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December 1, 2003

Mr. Robert Warther, Manager
US DOE Ohio Field Office
175 Tri-County Parkway
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Dear Mr. Warther:

I am writing you concerning the USDOE Fernald site's Draft Risk-Based End State (RBES) Vision document, which was provided to Ohio EPA as an Executive Summary on November 13, 2003 and upon which a public meeting was held on November 18, 2003. At that public meeting, Ohio EPA was able to obtain a full copy of the document. Based upon our review of the document and the public meeting, Ohio EPA has significant concerns regarding the document and DOE's implementation of its Risk-Based End States policy.

DOE has failed to have any meaningful public or regulatory involvement in the development of the document. Providing the public and regulatory agencies a portion of the document just 2 working days prior to the public meeting does not constitute formulating the vision "...in cooperation with regulators and, in consultation with affected governments, Tribal nations and stakeholders..." as required by DOE Policy P 455.1. In fact, it is our understanding that no change to the document occurred following the public meeting, where adamant opposition was expressed, and prior to submittal to DOE HQ. This leaves one to question what the point of the public meeting was other than to say a meeting occurred. The lack of public and regulatory involvement in this document and it's predecessor, the Comprehensive Groundwater Strategy Report, have seriously damaged the productive working relationships between DOE and the regulatory agencies and public. The past two months have seen numerous negative press articles and a growing distrust of DOE in the community. This, after the DOE Fernald site has been seen as a national leader over the past decade in successful stakeholder involvement and productive working relationships between DOE, regulators and the community.

Concerning the specific proposals outlined in the Draft Risk-Based End State Vision, Ohio EPA finds all of the proposals unacceptable. At the Fernald site, DOE, regulators and stakeholders employed a process to evaluate cleanup options based upon risk and community values long before the development of this policy. Additionally, these decisions were reached over years of education, discussion and compromise. To expect the public or regulators to consider changing these agreements based upon a few weeks of internal DOE document development and very limited public involvement is naive, and seemingly ignores all the effort put in by the community, site personnel and regulators over the past 10 years.

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It is important to note th[illegible] our efforts on the RBES Vision were [illegible]ormed to meet a DOE policy directive and not to satisfy any regulatory requirement of USEPA or Ohio EPA. In that regard it can be viewed as an exercise to help DOE determine if there are any regulatory "opportunities" that should be pursued further. We have always felt that such an evaluation would not bear any significant fruit at Fernald. In comparison to the evaluation and discussion that resulted in current cleanup requirements, this evaluation is anemic in terms of its rigor and devoid of the meaningful regulator and public discussion that produces implementable decisions. The result is a list of potential changes that are all problematic in that they ignore the rich history of decisions at Fernald and fail to recognize the inter-related nature of these decisions. Put simply, it does not appear to be in DOE's best interest to reopen Records of Decisions (RODS) that included extraordinary compromises from the public and regulators.

For all of these reasons, I would suggest that DOE not proceed to propose any changes based on this exercise. To the extent that you have satisfied an internal DOE screening process, you can report that you have completed that task. But, clearly, additional effort put into RBES would not be prudent. Some of your strongest supporters have already begun to question DOE's commitment to truly remediate the site. We have heard a growing perception that DOE is willing to change remedies, leave behind a dirtier site and place additional burdens on the community in order to complete work in 2006. We hope and expect this is not the case.

This is not to say that we will not continue to discuss and act on proposals to improve the cleanup at Fernald. DOE, regulatory agencies and the local community have had a very productive relationship over the past several years. Indeed several Records of Decision have been revised recently to address technical difficulties, improve processes and provide clarification. However, these changes were implemented using the successful public participation and regulatory concurrence model developed and used at Fernald over the past 10 years. Ohio EPA remains committed to working within the bounds of this framework to address site issues as they arise.

Continued work on the RBES Vision will only further distract vital resources and staff from focusing on achieving DOE's 2006 cleanup goal. The process has already cost substantial dollars in personnel time and contractor effort as well as caused damage to the working relationships at the site. Ohio EPA believes it is time to move beyond the RBES Vision exercise and allow the site and community to return their focus to achieving the 2006 goal.

Sincerely,

Thomas A. Winston, P.E.
Chief, Southwest District Office

cc: Bill Taylor, DOE-FFO
Jim Bierer, FCAB
Jim Saric, USEPA Region V
Jim Woolford, USEPA