



## Department of Energy

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FEB 12 2016

Mr. Brian Begley  
Federal Facility Agreement Manager  
Division of Waste Management  
Kentucky Department for Environmental Protection  
200 Fair Oaks Lane, 2<sup>nd</sup> Floor  
Frankfort, Kentucky 40601

PPPO-02-3393894-16

Ms. Julie Corkran  
Federal Facility Agreement Manager  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Dear Mr. Begley and Ms. Corkran:

**PADUCAH FEDERAL FACILITY AGREEMENT—SIGNED MEMORANDUM OF AGREEMENT FOR RESOLUTION OF FORMAL DISPUTE OF THE PROPOSED PLAN FOR THE BURIAL GROUNDS OPERABLE UNIT SOURCE AREAS FOR SOLID WASTE MANAGEMENT UNITS 5 AND 6 (DOE/LX/07-1275&D2)**

Please find enclosed the signed *Memorandum of Agreement for Resolution of Formal Dispute of the Proposed Plan for the Burial Grounds Operable Unit Source Areas for Solid Waste Management Units 5 and 6, DOE/LX/07-1275&D2*.

The U.S. Department of Energy appreciates the U.S. Environmental Protection Agency's and the Kentucky Department for Environmental Protection's efforts to resolve the formal dispute and looks forward to providing the Proposed Plan.

If you have any questions or require additional information, please contact me at (270) 441-6862.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey Duncan".

Tracey Duncan  
Federal Facility Agreement Manager  
Portsmouth/Paducah Project Office

Enclosure:

Signed Memorandum of Agreement

e-copy w/enclosure:

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**MEMORANDUM OF AGREEMENT FOR RESOLUTION  
of Formal Dispute of the *Proposed Plan for the Burial Grounds Operable Unit Source Areas  
for Solid Waste Management Units 5 and 6 (DOE/LX/07-1275&D2).***

**OVERVIEW OF AGREEMENT**

The undersigned members of the Senior Executive Committee (SEC) under the Federal Facility Agreement (FFA) for the Paducah Gaseous Diffusion Plant (PGDP) agree that the Formal Dispute invoked by the U.S. Department of Energy (DOE) in the letter to the U.S. Environmental Protection Agency Region 4 (EPA) and the Kentucky Department for Environmental Protection (KDEP), dated May 1, 2015, is hereby resolved and the FFA Parties' resolution of this Formal Dispute under the FFA includes the TERMS AND CONDITIONS detailed below. The dispute resolution documents the Parties' agreement that DOE will identify an environmental covenant pursuant to the Kentucky Uniform Environmental Covenant Act (KY UECA) at KRS 224.80-100 subchapter 80 as a land use control (LUC) element in the Proposed Plan and Record of Decision (ROD) documents. The Parties' also agree that for purposes of this dispute, neither the KY UECA nor 401 KAR 100:030 Section 8(3)(b)(3) will be identified in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) primary documents to be submitted by the DOE pursuant to the PGDP FFA as an 'applicable or relevant and appropriate requirement' (ARAR) under CERCLA Section 121(d)(2).

**TERMS AND CONDITIONS**

1. The FFA parties agree that an environmental covenant pursuant to KY UECA will be identified as a land use control element of the Preferred Alternative for Solid Waste Management Units (SWMUs) 5 and 6. If that remedy is selected, then an environmental covenant will be implemented upon property transfer by DOE to a non-federal entity.
  
2. The Parties agree that for purposes of this dispute, neither the KY UECA nor 401 KAR 100:030 Section 8(3)(b)(3) are to be identified as ARARs in CERCLA primary documents under the PGDP FFA including but not limited to the Proposed Plan for SWMUs 5 and 6. The Conditions for approval of the *Proposed Plan for the Burial Grounds Operable Unit Source Areas for Solid Waste Management Units 5 and 6* (KDEP Conditional Concurrence letters dated January 22, 2015, January 26, 2015 and March 20, 2015) are superseded by this dispute resolution agreement's terms and conditions.
  
3. The following text has been agreed to by the FFA Parties and is to be included in both the revised Draft Final Proposed Plan and ROD for the Burial Grounds Operable Unit Source Areas for Solid Waste Management Units 5 and 6.

“A LUCIP will be prepared after the ROD for EPA and KDEP approval. LUCs will be designed and implemented through a LUCIP to ensure protectiveness. LUCs maintain restrictions on direct contact with the waste and soils by controlling access. LUCs for this remedial action consist of the following:

- Excavation/Penetration Permit (E/PP) Program
- Warning Signs
- Property Record Notices

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- Contingent Deed/Lease Restrictions
- An Environmental Covenant meeting the requirements of KRS 224.80-100 *et. seq.* to be filed at the time of property transfer

The E/PP program includes a specific permitting procedure designed to provide a common site-wide system to identify and control potential personnel hazards related to trenching, excavation, and penetration greater than 6 inches into the surface of the earth, concrete, or pavement. Warning signs are a physical control placed at the site to notify personnel of contamination and the use/activity restrictions.

A Property Record Notice will be recorded by DOE in the county clerk's office along with original property acquisition records after approval of the LUCIP for SWMUs 5 and 6 that alerts anyone searching property records that an environmental covenant will be filed simultaneous with transfer of a fee simple interest in the property to a non-federal entity. The Notice will also identify the restrictions to be included in the environmental covenant consistent with the Record of Decision or any amendments made thereto, as well as, important information about the contamination at the source areas site and protection of the landfill caps. Should DOE transfer or convey ownership of the property encompassing SWMUs 5 & 6 any deed or lease would include, at a minimum, use restrictions prohibiting residential development and agricultural development. Should the Federal Government convey by deed a fee simple interest for contaminated real property at SWMUs 5 & 6, an environmental covenant pursuant to Subchapter 80 of KRS Chapter 224 will be created, granted to the holder and recorded that will contain the land use restrictions required in the Record of Decision or any amendments made thereto. The environmental covenant will impose no obligation on DOE independent of CERCLA requirements but will provide an additional means to assure the use of the property by a subsequent owner is consistent with restrictions that are established under the CERCLA remedy. The terms of the environmental covenant will be enforced against a subsequent non-federal owner in accordance with applicable federal and state law in a court of competent jurisdiction. The holder(s) of the Environmental Covenant will be identified at the time the Environmental Covenant is created. Identification of a Kentucky environmental covenant as a land use control does not otherwise affect the Department's ability as a federal agency to remove adjudication of a matter involving the environmental covenant to a U.S. district court, or otherwise affect any of the Department's rights as a federal agency with respect to any state proceeding or action."

4. A revised D2 *Proposed Plan for the Burial Grounds Operable Unit Source Areas for Solid Waste Management Units 5 and 6* incorporating the terms and conditions of this SEC dispute resolution agreement will be submitted to EPA and KY for review/approval within 30 days of the date of the last FFA party signature on this agreement.

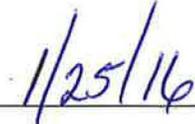
5. The FFA Parties acknowledge PGDP FFA Section XXV.(B)(10) which states in part "Any final resolution of a dispute pursuant to this Agreement shall be incorporated into the Agreement and shall become a term and condition of this Agreement".

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Nothing in this Memorandum of Agreement modifies the FFA Conditions (e.g., related to review and comment on Primary Documents, Extension Requests, and Dispute Resolution) except as specifically stated above. Failure to abide by the terms of this Agreement may result in one or more of the parties taking any action authorized under the FFA.

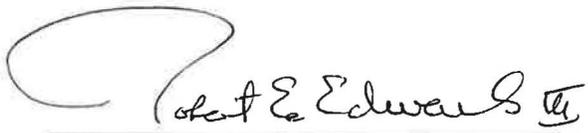
**AUTHORIZING SIGNATURES**

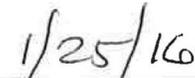
  
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Heather McTeer Toney  
Regional Administrator  
U.S. Environmental Protection Agency, Region 4

  
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Date

  
\_\_\_\_\_  
R. Bruce Scott  
Commissioner  
Kentucky Department of Environmental Protection

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Robert E. Edwards III  
Acting Manager  
U.S. Department of Energy, Portsmouth/Paducah Project Office

  
\_\_\_\_\_  
Date