

MEETING NOTES

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**SUBJECT:** Natural Resource Trustees  
**MEETING DATE:** December 21, 1995  
**LOCATION:** Ohio Environmental Protection Agency Dayton Office  
**ISSUE DATE:** January 4, 1996 File Record Storage Copy 104.1.5

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<b>DISTRIBUTION:</b>	+ Attendees	+ + Part-time	* Author of Notes
Stephanie Bogart		Greg Jones	Sue Walpole
Alicia Bushman		Pete Kelley	Keith Wilkerson
+ Terry Hagen		* + Jenny Mailander	+ Eric Woods
Renee Holmes		Steve Oberjohn	+ Pete Yerace
John Homer		Craig Straub	NRM 4.7.1
Jack Hoopes			

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Attendees not listed above included Tom Schneider and Tim Hull from Ohio Environmental Protection Agency (Ohio EPA).

The purpose of this meeting was to initiate preliminary discussions regarding potential settlement of the State of Ohio's natural resource damages claim against the U.S. Department of Energy (DOE). The meeting was in response to a telephone call between Terry Finn (Ohio Attorney General's Office) and Beth Osheim (DOE), where Mr. Finn indicated that the State might be interested in such a settlement.

All attendees agreed discussions at this meeting would need to be considered preliminary and in no way implied a commitment by or an agreement between DOE or Ohio EPA.

Pete Yerace reviewed the status of trustee negotiations between DOE, Ohio EPA, and the U.S. Department of the Interior (DOI). He stated that DOE felt settlement was possible under the present path (i.e., hiring of a contractor.) However, DOE was also interested in considering alternative avenues for possible settlement of the natural resource damage claim against it, particularly if it resulted in a savings of time and tax payers' money. Mr. Yerace identified three areas that he felt needed to be discussed during the meeting: (1) administratively, the form/format for such a settlement agreement; (2) general Ohio EPA potential natural resource settlement scenarios (e.g., additional wetlands, on-property park); and (3) the time frame for identified areas (1) and (2).

Mr. Schneider discussed why Ohio was interested in considering additional trustee settlement options. Mr. Schneider explained that Ohio felt that resolution of the natural resource trustee issues should be on a faster track to be integrated into the site's design process. This faster track should result in time and money savings. Under the current

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trustee negotiations, the State felt that there were going to be difficult issues related to the hiring of a contractor to evaluate natural resource injury. The State of Ohio is concerned that these issues might impact the potential for integrating resolution of natural resource trustee issues with remedial design at the Fernald site.

Mr. Schneider stated that the State recognizes the need for public involvement in the trustee issues and is interested in learning how this will interact with DOE's Citizens Reuse Organization (CRO) and its mission at the Fernald site. When Mr. Schneider goes to Columbus for approval of a trustee settlement agreement, he wants to be able to convey an agreement that is in the best interests of the State of Ohio, without making Ohio EPA the "bad guy" from the public perspective. He does not want it to appear that the State of Ohio is forbidding economic development and demanding natural resource development at the site.

Mr. Hagen inquired if the State would be supportive of a concept whereby environmental restoration/enhancement activities would be combined with actions designed to enhance beneficial community use (such as constructing bike paths) as part of an overall settlement approach. Such an approach would include promoting the beneficial use of the Fernald property and involving the public early on in the process. Mr. Hagen explained that such involvement would occur as soon as possible, even before final decisions are made. He stressed that we need to explain to people who the various stakeholders are and provide them with a clear solid explanation of the issues. Mr. Yerace proposed providing such a status at the quarterly community meetings. The briefing could be conducted by the trustee representatives, Ohio EPA, DOE, and DOI. Mr. Schneider was supportive of these concepts.

Mr. Hagen identified that the Fernald Citizen's Task Force (FCTF) recently formed a Natural Resource Sub Committee. All agreed that it would be important to work with this sub committee consisting of Jim Bierer, Guy Guckenberger, and others. Jenny Mailander agreed to contact Jim Jackson, FERMCO FCTF liaison, to see if and when the FCTF sub committee would like to meet.

Mr. Schneider reiterated the State's interest in integrating with the on-going design process at the site. Mr. Hagen stated that it was still somewhat unclear when site regrading and restoration plans must be complete to support timely remediation. Current indications are that it is in excess of one year and could possibly be in excess of two years.

Mr. Yerace asked if the State had a concept or plan of what the site would look like at the end of remediation and restoration. Mr. Schneider identified that the State was interested in enhancements to proposed remedial actions and a common sense approach. Mr. Schneider stated that the State's preference would be for on-property restoration, for example expansion of the forested wetlands area, widening of the riparian zone, protection

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of the Paddys Run corridor. When asked if "enhancements" would include additional remedial work at the site (e.g., further cleanup of the Great Miami Aquifer), Mr. Schneider said it would not.

Ms. Mailander asked Mr. Schneider to clarify if the State's concept of "enhancement" would resolve all of DOE's responsible party obligations to the natural resource trustees, or just the lawsuit obligations. Mr. Schneider clarified that the State would be interested in using such a settlement to resolve all of the State's trustee issues at the Fernald site. Mr. Schneider said that Mr. Finn had contacted DOI's trustee representative, Don Henne, and he was aware that Ohio had proposed settlement. Mr. Henne's first reaction to the State's proposal was positive. Ms. Mailander stated that DOE and the State should involve DOI in discussions as soon as possible because of its trustee settlement experience and to ensure that any negotiations could/would meet DOI's respective trustee concerns. Subsequent attempts to reach Mr. Henne or a representative of the U.S. Fish and Wildlife Service have been unsuccessful. This is probably related to Congress' failure to finalize the DOI budget.

Mr. Hagen proposed and it was agreed that FERMCO would continue to research other natural resource trustee settlement agreements to identify potential issues and ideas for a path forward. Such research will identify issues and past lessons learned from other sites across the country. This information will be presented to the trustees' and FERMCO legal counsels sometime in the near future for consideration and to obtain preliminary agreement as to how the negotiations proceed. Eric Woods provided the example of "How will the trustees know how much restoration is enough to meet DOE's responsible party obligation?" as a key issue that FERMCO would be examining. All agreed that the trustees must provide a firm sound basis for whatever settlement is reached. Ms. Mailander stated that identification and discussion of such issues early in the process could avoid multiple disputes in the long run.

Mr. Woods asked what the State's reaction would be if there was a public push for economic development on the Fernald property. Mr. Schneider said that he would like to reserve final judgement on this issue, but that the State could accept such a finding if such a development took place away from the major natural resource areas on property. Mr. Schneider and Mr. Hagen stated that Jim Saric (U.S. EPA) has advised DOE to have some on-property or off-property area set aside for economic development to account for the loss of revenue historically generated by the Fernald site. All agreed that DOE needed to clearly define the CRO's scope of work. Mr. Schneider said that whatever the CRO's scope of work is, on-property versus off-property economic development should be supported by a cost benefit analysis.

**ACTION ITEMS:**

- FERMCO to continue its attempts at contacting and involving DOI as soon as possible.

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- FERMCO to identify ways to work with the public on integrated site issues (e.g., natural resource trustees and CRO).
- FERMCO to develop a time line depicting future trustee activities (e.g., issues identification, public involvement, key design schedules, restoration planning.)
- FERMCO to continue to research natural resource trustee settlements. Issues to be researched include: administrative mechanism for settlement; technically related issues; and potential lessons learned from past experience.
- Mr. Schneider and Ms. Mailander to contact Jim Bierer and Jim Jackson to set up January 1996 meeting with FCTF Natural Resources sub committee.
- DOE/FERMCO to identify respective points of contact for the FCTF Natural Resources sub committee.

JKM