



**Environmental  
Protection Agency**

John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

March 30, 2012

**PIKE COUNTY  
PORTSMOUTH GASEOUS DIFFUSION PLANT  
RCRA-LQG/TSDF  
OH7890008983/ 04-57-0680**

William E. Murphie, USDOE  
Portsmouth/Paducah Project Office  
1017 Majestic Drive, Suite 200  
Lexington, Kentucky 40513

Fluor-B&W Portsmouth LLC  
Woodrow B. Jameson  
P.O. Box 700  
Piketon, Ohio 45661

Dear Sirs:

On February 13, 2012, Ohio EPA received a letter documenting the events associated with the January 3, 2012 overflow of contaminated ground water at the X-749 Equalization (EQ) Tank and subsequent actions taken. Maria Galanti, from the Division of Environmental Response & Revitalization, and Steve Wells, from the Division of Surface Water, were verbally notified by USDOE and Fluor-B&W on January 3, 2012, and it was agreed that DOE could take six surface soil samples from the spill area and analyze for trichloroethylene (TCE) levels. Based on discussions with Ms. Galanti and Mr. Wells, it was also agreed that if the levels were less than the leaching limit of 48 ug/kg, then no further action at this time would be required unless the facility's contingency plan had other requirements.

On March 8, 2012, Ohio EPA received your response to the February 16, 2012 Notice of Violation (NOV) requesting that the NOV be rescinded. It is stated in the March 8, 2012 letter, that the overflow from the X-749 EQ Tank did not result in a situation that would "threaten or could threaten human health or the environment" based on several reasons. Ohio EPA has reviewed the contingency plan requirements contained in state law, relevant Agency guidance, USDOE's Part B permit obligations relating to contingency plan implementation, and the Part B contingency plan language.

As stated in Ohio Administrative Code (OAC) rule 3745-54-51, the purpose of the contingency plan is to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. Based on our review of USDOE's contingency plan contained in the Part B permit application, Ohio EPA has

Mr. William Murphie  
Portsmouth/Paducah Project Office  
March 30, 2012  
Page 2 of 3

determined that implementation of the contingency plan was required in response to the events of January 3, 2012.

USDOE's contingency plan outlines specific steps to follow in case of a spill or release to soil. Specifically, Section G-3 states that the contingency plan will be implemented if a spill or release of hazardous waste can be contained onsite, but the potential exists for ground water contamination. Even though the ground water is already contaminated in the X-749 area, as you noted, the contingency plan should have been implemented and its soil remediation steps followed. The overflow of contaminated ground water (a listed hazardous waste) to uncontaminated soils was contained on-site and could lead to additional contamination to ground water, a situation described in your contingency plan as requiring implementation of the plan. OAC rule 3745-54-50 does not exempt facilities with existing environment contamination, be it soil or ground water, from the contingency plan requirements.

Section G-4F includes steps that will be taken in the event of a spill or release to soil from a container in the permitted storage area. Step 1 states that soil showing visible contamination will be excavated immediately. Ohio EPA believes that these are the same spill procedures that should have been implemented in the case of the January 3, 2012 release, since a hazardous waste was involved. If USDOE intended that the steps outlined in Section G-4F of the contingency plan would be implemented only if the spill was from a container in the permitted storage area, then the contingency plan must be revised to include and discuss spill procedures for spills or releases for the rest of the facility, not just the permitted storage area. However, as Ms. Galanti and Mr. Wells agreed to a cleanup value during the January 3, 2012 telephone call, USDOE and Fluor-B&W will not have to excavate the soil in this instance.

It is Ohio EPA's expectation that should an incident occur at the facility similar to the January 3, 2012 release that the contingency plan will be implemented and followed as approved.

USDOE and Fluor-B&W Portsmouth, LLC's (FBP) March 8, 2012 response, also states that because the EQ Tank is exempt from the hazardous waste management standards, OAC rule 3745-54-51, purpose and implementation of contingency plan, does not apply. The wastewater treatment unit (WWTU) exemption allows the owner or operator of a WWTU to treat or store hazardous wastewater and sludge in a tank or tank system that is part of a WWTU without a hazardous waste permit and without complying with the hazardous waste management standards, specifically the hazardous waste tank standards.

This exemption is only for the wastewater management unit and not the hazardous waste (e.g., wastewater or sludge) that is treated or managed within the unit. Any hazardous waste releases or treatment residuals generated from the WWTU process must be

Mr. William Murphie  
Portsmouth/Paducah Project Office  
March 30, 2012  
Page 3 of 3

managed in compliance with the hazardous waste management regulations when it leaves the exempted unit.

Ohio EPA declines to rescind the February 16, 2012 Notice of Violation. USDOE and Fluor-B&W have not provided a justifiable basis for Ohio EPA to take such action. It should be noted that taking action other than that required by the contingency plan does not excuse the failure to implement the plan itself, nor does existing contamination excuse additional contamination. In order to abate the violation that was cited in the February 16, 2012 NOV, USDOE and Fluor-B&W must submit in writing, within 14 days, that a review of its contingency plan and emergency procedures has been conducted, and has been revised (if necessary) to ensure that the contingency plan will be properly implemented. I encourage USDOE-Fluor-B&W to work closely with Melody Stewart on specific RCRA hazardous waste issues and contingency plan questions that may arise in the future. Melody can assist you in your review of the contingency plan and help answer questions that may come up pertinent to contingency plan requirements in state law and USDOE's Part B permit. Ohio EPA also strives to have a positive and productive relationship with USDOE and we are willing to lend our assistance to USDOE-Fluor-B&W in support of this principle.

Please do not hesitate to contact me at (740) 380-5288 if you have any questions regarding this letter.

Sincerely,



Scott Bergreen  
Supervisor  
Division of Materials and Waste Management

SB/sjb

Cc: John Rochotte, DERR-SEDO  
Steve Wells, DSW-SEDO

**NOTICE:**

**Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.**