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Office of Inspector General

AUDIT OF PROPOSAL TO ACQUIRE LAND AT
THE FERNALD ENVIRONMENTAL MANAGEMENT PROJECT

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AUDIT OF PROPOSAL TO ACQUIRE LAND AT
THE FERNALD ENVIRONMENTAL MANAGEMENT PROJECT

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U.S. DEPARTMENT OF ENERGY
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES

AUDIT OF PROPOSAL TO ACQUIRE LAND AT THE
FERNALD ENVIRONMENTAL MANAGEMENT PROJECT

Audit Report Number: ER-B-97-03

SUMMARY

The U.S. Department of Energy (Department) obtained an appraisal and developed a cost estimate to acquire 78 to 100 acres of privately-held land adjoining the Fernald Environmental Management Project (FEMP) as an additional buffer for a waste disposal facility. The objective of this audit was to determine whether the proposed purchase of land was essential to support the site's mission.

Federal regulations require that executive agencies acquire and retain only that land necessary to support mission related activities. However, the Department proposed to acquire 78 to 100 acres of land adjoining the FEMP even though current land holdings met the minimum mission requirements. The Department obtained an appraisal and developed a cost estimate to acquire the additional land without confirming that a valid need for the land existed. If the land is acquired, the Department could spend between \$655,000 and \$2.2 million unnecessarily. Additionally, the Department could incur unnecessary maintenance and security costs to maintain the land after acquisition. We recommended that the Manager, Ohio Field Office, dismiss the proposal to acquire the additional land.

Management agreed with the recommendation, stating that the acquisition could not be justified at this time. However, management did not agree with the finding that the Department obtained an appraisal and developed a cost estimate without confirming that a valid need for the land existed. Management stated that the appraisal and cost estimate were principal and necessary to determining whether a need for the land existed. Management also stated that sufficient funding was not available for the acquisition without reprioritizing remedial activities, which cannot be justified at this time.

We concluded that the appraisal and cost estimate should not have been performed because a valid need for the land was never established. Also, we concluded it would be inappropriate to reconsider the proposal to acquire the land at a later date if additional funds become available, unless a valid need for the land is first established.

PART I

APPROACH AND OVERVIEW

INTRODUCTION

In May 1995, the U.S. Department of Energy (Department) and the U.S. Environmental Protection Agency agreed on the remedial actions needed to clean up Operable Unit 2 of the Fernald Environmental Management Project (FEMP). The agreement called for the construction of an on-site disposal facility for waste near the FEMP's eastern boundary. In August 1995, the Department requested that the U.S. Army Corps of Engineers (Corps) provide an appraisal and prepare a plan for the acquisition of 78 to 100 acres of privately-held land near the disposal facility as an additional buffer. We conducted this audit to determine whether the proposed purchase of land was essential to support the site's mission.

SCOPE AND METHODOLOGY

The audit was performed from November 12, 1996, through March 18, 1997, at the FEMP in Fernald, Ohio, and the Ohio Environmental Protection Agency in Dayton, Ohio. To accomplish our objective, we:

- o Reviewed requirements for the on-site disposal facility and the associated buffer zone;
- o Evaluated local zoning requirements and restrictions for the land proposed to be acquired;
- o Analyzed cost and budget information related to the planned acquisition of land; and
- o Reviewed Federal, State of Ohio (State), and Departmental regulations, pertaining to on-site disposal of radioactive waste.

The audit was performed in accordance with generally accepted Government auditing standards for performance audits, and included tests of internal controls and compliance with laws and regulations to the extent necessary to satisfy the audit objective. Accordingly, we assessed significant internal controls related to the Department's real property acquisition process. Because our review was limited, it would not necessarily have identified all internal control deficiencies that may have existed. Also, we did not conduct a reliability assessment of computer-processed data because no computer-processed data was used during the audit.

BACKGROUND

In May 1995, the Record of Decision for Operable Unit 2 was adopted by the Department and the U.S. Environmental Protection Agency. Local stakeholder groups participated in the decision-making process and agreed with the Record of Decision. The selected remedy for Operable Unit 2 was the construction of an on-site disposal facility, to be located near the eastern boundary of the site, and the installation of monitoring wells.

The location of the disposal facility was determined in accordance with Ohio Solid Waste Disposal Regulations. The regulations require that the disposal facility not be located in a regulatory flood plain; near a stream, lake, or wetland; within 1,000 feet of an existing water-supply well; or near enough to an existing public water-supply well so that contaminants may reach the well within a 5-year period. Further, the facility must have at least 300 feet of buffer between the waste and the property line and must not be within 1,000 feet of an existing residence whose owner has not consented in writing to the location of the facility. Finally, the distance between the uppermost part of the aquifer system and the bottom of the soil liner must be greater than 15 feet. The Department obtained a waiver from the State so that the disposal facility could be located over a sole-source aquifer.

In August 1995, the Department established an interagency agreement with the Corps requiring that the Corps provide a gross appraisal and prepare a plan for the acquisition of additional land in support of the on-site disposal facility at the FEMP. The Corps evaluated options for the acquisition of between 78 and 100 acres of land owned by 4 of the FEMP's neighbors. The Corps estimated that the acquisition of the land could cost the Department between \$655,000 and \$2.2 million, depending on the option selected.

PRIOR AUDIT REPORTS

Although the Office of Inspector General has not issued any prior reports dealing with the acquisition of nonessential assets, we have issued many reports dealing with the divestiture of nonessential assets. The prior reports are listed in Part IV of this report.

Our audit disclosed a material internal control weakness that management should consider when preparing its yearend assurance memorandum on internal controls.

PART II

FINDING AND RECOMMENDATION

Acquisition of Nonessential Land

FINDING

Federal regulations require that executive agencies acquire and retain only that land necessary to support mission related activities. However, the acquisition of land as an additional buffer for the waste disposal facility at the FEMP is not necessary to support the site's mission. The Department obtained an appraisal and developed a cost estimate to acquire the land without confirming that a valid need for the land existed. If the land is acquired, the Department could spend between \$655,000 and \$2.2 million unnecessarily. Additionally, the Department could incur unnecessary maintenance and security costs to maintain the land after acquisition.

RECOMMENDATION

We recommend that the Manager, Ohio Field Office, dismiss the proposal to acquire additional land as a buffer for the on-site waste disposal facility.

MANAGEMENT REACTION

Management agreed with the recommendation, stating that the acquisition could not be justified at this time. However, management did not agree with the finding that the Department obtained an appraisal and developed a cost estimate without confirming that a valid need for the land existed. Management stated that the appraisal and cost estimate were principal and necessary to determining whether a need for the land existed. Management also stated that sufficient funding was not available for the acquisition without reprioritizing remedial activities, which cannot be justified at this time. Comments received from management are summarized and addressed in Part III of this report.

DETAILS OF FINDING

REQUIREMENTS FOR ACQUIRING AND RETAINING LAND

Federal regulations require that executive agencies acquire and retain the absolute minimum amount of land necessary to economically and efficiently support mission requirements. The Federal Property and Administrative Services Act of 1949, as amended, requires all executive agencies to periodically review their real property holdings to identify property that is "not needed," "underutilized," or "not being put to optimum use." Following are some of the questions the General Services Administration has developed for executive agencies to consider in identifying valid real property needs:

- o Is all the property essential for program requirements?
- o Will local zoning provide sufficient protection for necessary buffer zones without Government ownership?
- o Are buffer zones kept to a minimum?

- o Is the present property inadequate for approved future programs?

PRESENT PROPERTY IS ADEQUATE

The Department does not need to acquire additional land to meet Federal or State requirements for an on-site disposal facility. The Department's current land holdings meet the minimum requirements for a 300-foot buffer around the disposal facility. Acquisition of the adjacent properties would extend the buffer to between 800 and 1,300 feet.

Although there are advantages to acquiring additional land, the advantages do not justify the estimated cost. Fluor Daniel Fernald (Fluor Daniel) identified three advantages to acquiring adjacent properties. First, the acquisition would provide an additional buffer in which the public could not construct residences or install wells. Second, the acquisition could reduce the risk of litigation with neighbors over the impact of the waste disposal facility on the value and use of the neighbors' properties. Finally, the acquisition could simplify the remedial processes in the event of an inadvertent release affecting adjacent properties, and could allow greater flexibility in controlling and monitoring storm water run-off. A discussion of each of these advantages follows.

The risk of neighbors constructing new residences or installing wells should be minimal. Portions of the land considered for acquisition are zoned Heavy Industrial and Flood Plain. Both classifications generally prohibit the construction of residences within the zoned areas. Further, the land lies under or near two high-voltage transmission lines. The Cincinnati Gas & Electric Company holds an easement estate which precludes the construction of residences within transmission lines rights-of-way.

Also, construction of the disposal facility should not create a significant risk of litigation involving the FEMP's neighbors. The Fernald Residents for Environmental Safety and Health and the Fernald Citizens Task Force, two citizens groups representing various facets of the local community, participated in the decision-making process and agreed with the decision to construct the waste disposal facility at the site. Furthermore, the Department has already provided financial compensation (between \$800 and \$54,000 per residence) to its neighbors for the loss of property values caused by the Department's presence.

Finally, the Department could acquire portions of the adjacent properties after the facility becomes operational in the event contaminants are inadvertently released. However, a properly designed and constructed facility should not permit inadvertent releases or storm water run-off.

VALID NEED NOT CONFIRMED

This condition occurred because the Department proposed the acquisition of land without confirming that a valid need for the land existed. The Department requested that the Corps perform a gross appraisal and prepare an acquisition plan in August 1995. At the time the agreement was established, the Department had not formally assessed the need for additional land.

Moreover, until a need for the land is justified, evaluating the cost to acquire the land is premature. During our audit, Fluor Daniel issued a report outlining the advantages and disadvantages of acquiring additional land. In its report, dated January 31, 1997, Fluor Daniel recommended that the Department further evaluate the potential costs and benefits prior to making a final decision whether or not to acquire the land. The report states that the Department may request that either Fluor Daniel or the Corps prepare a formal Preliminary Real Estate Plan once a final decision is made to pursue the acquisition. Also, Fluor Daniel recommended that a life-cycle cost analysis be performed as part of the evaluation process, and that the Department begin the stakeholder involvement process as early as practicable.

POTENTIAL COST

As a result of this condition, the Department could spend between \$655,000 and \$2.2 million to purchase land that is not essential to its mission. The cost estimate is based on the Corps' assessment of the 78 to 100 acres of land currently under consideration, and does not include the cost of additional appraisals and studies that might be performed by the Corps and Fluor Daniel to assist the Department in its acquisition. Also, the Department could incur unnecessary maintenance and security costs to maintain the land after it is acquired.

PART III

MANAGEMENT AND AUDITOR COMMENTS

Management agreed that there was not adequate justification to support the acquisition of land at this time and concurred with the audit recommendation. However, management stated that obtaining the appraisal was principal and necessary to determine the need for the property. Management's comments are summarized and addressed below.

Recommendation. We recommend that the Manager, Ohio Field Office, dismiss the proposal to acquire additional land as a buffer for the on-site waste disposal facility.

Management Comments. Management concurred with the recommendation and stated that the Department has no plans to acquire the property at this time. Based on information received from the Corps and Fluor Daniel, the decision was made not to

pursue the acquisition. Management stated that the Department engaged the Corps to conduct the gross appraisal so that a more informed decision could be made whether or not to pursue the acquisition. Management stated the appraisal was principal and necessary to determine whether a need for the land existed. Management also stated that there is no funding available for the acquisition without reprioritizing remedial activities, which cannot be justified at this time.

Auditor Comments. We disagree with management's statement that it was principal and necessary to obtain the Corps' appraisal to determine whether a need for the land existed. We believe that the appraisal and cost estimate should not have been performed because a valid need for the land was never established. Also, we believe it would be inappropriate to reconsider the proposal to acquire the land at a later date if additional funds become available, unless a valid need for the land is first established.

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PART IV

Related Reports Issued by the Department of Energy
Office of Inspector General

Report Number	Report Title
IG-FS-97-01	Audit of the U.S. Department of Energy's Consolidated Financial Statements for Fiscal Year 1996, February 1997
DOE/IG-0402	Audit of the Management of the Department of Energy's Leased Administrative Facilities, April 1997
IG-FS-96-01	Audit of the U.S. Department of Energy's Consolidated Statement of Financial Position (As of September 30, 1995), February 1996
DOE/IG-0399	Audit of the U.S. Department of Energy's Identification and Disposal of Nonessential Land, January 1997
DOE/IG-0385	Special Audit Report on the Department of Energy's Arms and Military-type Equipment, February 1996
DOE/IG-0375	Audit of DOE's Management of Precious Metals, June 1995
DOE/IG-0362	Audit of Light Vehicle Fleet Management in the Department of Energy, December 1994

DOE/IG-0360 Audit of the Transfer of Government-owned Property at the Mound and Pinellas Plants, November 1994

DOE/IG-0344 Summary Report on DOE's Management of Personal Property, March 1994

DOE/IG-0343 The Inspection of the Management of Excess Personal Property at Sandia National Laboratory, Albuquerque, New Mexico, March 1994

DOE/IG-0338 Audit of Personal Property Management at Los Alamos National Laboratory, December 1993

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DOE/IG-0329	Inspection of Management of Excess Personal Property at Rocky Flats, May 1993
DOE/IG-0320	Disposal of Excess Capital Equipment at the Fernald Environmental Management Project, Fernald, Ohio, February 1993
CR-B-97-01	Audit of the Department of Energy's Warehouse Space, January 1997
WR-B-96-04	Audit of Fuel Processing Restoration Property, October 1995
ER-B-95-02	Audit of Property Management at Fernald Environmental Restoration Management Corporation, November 1995
ER-B-94-07	Audit of Shipment of Low-Level Waste from Fernald to the Nevada Test Site, June 1994
CR-B-94-05	Audit of Aircraft Management at the Albuquerque Operations Office, September 1994
WR-B-93-07	Audit of Light Vehicle Fleet Management at the Idaho National Engineering Lab, September 1993
WR-B-93-06	Audit of Controls Over Firearms and Ammunition at the Central Training Academy and the Transportation Safeguards Division, Albuquerque, New Mexico, August 1993

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