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SECRETARY



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COMMONWEALTH OF KENTUCKY  
**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET**  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

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cc: Document Center  
John Morgan  
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April 18, 2000

Mr. Don Seaborg, Site Manager  
U.S. Department of Energy  
Paducah Site Office  
P.O. Box 1410  
Paducah, Kentucky 42001

Mr. Gordon Dover, Paducah Manager of Projects  
Bechtel Jacobs Company /LLC  
761 Veterans Avenue  
Kevil, Kentucky 42053

RE: Paducah Federal Facilities Agreement – Resolution of Informal Dispute for  
Engineering Evaluation/Cost Analysis associated with the Surface Water Operable  
Unit at the Paducah Gaseous Diffusion Plant McCracken County, Kentucky  
Permit # KY8-890-008-982

Gentlemen:

On March 3, 2000, the Department of Energy (DOE) invoked informal dispute resolution with respect to the Division of Waste Management's direction for submittal of an Engineering Evaluation/Cost Analysis (EE/CA) for early actions necessary to mitigate the site-wide migration of contaminants to the surface waters.

The DOE, in its' March 3, 2000 letter invoking informal dispute, listed the following three items relative to the dispute:

1. The direction to submit an EE/CA exceeds Kentucky Natural Resources and Environmental Cabinet's authority under Section X of the FFA, which provides only that "EPA or KNREPC may require DOE to submit a Removal Notification," Nowhere does Section X of the FFA provide authority for KNREPC to require the submission of an EE/CA by a date certain.



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2. The EE/CA contemplated by KNREPC's demand appears to exceed the scope of a permissible removal action, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Contingency Plan (NCP).
3. Preparation of an EE/CA and performance of a non-time critical removal action as required by KNREPC is not appropriate under CERCLA and the NCP, is not contemplated by the FFA, and is not consistent with the scope of discussions and agreements of the Tri-Party Working Group (TPWG) as understood by DOE.

With regard to item #1, the Division agrees that our request for an EE/CA was not consistent with the FFA. Parties to the dispute recognized this inconsistency, but acknowledged its intent to be consistent with the TPWG and the larger milestone informal dispute. Therefore, the call for an EE/CA is rescinded with recognition that the intent of the KDEP call for an EE/CA is fully consistent with the TPWG and the issue is encompassed in the larger enforceable commitments dispute.

With regard to item #2, the Division interprets an "early action" to mitigate the site-wide migration of contaminants to the surface waters surrounding the PGDP, to be within the scope of a removal action, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Contingency Plan (NCP).

With regard to item #3, the Division believes an "early action" to mitigate the site-wide migration of contaminants to the surface waters surrounding the PGDP, is contemplated by the FFA as a removal action, and is integral to the scope of discussions and agreements of the Tri-Party Working Group as understood by the Division. In fact, surface water sediment controls was identified as the highest priority in the sequencing process performed by the Tri-Party Working Group.

Parties to this informal dispute met on several occasions including the March and April PGDP Core-Team meetings. Agreement was reached that the Division's request for an EE/CA was inconsistent with Section X. of the FFA. The parties further agreed that scheduling of this "early action" should be addressed during the ongoing dispute regarding enforceable commitments.

The Division believes reaching consensus and understanding by all parties of the FFA regarding the appropriate manner to pursue "early actions" at the PGDP, is critical to resolution of the dispute regarding enforceable commitments.

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If you have any questions, please contact Mike Guffey at (502) 564-6716.

Sincerely,

*Md. Alauddin*  
for Michael V. Welch P.E., Manager  
Hazardous Waste Branch

MVW/mg

cc: Randy McDowell, OLS  
Jeff Crane, EPA Region 4  
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John Shepherd, DOE  
Margie Williams, KDWM-Paducah  
Gaye Brewer, HWB