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memorandum

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DATE: September 6, 2001

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REPLY TO:

ATTN OF: CC-10:Miskelley

SUBJECT:

PROVISIONAL RESOLUTION OF DISPUTE ON THE PROPOSED REMEDIAL ACTION PLAN FOR THE NORTH-SOUTH DIVERSION DITCH AT THE UNITED STATES DEPARTMENT OF ENERGY'S PADUCAH GASEOUS DIFFUSION PLANT, PADUCAH, KENTUCKY

to: W. Don Seaborg, Site Manager, Paducah Site Office, EM-96

I have enclosed for your review and signature three originals of the final version of the above-referenced agreement. Robert Daniell of the Kentucky Department for Environmental Protection, and Richard Green from EPA Region 4, have already signed all three originals. Please sign and date each of the three documents. Once you have signed and dated the three originals, please forward them to me by overnight mail. I will then distribute two of the originals to the regulators and retain an executed original in our files. I thank you for your assistance in bringing this matter to a close.

If you have any questions, please contact me at 865-576-1217.


C. Ray Miskelley, Attorney
Office of Chief Counsel

Attachments

cc w/attachments :
Rod Nelson, EM-90
Dennis Boggs, EM-96

cc w/o attachments:
Nancy Carnes, CC-10

I-04812-0061


**PROVISIONAL RESOLUTION OF DISPUTE
ON THE PROPOSED REMEDIAL ACTION PLAN
FOR THE NORTH-SOUTH DIVERSION DITCH AT
THE UNITED STATES DEPARTMENT OF ENERGY'S
PADUCAH GASEOUS DIFFUSION PLANT, PADUCAH, KY**

This three-party agreement reflects consensus reached by the undersigned on the means to resolve the parties' dispute about contents of a Proposed Remedial Action Plan for the Paducah Gaseous Diffusion Plant (PGDP) North-South Diversion Ditch (NSDD) remediation project. Through dispute resolution procedures set out in Section XXV of the PGDP Federal Facility Agreement (FFA), the issue of whether the preferred remedial alternative for this project should allow DOE to store the excavated remediation waste for an indefinite period pending availability of a suitable disposal facility at PGDP was elevated for resolution to the three of us who comprise the FFA Dispute Resolution Committee (DRC) in our respective capacities as Manager of DOE's Paducah Site Office, Director of the Kentucky Division of Waste Management, and Director of the EPA Region 4 Waste Management Division. Our DRC conferred on this dispute three times, most recently by telephone on August 14, 2001, when we agreed as follows:

1. The portion of the NSDD project's current draft Proposed Remedial Action Plan (PRAP) relating to the preferred remedial alternative (Alternative 2 – complete excavation and NSDD restoration, with rerouting of process water and land use controls) will promptly be amended as necessary to specify that:

a) This remedial alternative will be implemented in two phases. Phase I will include hard piping, excavation of a surge basin, and plugging the NSDD at the security fence line. Phase II will include complete excavation of Sections 1 through 5, together with appropriate disposal of materials excavated during Phase II.

b) DOE's preference for the alternative including complete excavation is partly based on its expectation that approximately 90 per cent of the remediation waste (i. e., contaminated soils and material) resulting from the Phase I and Phase II excavation activities may appropriately be disposed in the C-746-U landfill located adjacent to the NSDD. DOE's estimate of disposal costs to be incurred if this alternative were selected and implemented is based on the assumption that only about 10 per cent of that remediation waste will have to be shipped away from PGDP for disposal. However, it has not yet been determined whether, or to what extent, this landfill is suitable as a disposal site for the anticipated remediation waste.

c) If the complete excavation alternative is selected by the three FFA parties in the Record of Decision for this project, and significantly more than 10 per cent of the Phase I and Phase II remediation waste is subsequently determined to be inappropriate for disposal at the C-746-U landfill and so must be shipped and

disposed off-site at more expense, DOE's estimate of the cost of implementing Phase II may increase substantially. Should any of the FFA parties conclude in good faith that such a substantial cost increase appears likely, any of the FFA parties may require DOE, EPA, and KNREPC to reconsider the selected alternative in light of the anticipated cost increase. If, as the result of their reconsideration, the three FFA parties agree that, or the dispute resolution process under the FFA determines that, significant changes or fundamental alterations should be made to the previously-selected action, the proposed changes will be documented in accordance with the National Contingency Plan, using procedures which provide the public with an opportunity to review and comment on the proposed changes prior to any final decision on adopting them.

Phase I work will proceed at the same time as the FFA parties work to complete evaluation of the C-746-U landfill. Phase II excavation work will be sequenced to follow the determination of whether, or to what extent, the C-746 landfill is suitable as a disposal site for the anticipated NSDD remediation waste. Additionally, should any party, as contemplated above in this Paragraph, require the reconsideration of the selected alternative during implementation of Phase II activities, all Phase II excavation activities which would generate remediation waste will halt (unless the FFA parties agree otherwise) pending the completion of the reconsideration process described herein.

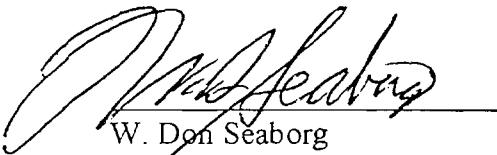
2. No "contingent remedy" will be included as part of the preferred alternative presented in the NSDD Proposed Remedial Action Plan.
3. If, after full consideration of all public comments received on the NSDD PRAP, the FFA parties agree to a ROD selecting "complete excavation" of NSDD Sections 1 through 5, that ROD will include the substance of the provisions set forth with respect to the preferred alternative in Paragraphs 1 and 2 above.
4. DOE, EPA, and KNREPC will work together to achieve the completion of Phase I field work by the following target date: April 26, 2002. DOE, EPA, and KNREPC, will cooperate to resolve expeditiously all outstanding issues associated with determining whether, to what extent, and/or under what conditions Phase II remediation waste may appropriately be disposed in the C-746-U landfill. The FFA parties will work together to complete that determination by the following target date: May 15, 2002. To facilitate timely performance of work under DOE direction, DOE has established the following additional target dates:
 - a) Complete construction of the new monitoring wells for the C-746-U landfill: 90 days after approval of the proposed permit modification submitted to KNREPC for this work scope.
 - b) Submit proposed permit modification to KNREPC for the disposal of NSDD

remediation waste in the C-746-U landfill: Within 15 days of receiving KNREPC guidance as to the recommended content and format for the proposed permit modification.

c) Submit to EPA and KNREPC for review a draft (D1) Risk and Performance Evaluation of C-746-U Landfill Report: February 13, 2002.


These target dates do not themselves constitute enforceable commitments by DOE, nor do they alter in any respect any previously-established deadline or milestone enforceable under the FFA or otherwise.

5. Because the issues elevated to the DRC concern disagreement about the contents of the NSDD PRAP, final resolution of this dispute requires the parties to agree on final wording of that document, consistent with this agreement. Accordingly, the resolution agreement set forth herein will remain provisional until consensus on that final wording is reached, on which date the resolution will become final and effective.



W. Don Seaborg
Site Manager
Paducah Site Office
US Department of Energy

Date: 9/6/01



Robert H. Daniell
Director
Division of Waste Management
Kentucky Department for
Environmental Protection

Date: 9-4-01



Richard D. Green
Director
Waste Management Division
EPA Region 4

Date: 31 AUG 01