Weldon Spring Citizens Commission
7295 Highway 94 South
Saint Charles, Missouri 63304

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February 1, 2005

Mr. Tom Pauling, Project Manager
Office of Legacy Management
2597 B ¾ Road
Grand Junction, CO 81503

Dear Mr. Pauling:

The Weldon Spring Citizens Commission has continuing interest in the Department of Energy's proposed institutional controls and the U.S. Environmental Protection Agency's and the Missouri Department of Natural Resources' viewpoints concerning institutional controls. The health and safety of the community will depend, to a great extent, on the strength and enforceability of the institutional controls that will eventually be put in place.

The Commission has made an attempt to summarize, in our opinion, the viewpoints of all the agencies involved in the current dispute and clarify the Commission's position regarding institutional controls in order to better understand the dispute and evaluate some of the difficult problem areas associated with institutional controls (such as the enforceability of current Missouri real estate law).

The Commission believes the attached summary represents the positions of the Department of Energy and the regulatory agencies associated with ICs at the Weldon Spring Site. We are providing this summary to you so you can see the proposed institutional controls from our perspective as well as your own. If your viewpoint is not accurately represented, please let us know.

Sincerely,

Weldon Spring Citizens Commission

Cc: (with attachment)
Mike Duvall, Director, St. Charles County Division of Environmental Services
Mimi Garstang, Director and State Geologist, Missouri Departement of Natural Resources
Joe Ortwerth, County Executive, St. Charles County
St. Charles County Council
Dan Wall, Remedial Project Manager, Superfund Division, USEPA-Region VII

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INSTITUTIONAL CONTROLS
SUMMARY OF VIEWPOINTS

U.S. Department of Energy (DOE)

Current DOE-proposed ICs:

- Federal and State Ownership (Governmental Control) - Primary and necessary IC;
- Missouri Well Drilling Code (Governmental Control) - Necessary IC;
- Deed Notation on DOD ownership (Proprietary Control) – Necessary IC that runs with the land;
- Real estate agreements for non-DOD property (Proprietary Control) – considered as secondary and additive (not necessary);
- Interpretive Center, Prairie and Gardens – Additive informational, educational and public involvement tool;
- Historical Markers – Additive informational and educational tool;
- State Registry of Hazardous Waste Sites for State-owned property only – Information tool (this tool is only mentioned in the IC Evaluation Document and is not cited elsewhere); and
- Post Closure Federal Facilities Agreement (PCFFA) – enforcement tool (not an IC).

Additional Considerations:

- Best document to address ICs – Long-Term Surveillance and Maintenance Plan (LTSMP) – the Records of Decision (RODs) for the Chemical Plant, Quarry residual and groundwater residual operable units stipulate ICs for support of the remedy;
- Primary implementation and enforcement agency – DOE;
- Real estate agreements are additive and considered durable and reliable– 1. Will use existing access agreement and update with proper wording to restrict use at quarry, area north of slough and quarry buffer zone, springs and groundwater residuals and groundwater buffer zone; 2. For the culverts this will include notification regarding removal/disturbance of the culverts; 3. Southeast Drainage – DOE considers the existing easement for discharge of effluent sufficient because developers will have to investigate the discharge before developing the property; 4. Department of Army – DOE will update the 1985 Memorandum of Agreement (MOA) or create a new one; 5. Chemical Plant – DOE plans to use a "recorded" real estate easement with very specific wording because nitrate acts differently and impacts infants; 6.DOE plans for all agreements to run with the land;
- ICs will be monitored using annual inspections, monitoring, data reporting and 5-year reviews;
- Duration of ICs – At the disposal cell the duration is indefinite. Throughout the remainder of the site, the ICs are required until the property is released for unrestricted use.

U.S. Environmental Protection Agency Viewpoint

- Recommends that performance standards for ICs be detailed in a decision document such as a ROD Amendment or an Explanation of Significant Difference (ESD). These documents are formal decision documents that require formal public involvement as part of the process for updating remedial action decisions. The RODs do not adequately stipulate ICs;
- There is no clear detail provided for implementation and maintenance of ICs – no clear objectives, performance standards, analysis of Missouri law or details of ownership agreements. EPA wants the assumptions and rationale for the ICs to be clearly outlined and be consistent with new EPA guidelines. Once objectives, performance standards, assumptions and rationale are clearly and consistently outlined, the type of IC and the required wording will fall into place;
- Discussion of ICs is not consistent;
- State and federal ownership of the land is not an IC, but it affords significant opportunity to protect the remedy if ICs are properly established; and
- There is no discussion of length and duration.

EPA has additional concerns associated with stewardship and the LTSMP that are not directly related to ICs but may have some impact on their effectiveness (see information on dispute resolution)

Missouri Department of Natural Resources (MDNR)

IC likes and dislikes:

- Federal and State Ownership is not a primary IC. It is not durable, or enforceable. Ownership should be a secondary or additive IC;
- Missouri Well Drilling Code is not appropriate as a primary IC. It is not as durable as a deed notations and contamination may be greater than 80 feet deep. This code should be a secondary or additive IC;
- Deed Notation on DOD ownership is not enforceable and could be removed from the deed;
- Prefers restrictive covenants as primary ICs (Proprietary Controls) – Covenants run with the land. Access agreements are not ICs. MDNR would like to add a requirement that any wells constructed on restricted property would have to meet public water supply well construction. Public water supply wells must meet with MDNR approval;
- Recommend application of eminent domain;
- Recommend DOE and state property be placed on the State Registry of Abandoned and Uncontrolled Sites;
- Establish a "special drilling area";
- Recommend signage (additive)
- Recommend coordination with zoning and planning; and

- Recommend that information tools (Interpretive Center) receive enduring support from DOE (i.e. Interpretive Center should receive funding for as long as property use is restricted);

Additional Considerations:

- MDNR would like DOE to provide appropriate funding to the state (similar to a set aside or a trust);
- Generally agrees with EPA that ICs should be included in a ROD amendment or an ESD;
- Primary implementation and enforcement agency – DOE. DOE's use of State ownership makes the State a primary enforcement tool.
- MDNR would like the restrictions as minimal as possible;
- MDNR would like DOE to provide indemnification for any exposure claims (indemnify in case someone is actually exposed to the contamination and sues the State); and
- MDNR would like DOE to provide assistance in the event soil is disturbed.

Weldon Springs Citizens Commission's (WSCC) Viewpoint (based on Comments)

IC likes and dislikes:

- Federal and State Ownership is not enough to prevent groundwater usage, limit residential use or disturbance of the reduction zone. It is not durable, or enforceable. Should be a secondary or additive IC;
- Missouri Well Drilling Code is not appropriate as a primary IC. The drilling regulations might not limit contamination in Karst areas and contamination may be deeper than 80 feet. Drilling in a contaminated area may result in moving contamination from shallow areas to deeper ones. In addition, the drilling code would not limit disturbance in the reduction zone. Drilling itself, even if the upper 80 feet are cased, is a disturbance;
- Legal agreements are needed that are enforceable and remain with the land. The type of agreement doesn't matter as long as the restrictions are accurately described (and the reasons for them), the document is enforceable and the document can run with the land;
- Recommend signage (additive);
- Recommend coordination with zoning and planning (additive); and
- Recommend funding from for the Interpretive Center for the duration the ICs are needed.

Additional Considerations:

- Primary implementation and enforcement agency – DOE. DOE's use of State ownership makes the State a primary enforcement tool.