 8 of the OSDF.
- Discharges for the Aquifer Project have been well below the allowable monthly average of 30 ppb.
- The Waste Pits Project is going well; unit train #116 left the site on May 15.
- As the last production buildings have come down, members of the D&D workforce have been transferred to the Soils Project.
- Excavation of the northwest corner of the production area, Area 3B, is complete. This area will be the first area in the production area to undergo the certification process.

In response to a question from a FCAB member, Dennis noted that perched water had been encountered near Plant 6 and was pumped to the AWWT for treatment.

David reported that the Critical Analysis Team (CAT) submitted a memo to the FCAB, asking for input on the appropriate role of the CAT during the removal and treatment of silos waste. The FCAB will provide feedback to the CAT when it attends the Board meeting in June. David also explained that the CAT provided the FCAB with its most recent report, which included responses from Fluor Fernald printed in italics.

**Disposal of Silos Materials**

David reviewed current issues facing final disposal of silos materials. In April, the Attorney General of Nevada sent a letter to DOE alleging that the planned disposal of Fernald silos materials at the Nevada Test Site (NTS) would be illegal and unsafe. The letter threatened legal action if DOE moves forward with its plan. DOE responded that it is considering the Nevada AG's legal arguments and will provide the state with 45-days notice before it begins shipments of silos waste to NTS. The Nevada AG's Office immediately sent another letter, urging DOE not to create an emergency condition by removing waste before disposal issues are resolved. David stated that he and Doug had spoken to several FCAB members about this issue and provided DOE with a list of questions. He noted that there is a great deal of uncertainty surrounding this issue and stated that this meeting would provide the FCAB with an opportunity to learn about the issue and a range of potential scenarios.

Bill Taylor explained that the site is moving forward with the Silos Project, as specified in the OU4 Record of Decision (ROD). He reported that construction and startup procedures have been completed for Silo 3, and operability tests and employee training are underway. Construction of the Advanced Waste Retrieval system for Silos 1 and 2 is complete and startup procedures have begun for that facility. Construction of the treatment and packaging system for Silos 1 and 2 will be completed soon. Bill explained

that once materials have been removed from the silos, the D&D staff would take down the silos structures. As soon as all of the waste has been packaged, the remediation facilities would also be demolished. Bill stated that remediation of Silo 3 is scheduled to begin before Silos 1 and 2. He noted that the originally scheduled date for removing waste from Silo 3 was already fewer than 45 days away.

Bill explained how DOE is addressing the issues raised by the Nevada AG's letter. DOE determined that the legal issues raised in the letter are too complex to provide an immediate response, so it has put together a team of four DOE staff members to address the issues. The team is comprised of Bill (representing DOE-Ohio) and a representative from Environmental Management, the DOE Office of General Counsel, and DOE-Nevada. An alternate has been designated from each member. John Sattler will serve as Bill's alternate. Bill stated that the team had spoken several times by telephone but had not determined a clear strategy for resolving the issue. He explained that the team would meet face-to-face in Washington, DC on Thursday, May 13. Bill stated that due to potential litigation, team discussions would remain confidential.

John Sattler briefly reviewed the arguments presented in the letter from the Nevada AG. He stated that the letter presents a wide range of complaints and allegations, but he believes the primary complaint is related to language included in the 2004 Energy and Water Appropriations Bill. This bill provided DOE with the option to dispose of silos waste at a private disposal facility. John explained that the Nevada AG interprets this language as requiring the silos waste to be sent to an NRC-regulated facility. As a DOE facility, NTS is not licensed by NRC. John stated that DOE-Ohio believes that disposal of the waste at NTS is legal and safe, and it also believes that the U.S. EPA would not have approved the project if it were unsafe or illegal. John explained that DOE-Ohio provided DOE Headquarters with responses to the Nevada AG's allegations, but it wants to be sure there would be no unintended legal consequences to any response. John explained that there are layers of uncertainty regarding this issue. For example, it is not known if the State of Nevada will follow through with legal action, and it is not known how a federal judge would respond to Nevada's complaints.

FCAB members had several questions and comments regarding the dispute with the Nevada AG and how DOE would resolve the issue. Key points are listed below:

- Some stakeholders are wary of interim storage of materials at the Fernald site, because there is clear limit to how long interim storage would last. Other stakeholders believe that removing the waste from the silos would reduce risks to the community.
- Environmental regulators for the State of Nevada were surprised by the AG's actions. It is unlikely, however, that a state regulatory agency would publicly oppose an action taken by the state's Attorney General.
- To date, there have been no direct conversations between the State of Nevada and DOE. This is not likely to occur, due to the potential of litigation.
- This dispute will likely have a political solution. A technical solution, such different packaging or additional treatment, would not be successful.
- The U.S. EPA and Ohio EPA do not have a role in this dispute unless shipment of the silos waste is interrupted by a lawsuit. They cannot prevent DOE from moving forward with implementation of the ROD.
- DOE could not legally walk away from its obligations to remove the waste from the Fernald silos.
- As long as there is intent to implement the ROD and dispose of the waste off site, the project's Environmental Impact Statement would not have to be revised. It

would have to be revised to allow long-term, on-site disposal. It is not clear what duration would qualify as “long term.”

- The Office of Legacy Management has not yet been involved in this issue. It could become involved, if lengthy litigation were to impact transition of the site to long-term surveillance and monitoring.
- The Critical Analysis Team (CAT) has been briefed on this issue and DOE’s strategy for moving forward. The CAT will consider the information and provide comments in the near future.

**Silo 3 Issues**

Because no action has been taken by the State of Nevada to stop the Silos Projects, DOE-Ohio intends to move forward with the removal and processing of Silo 3 waste, which is first in the baseline schedule. However, DOE-Ohio is developing an interim strategy in case Nevada takes legal action and a judge stops shipment of the waste to NTS. John provided four reasons why DOE believes it is best to move forward with the removal of waste from Silo 3:

1. Removal of the waste allows the site to make progress on the overall remediation of the Fernald site.
2. Removal of the waste is safer than leaving it in the silo.
3. Removal of Silo 3 waste is the best strategy for moving DOE and Nevada towards a resolution.
4. There are serious consequences to delaying the project, including the expense of hiring and training a new workforce and unknown ramifications of shutting down and restarting the project facilities.

Dennis Carr reviewed the stabilization and treatment process for Silo 3. Fluor plans to remove the Silo 3 waste from the silo using a pneumatic wand. The powdery material will be sprayed with a sticky substance as it is transferred into soft-sided, DOT-approved “super sacks.” This fixative also contains ferric sulfate, which will reduce the mobility of some hazardous metals. Six to eight full, sealed bags will be placed in a metal SeaLand container for shipment and disposal. If shipment of the waste is delayed, these SeaLand containers would be stored at the site. Doors to the containers would not be sealed until shipment is approved, so the packages of waste could be inspected. The SeaLand containers would be stacked two-high on a graded pad and would have to meet all applicable or relevant and appropriate requirements (ARARs). The project is expected to result in a total of 220 to 273 SeaLand containers of packaged waste.

The FCAB had many questions and comments regarding DOE’s intent to move forward with the removal of waste from Silo 3. Key discussion points are listed below:

- The bags that will be used to package the waste have a minimum 20-year life span. They deteriorate in UV light, but the bags would not be exposed to sunlight when stored in SeaLand containers.
- The IP2 bags are a common packaging for waste and would be acceptable at other licensed waste facilities.
- If shipment to NTS is delayed for a long time, it might be possible to send the waste to an off-site interim storage facility. The WCS facility in Texas is licensed for storage but not disposal.
- If the SeaLands were to remain at the site for an extended period, they would have to be moved to a covered storage area. The existing Silos Project warehouse could be used for this purpose. A new storage facility for all of the SeaLand containers would cost an estimated \$2.5 million.

- DOE expects that the radon flux rate of the sealed packages of waste will be below allowable limits. However, it was not known if each bag would have to meet the flux rate or if the levels would be averaged across the storage area.
- Once the waste is removed from the Silo 3, its hazard level would be reduced, because there is no longer a risk from earthquakes. In original risk assessments, tornados were not considered to be a relevant risk at the site.
- Storage of the waste would have to meet RCRA standards. Once it leaves the site, RCRA no longer applies to the Fernald silos waste.
- The level of selenium in Silo 3 waste is just above allowable limits. The only way to reach these limits would be through dilution of the material. Federal and state regulators determined that the current ROD would be protective.
- Waste must undergo a two-week evaluation period before it is shipped. This means the first Silo 3 waste could not be shipped until two weeks following its removal from the silo.
- The Silo 3 remediation facility was not designed to operate during cold weather months. It is not known how the facility would perform if removal of the wastes is delayed until colder months.

**Silos 1 and 2 Issues**

Removal of waste from Silos 1 and 2 is planned to begin in late July 2004. It is likely that Silo 3 activities will lead to some clarification of these issues prior to any actions being taken for Silos 1 and 2.

John Sattlerterly reviewed the two phases of the Silos 1 and 2 remediation project. First, the Advanced Waste Retrieval system (AWR) will pump the wastes from the silos to four large transfer tanks. After all of the waste is transferred to the tanks, the treatment and packaging phase will begin. Shipment of the treated waste to NTS is expected to begin in early November. If shipment of the wastes is not possible, due to the dispute with the State of Nevada, the waste would remain in the storage tanks. The large volume of waste after treatment would prohibit the interim storage of packaged materials for Silos 1 and 2. Dennis Carr explained that a 20-year minimum standard was used for the design and construction of the storage tanks. Because the silos have already exceeded their expected lifespan, DOE believes it is safer to store the waste in the tanks than in the silos.

The group briefly discussed concerns regarding Silos 1 and 2. Key discussion points are listed below:

- The AWR storage tanks are in a concrete building, which would act as secondary containment if a tank were to leak. The walls of this building are 24 inches thick. Some seepage problems were experienced recently at this building, but Dennis Carr stated these problems are normal for a new concrete structure and are being sealed.
- Earlier plans to vitrify this waste would have resulted in more concentrated waste than the current treatment plans.
- Special trailers for the shipment of Silos 1 and 2 waste are currently being constructed by a contractor. A decision would have to be made regarding the future of this contract, if it appears shipment of the waste will be delayed.
- Delays in the Silo 3 project could create complications for the operation of the Silos 1 and 2 remediation facilities, because Fluor planned on using much of the same staff for both projects.
- By moving the waste to the tanks, the project could move forward with D&D of Silos 1 and 2 and excavation of the soils beneath them.

**FCAB Action**

FCAB members discussed the issues related to the disposal of silos waste. All members agreed that the FCAB should continue to support implementation of the existing ROD. No consensus could be reached, however, on whether it was better to have interim on-site storage of Silos 3 waste or to leave the waste in the silo, if immediate shipment of the waste to NTS is not possible. The FCAB did agree that it is critical for DOE to seek immediate resolution to this issue. There were concerns that it would take a long time for issues to be resolved through the legal system, so DOE should directly engage the State of Nevada in discussions of the issue.

Gene Willeke suggested that the FCAB should clarify its position on this issue to the editors of the newspapers in Ohio and Nevada.

The FCAB determined that it would prepare a letter in time for distribution at the DOE team meeting on Thursday, May 13. Bill Taylor agreed to take a FCAB letter to that meeting. The letter should confirm the FCAB's support for full implementation of the current ROD and recommend that DOE should expedite resolution of these issues by immediately giving the State of Nevada 45-days notice of its intent to remove, package, and ship the silos materials to NTS. The letter should also clarify that the current ROD was the result of a long process, which involved stakeholders in Ohio and Nevada.

David noted that there would be additional opportunities for the FCAB to provide recommendations on this issue, as DOE proposes specific actions. The FCAB urged DOE to keep the community informed regarding this issue. FCAB members stated that special public meetings on this issue could be necessary prior to the next FCAB meeting.

**SSAB Chairs Meeting**

Lisa reported that she and Katie attended the April SSAB Chairs meeting in Washington, DC. She reported that Fernald is the only site that has responded fully to Headquarters' Risk-Based End State (RBES) requirements. She also reported that the other SSABs appeared to be less opposed to the RBES process than the FCAB.

The next SSAB Chairs meeting will be held at the Hanford site. The Chairs also expressed an interest in having another SSAB workshop, focused on public participation, transportation, and stewardship. Lisa stated that the FCAB should not host this workshop, because it has not been fully reimbursed for past workshops it has hosted.

Lisa also reported that the Chairs from the NTS Citizens Advisory Board were not aware of the State of Nevada's objection to the disposal of Fernald silos waste at NTS. Jim Bierer has contacted the Chair of the NTS CAB to discuss these issues, but he has not yet responded.

**Tracking FCAB recommendations**

David noted that Perspectives Group would continue to track responses to FCAB recommendations and comments. He recently reviewed FCAB recommendations and comments and found that some of them did not ask for a response or did not provide a specific date by which a response was requested. David stated that the FCAB should be sure to include a specific deadline for a response in its future correspondence to DOE.

**Stewardship**

David reported that the Stewardship Committee's May 10 Stewardship Summit went well. The Stewardship Committee is convening a coalition of individuals and organizations who are interested in post-closure involvement at site. Future Stewardship Committee meetings will be dedicated to work by this coalition. All FCAB members are encouraged to recruit organizations for participation in the coalition.

**Meeting Schedule**

The FCAB discussed its upcoming meeting schedule. Some FCAB members suggested that FCAB return to Saturday meetings, because weekend meetings are easier for members to attend and they would be more energetic.

Due to the schedule of the facilitators, the FCAB meeting planned for Tuesday, June 29 could not be changed to a Saturday. However, the meeting will begin at 6:15, to facilitate the attendance of members who must travel from longer distances. The Board shifted the Stewardship Committee meeting from Monday to Wednesday, June 30, in order to avoid conflicts with the meetings of other local organizations.

The meeting scheduled for August will be shifted to a Saturday. The annual FCAB retreat is already scheduled for a Saturday, September 18. The meeting schedule for FY2005 will be determined during that retreat.

**Public Comment**

The meeting was opened to public comment.

- A member of the Fernald guards union raised concerns about emergency response for the silos projects. He also stated that the guards union should have a representative on the FCAB.
- Gene Willeke announced that a graduate student recently created a resource guide for locating information at Fernald. This guide will be available on the Internet later this summer.
- Lisa Crawford stated that the State of Nevada has an Internet site called "What's News," which provides links to nuclear-related news from around the world. David Bidwell promised to provide FCAB members with the address to this site.
- Graham Mitchell stated that public involvement is still critical at the Fernald site, because issues are becoming more complex as site closure approaches. He stated that it is not a good time for the site to lose people who have a long-standing relationship with the public.

