

**SUMMARY AND RESPONSE TO COMMENTS
CLASS 3 PERMIT MODIFICATION REQUEST
U.S. DEPARTMENT OF ENERGY - KANSAS CITY PLANT
KANSAS CITY, MISSOURI
EPA ID# MO9890010524**

On Sept. 1, 2011, the Department of Energy (DOE)/National Nuclear Security Administration (NNSA) submitted a Class 3 Permit Modification request to the Missouri Department of Natural Resources (DNR) and U.S. Environmental Protection Agency (EPA) Region 7, requesting to modify their existing Missouri Hazardous Waste Management Facility Part I Permit and Hazardous and Solid Waste Amendments Part II Permit. The public was invited to review and offer written comments on the modification request during a 60-day public comment period, Sept. 1 to Nov. 1, 2011. Listed below are all written comments/questions received during the public comment period and the Department and EPA's responses.

Question 1: Why not put this on the National Priority List (NPL) where Community Involvement is much more hardwired in the process (TAG grants for example)?

Response 1: DNR and EPA believe that community involvement is no more "hardwired" in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) NPL process than it is in the Resource Conservation and Recovery Act (RCRA) and State RCRA-equivalent processes. There are ample opportunities for public and community involvement that are both required and optional under both CERCLA and RCRA. We recognize that the level of public and community interest is substantial with regard to this project. Both DNR and EPA are committed to a transparent permit modification process that will provide opportunities for community involvement equivalent to that associated with NPL sites. The following web links are to EPA's RCRA Public Participation Manual and the Superfund Community Involvement Toolkit, elements of which are expected to be utilized/implemented during this project as dictated, in large part, by public and community interest.

RCRA Public Participation Manual: www.epa.gov/osw/hazard/tsd/permit/pubpart/manual.htm
Superfund Community Involvement Toolkit: www.epa.gov/superfund/community/toolkit.htm

As to the reference to Technical Assistance Grants (TAGs) and related technical assistance, these are EPA programs and a brochure regarding potentially applicable programs can be found at www.epa.gov/superfund/community/tasc/. At this time, there are no State-specific funds or technical assistance programs in place to provide for independent third-party technical assistance to the public for the upcoming activities at the Bannister Federal Complex (BFC). However, if you have further interest in this matter, the EPA Region 7 contact for more information is Belinda Young and she can be reached at (913) 551-7463 or by e-mail at young.belinda@epa.gov.

Question 2: How can we be sure that the cleanup will be done thoroughly and comprehensively, that is how can we be sure if the property is reused in a few months or years that those new workers won't get sick?

Response 2: The overarching objectives of the proposed permit modifications are to bring the entire BFC under the auspices of a single governing environmental regulatory instrument/jurisdiction. This will, in turn, support the objectives of updating complex-wide knowledge of contamination/releases to the environment, identifying and filling gaps in that knowledge through additional investigations and thereafter reassessing potential risks to human health and the environment in a consistent and systematic fashion across the range of all potential future uses of the property so that if, and when, those uses are proposed it is clear what additional action(s) will be needed to ensure that necessary human health and environmental protections are in place. This work will be the regulatory obligation of the Permittees (DOE/NNSA and GSA as Owners and Honeywell FM&T as Operator) and will be performed with the technical and regulatory oversight of experienced project managers at DNR and EPA, some of whom have had oversight responsibility for portions of this project for over 15 years. Primary agency project managers will seek the assistance of other agency staff skilled in hydrogeology, risk assessment and other technical areas as necessary and appropriate. Each step in developing updated knowledge of environmental conditions, further investigation, risk re-evaluation, and remedy development processes will be in accordance with the applicable permit requirements. Work plans for these activities will be reviewed and approved in advance by DNR in coordination with EPA prior to implementation. At appropriate times during the process, proposed remedies will be made available for public review and comment/input. The agencies will respond to and address the public's comments in writing prior to making any final decisions or granting approval of proposed action(s). Should the public perceive issues of concern, those issues can be brought before the agencies for consideration and resolution prior to the agencies making decisions and granting final approvals. Information regarding the activities at the BFC site will be routinely made available and communicated to the public at meetings, via mailings/notifications and the internet. The foregoing approach is intended to ensure that any additional environmental cleanup is done thoroughly and comprehensively with the public's input.

If some of the buildings at the BFC wind up being reused, any future occupational exposures associated with the use of those buildings will be governed by the Occupational Safety and Health Administration (OSHA or equivalent), not the Missouri Hazardous Waste Management Facility Part I Permit or EPA Hazardous and Solid Waste Amendments Part II Permit. Except for potential vapor intrusion into buildings associated with contaminated environmental media (soil/groundwater), DNR and EPA have no regulatory jurisdiction over work place (occupational) chemical exposures.

Question 3: How about an independent company of those expert and experienced in this type of cleanup be set up to oversee the evaluation and cleanup process?

Response 3: See response 1 as related to potential technical assistance available to communities and response 2 as related to planned regulatory oversight and approval of project actions.

Question 4: How about an epidemiological study to check out the incidence of cancer in the surrounding neighborhood?

Response 4: In Missouri, epidemiological studies are conducted by the Missouri Department of Health and Senior Services (MDHSS). Typically, MDHSS initiates such investigations only when screening of epidemiological data or environmental assessments suggest a potential public health concern. Currently, MDHSS has indicated that there have been no specific epidemiological studies done near the BFC. MDHSS is however familiar with, and has been involved in technical review and comment on, the studies of fish from the Blue River and Indian Creek that have been conducted adjacent to the BFC.

Questions regarding epidemiological studies and the BFC should be directed to Jonathan Garoutte at MDHSS. His contact information is jonathan.garoutte@health.mo.gov and his phone number is (573) 751-6102. In addition, MDHSS has epidemiological data, including cancer occurrence, available online at www.health.mo.gov/data/mica/MICA/, and Environmental Public Health Data available online at www.ephtn.dhss.mo.gov/EPHTN_Data_Portal/.

Question 5: Why is the BFC going to the RCRA program when the CERCLA program has a better public involvement process? Can someone provide a comparison of RCRA vs. CERCLA as it relates to public involvement opportunities?

Response 5: DNR and EPA believe that the CERCLA and RCRA public involvement processes are similar/comparable and both provide meaningful opportunities for public input at appropriate times, including key points in the investigation and cleanup decision-making processes. During the state hazardous waste (RCRA-equivalent) permitting process, the public is provided the opportunity to review and provide comment on new permits and major modifications to existing permits. An opportunity is also provided to the public to request a public meeting/hearing or, in the absence of a public request, one can be held at the discretion of the lead agency if there is sufficient public interest (as there appears to be in this case). An administrative record of facility-related file material is also prepared by the regulatory agencies and is placed in a publically available location(s) to allow interested parties to review the information that is proposed to be relied upon to make facility-related decisions. Due to the level of public interest on this project, much of this information has and will continue to be made available for online viewing. The regulatory agencies are also responsible for announcing upcoming permitting and cleanup actions in various media (print and broadcast). CERCLA does not have an equivalent “permitting” procedure.

During the investigation and cleanup phases of both state RCRA-equivalent and CERCLA actions, the public involvement requirements are similar, although the terminology is slightly different. Both programs require the agencies to prepare proposed cleanup decision documents, which will be available to the public for review and comment prior to making final agency decisions. An opportunity for the public to request a public meeting/hearing is also provided to discuss proposed plans and provide comments. Under both programs, the regulatory agencies are required to provide written responses to applicable comments as part of making final agency decisions. These public comments and agency responses then become part of the administrative record for the particular activity/decision and are placed in the agency files and in a public

information repository to be available for review by interested parties. Both programs are responsible for announcing in various media the time, date and location of any public meetings/hearings, the location of the administrative record/information repository, public comment procedures, and the dates/length of time for any public comment periods.

Both state RCRA-equivalent and CERCLA programs have other public involvement opportunities in common that can be utilized. These may include the establishment of Community Advisory Groups (CAGs), conducting community interviews, preparation and distribution of fact sheets and other informational mailers, and posting of online information. Under RCRA, affected communities may also be able to receive technical assistance to better understand facility related issues. The Technical Assistance Services for Communities (TASC) program is an EPA program that provides independent educational and technical assistance to communities. The TASC program offers technical assistance to help communities better understand and become involved in the cleanup process for hazardous waste facilities. TASC services can be provided to community groups made up of nearby residents, directly impacted by Superfund, Resource Conservation and Recovery Act, or Federal Facility sites.

The TASC website, www.epa.gov/superfund/community/tasc/, provides information about the program's services, ongoing and completed projects, and contact information for communities interested in TASC program services. The website also provides a list of resources and answers to frequently asked questions.

In summary, it is difficult to do a meaningful side-by-side comparison of the RCRA and CERCLA community involvement processes, opportunities and schedule at this time as the facility-specific activities are expected to evolve as this project proceeds. DNR and EPA do clearly understand that there is a substantial level of public and community interest in this project and have already gotten involved and will continue to participate in several local groups to do outreach/education on this project as well as making project-related information broadly available via the internet. The agencies fully intend to continue to provide information and education to all interested stakeholders and ample opportunities for public and community involvement. In addition, the modified Permit will contain provisions requiring the Permittee to prepare and submit an updated community involvement plan for agency approval. This plan will describe the activities to be undertaken by the facility to engage and respond to the public as this project proceeds.

Question 6: What opportunities are available under the current Permit Modification process for public comment and opinion on whether this site should follow the RCRA vs. CERCLA process?

Response 6: The Permittee has already submitted a request to modify its state and federal permits to include the entire BFC under the Missouri Hazardous Waste Management Facility Part I Permit and EPA Hazardous and Solid Waste Amendments Part II Permit, respectively. The proposed permit modifications, once incorporated into the current permit in draft form, will be published for public review and comment for 45 days. At that time, the public can submit formal written comments on the draft permit modifications and, at the conclusion of the public comment period, DNR and EPA will formally respond in writing to those comments. While the

public can feel free to comment on any aspect of the permit/project, the only comments that will be considered in making a final decision regarding the proposed permit modifications are those relating specifically to the proposed modifications. Other parts of the permits that are not proposed for modification will not be open to change at that time based on public comments. EPA Region 7 has already indicated that it intends to suspend its pursuit of NPL (CERCLA) listing in favor of proceeding with this project via the Permit modification (RCRA) route. The decision by EPA to suspend the NPL listing and pursue the permit modification route was made in consultation with DNR. The advantages of expanding the existing Permit to incorporate the entire BFC include:

- Bringing the entire BFC under one primary regulatory enforcement mechanism (the Part I Permit), administered by one agency (DNR), to promote a consistent, comprehensive approach to further site investigation, risk reassessment, and remediation.
- Modifying the Part I Permit is likely the quickest option for conducting additional investigations (if needed), cleanup, and exploring reuse options.
- Addressing the facility via the modified Part I Permit will allow DNR staff with extensive historical knowledge and oversight of activities at the BFC to remain as the primary project lead.

Some of the issues being addressed as part of the permit modification include expanding the definition of the facility to encompass all the federal partners and land comprising the BFC, including appropriate owners and operators (Permittees) on the modified Permits, identifying a single or unified point of contact for future work at the facility, and establishing the roles and responsibilities of the regulatory agencies in this project via a State/EPA Memorandum of Understanding.

While some stakeholders might prefer that the facility follow the CERCLA process and are free to comment to that effect during the public comment period, that issue is not part of the permit modification proposal, will not be addressed in the draft modified permit, nor will comments indicating a CERCLA preference influence decision-making regarding final approval of the proposed permit modifications. Whether or not public comments are received concerning the CERCLA option, DNR simply does not have the authority in this matter to remand the facility back to the CERCLA NPL process. If proper administrative procedures are followed in responding to the Permittee's permit modification request, DNR has no choice but to approve the proposed permit modifications after considering and addressing public comments regarding those modifications. Of course, there will be permit appeal options for adversely affected or aggrieved parties to the extent that their specific comments bearing on the proposed permit modifications are not adequately addressed in the final modified permit. That said, please recognize that the permit appeals process can be lengthy and could greatly protract efforts to move forward with further investigation, cleanup, and reuse of the facility property while the appeals process runs its course.

Question 7: This is a comment on the RCRA permit for the DOE NNSA Kansas City Plant (KCP) in the Bannister Complex, Kansas City, MO. I toured the KCP several years ago

with other member groups of the Alliance for Nuclear Accountability. During the day-long tour, I noted that the KCP building itself was an integral part of the capture, containment and cleanup strategy for the hazardous materials in soil and groundwater at the KCP location, including but not limited to the VOCs and PCBs (as I recall). I also noted the paucity of pumping wells tasked with preventing the contaminated groundwater plume from entering nearby surface waters, as KCP is located at the confluence of the Blue River and Indian Creek. I was surprised to see how close to the surface waters the KCP is located and how easily the contaminant plume could enter the river. Now, the DOE NNSA has decided to leave the KCP site. Its future use is not known. Therefore, it is conceivable, if not downright likely, that the huge KCP building could be demolished in the future in whole or in part. If this happens, the rainwater would create a driving head in the newly uncovered soil area - and this could force the contaminant plume into the river (with both its current contaminants and perhaps some additional ones washed through the newly uncovered soils into the groundwater). In other words, demolition of the structure in whole or in part could substantially change the hydrology of the plume. This must be fully accounted for in the permit. Perhaps it should be addressed under contingency planning, perhaps it is better addressed elsewhere - but fully addressed it must be in order to provide for an appropriate cleanup that protects the land, waters and people of Kansas City.

Response 7: As you note, the buildings and paved areas are engineering controls that are integral parts of the final remedy in certain areas based on current use of the complex. The current Missouri Hazardous Waste Management Facility Part I Permit for DOE (EPA # MO9890010524) contains provisions for review and approval of any site activities that might modify or have an effect on previously-approved remedy elements. This includes requirements that any building, pavement, or asphalt over an area of contaminated soil shall not be removed unless measures to protect human health and the environment have been provided to and approved by the Department of Natural Resources in accordance with Special Permit Conditions IV.F. and XVII.D.3.

DOE/NNSA will be relocating to a new location and the future or new use of the property is not known at this time. The permit stays with the property, with the new owner/operator being a permittee. Transfer requirements are found in Special Permit Condition XVII.E. of the Part I Permit. Special Permit Condition XVII.F. requires prior notice and information regarding areas of contamination to be given to potential new owner/operators.

It is possible that some or all the buildings may be removed in future use scenarios. The permit requires that the groundwater monitoring continue and that it demonstrates in an ongoing manner that the pumping wells are providing adequate hydraulic containment of the contaminated groundwater. DOE/NNSA has already performed preliminary evaluation different potential future pumping requirements for scenarios ranging from all buildings remaining on the BFC to all GSA and DOE buildings being removed (with the exception of the IRS building and existing roads and parking lots) and their footprints being replaced with grass. Details regarding this preliminary work can be found in Appendix F, Facility Building Disposition Scenario Report, in the US DOE KCP Groundwater Corrective Action Report for Calendar Year 2010, Volume 1, dated March 2011.

The overarching objectives of the proposed permit modifications are to bring the entire BFC under the auspices of a single governing regulatory instrument/jurisdiction for the purposes of updating complex-wide knowledge of contamination/releases to the environment, identifying and filling gaps in that knowledge through additional investigations, and thereafter reassessing potential risks to human health and the environment in a consistent and systematic fashion across the range of all potential future uses of the property so that if, and when, those uses are proposed it is clear what additional action(s) will be needed to ensure that necessary human health and environmental protections are in place. As such, additional pumping and hydraulic containment scenarios for contaminated groundwater will be evaluated as future plans for reuse/redevelopment of the BFC emerge.