



Department of Energy

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FEB 27 2018

Mr. Brian Begley
Federal Facility Agreement Manager
Division of Waste Management
Kentucky Department for Environmental Protection
300 Sower Boulevard, 2nd Floor
Frankfort, Kentucky 40601

PPPO-02-4715192-18

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 THE FORMAL DISPUTE FOR THE REMEDIAL INVESTIGATION/FEASIBILITY STUDY REPORT FOR COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT WASTE DISPOSAL ALTERNATIVES EVALUATION AT THE PADUCAH GASEOUS DIFFUSION PLANT, PADUCAH, KENTUCKY, DOE/LX/07-0244&D2

Please find enclosed the signed *Memorandum of Agreement for Resolution of the Formal Dispute for the Remedial Investigation/Feasibility Study Report for CERCLA Waste Disposal Alternatives Evaluation at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky, DOE/LX/07-0244&D2*. The enclosed Memorandum of Agreement (MOA) memorializes the agreement reached by the Federal Facility Agreement (FFA) parties to finalize the D2/R1 Remedial Investigation/Feasibility Study (RI/FS) for approval and placement into the Administrative Record. In addition, due to the reprioritization of the proposed Comprehensive Environmental Response, Compensation, and Liability Act On-site Waste Disposal Facility, the MOA documents the FFA parties' agreement that the RI/FS will need to be modified and updated prior to the Proposed Plan to reflect the most current information.

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

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

Sincerely,



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 THE FORMAL DISPUTE**

for the

*Remedial Investigation/Feasibility Study Report for CERCLA Waste Disposal
Alternatives Evaluation at the Paducah Gaseous Diffusion Plant, Paducah,
Kentucky (DOE/LX/07-0244&D2)*

BACKGROUND

Initial Conditions and Dispute

In accordance with Section XX.I. of the Federal Facility Agreement (FFA) for the Paducah Gaseous Diffusion Plant (PGDP), DOE submitted the *Remedial Investigation/Feasibility Study Report for CERCLA Waste Disposal Alternatives Evaluation at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky* (DOE/LX/07-0244&D2) on July 25, 2013. Kentucky Division for Environmental Protection (KDEP) and Environmental Protection Agency Region 4 (EPA) issued conditional concurrence on October 23, 2013, and March 19, 2014, respectively, to the U.S. Department of Energy (DOE) for the Remedial Investigation/Feasibility Study (RI/FS) and provided conditions for approval of the RI/FS. In subsequent correspondence dated January 28, 2015, and February 10, 2015, KDEP issued additional conditions to DOE. A total of 30 conditions were issued to DOE, ten (10) from EPA and twenty (20) from KDEP.

Four conditions were not disputed by DOE and on May 19, 2014, DOE invoked Informal Dispute under Section XXV.A. of the FFA for 26 of the 30 conditions. The FFA Parties resolved 24 conditions during the Informal Dispute period. On May 19, 2016, DOE initiated Formal Dispute under Section XXV.B. of the FFA for two unresolved conditions: EPA Condition 3 related to Corrective Action Management Unit (CAMU) designation and ‘applicable or relevant and appropriate requirements’ (ARARs) and EPA Condition 7 related to Resource Conservation and Recovery Act (RCRA) Subpart F groundwater monitoring requirements for a RCRA landfill.

November 19, 2015, Condition and Dispute

On November 19, 2015, EPA issued an additional condition to DOE regarding “the discharge of wastewater and effluent limits for radionuclides from a potential future on-site waste disposal facility (OSWDF) for CERCLA waste from the Paducah Gaseous Diffusion Plant.” On January 5, 2015, DOE invoked Informal Dispute under Section XXV.A. of the FFA for this condition. This dispute proceeded separately from the May 19, 2014, dispute. On February 19, 2016, DOE initiated Formal Dispute and elevated the dispute to the Dispute Resolution Committee (DRC) under Section XXV.B. of the FFA. The FFA Parties were not able to resolve the dispute at the DRC level and on June 1, 2016, DOE elevated the dispute to the Senior Executive Committee as described in Section XXV.B.3 of the FFA. The FFA Parties resolved DOE’s dispute of EPA’s November 19, 2015, Additional Condition related to discharge of radionuclides in a Memorandum of Agreement (MOA) signed February 3, 2017. The February 3rd MOA did not resolve the remaining Conditions covered under the May 19, 2014, dispute.

DOE Reprioritization of the CERCLA Waste Disposal Alternatives Evaluation

In 2016, DOE approached EPA and KDEP with a proposal to reprioritize all work at the PGDP, including delay of the remedy selection, design, construction and operation of the proposed CERCLA OSWDF under the FFA for ten or more years. Therefore, it is the intent of the FFA Parties to finalize the D2/R1 RI/FS for the Administrative Record now, while at the same time recognizing that the RI/FS will need to be modified and updated prior to the Proposed Plan to reflect the most current information.

RESOLUTIONS

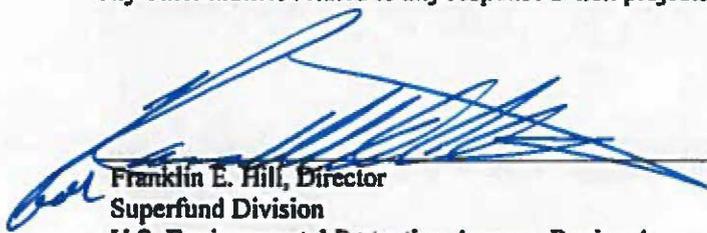
The FFA Parties agree that the dispute invoked by DOE on May 19, 2014, is hereby resolved. The terms of the dispute resolution are set forth below.

- DOE shall incorporate resolution of the disputed conditions into the revised *Remedial Investigation/Feasibility Study Report for CERCLA Waste Disposal Alternatives Evaluation at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky* (DOE/LX/07-0244&D2/R1). The attached table, titled “WDA RI/FS Dispute MOA Table: Summary of Resolutions to EPA/KDWM Conditions” and ten (10) attachments describe how the disputed conditions in EPA and KDEP conditional concurrence letters were resolved and identifies the revisions to the RI/FS that the FFA Parties agreed shall be made by DOE in order to resolve the disputed conditions.
- The revised *Remedial Investigation/Feasibility Study Report for CERCLA Waste Disposal Alternatives Evaluation at the Paducah Gaseous Diffusion Plant, Paducah, Kentucky* (DOE/LX/07-0244&D2/R1) incorporating the terms and conditions of this dispute resolution agreement will be submitted to EPA and KDEP within 90 days of the date of the last FFA party signature on this agreement. The FFA Parties agree that, upon approval by KDEP and EPA, the approved D2/R1 RI/FS document will be placed in the Administrative Record.
- The FFA Parties agree that the RI/FS will need to be modified and updated in the future, prior to the Proposed Plan, to reflect the most current information (for example, waste types, waste volumes, cost estimates, ARARs including the EPA Condition 3 CAMU ARARs, etc.).

OTHER TERMS AND CONDITIONS

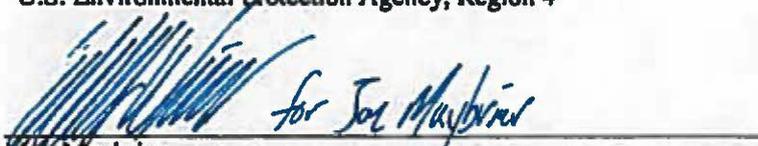
Pursuant to Section XXV.B.10 of the FFA, resolution of this dispute constitutes a final resolution of the dispute, which resolution is incorporated into, and becomes a term and condition of the FFA. Nothing in this MOA modifies other FFA Terms and Conditions or other CERCLA projects at the PGDP except as specifically stated above.

To the extent authorized under the FFA, nothing in this MOA shall prevent any of the Parties from disputing any other matters related to any response action projects.



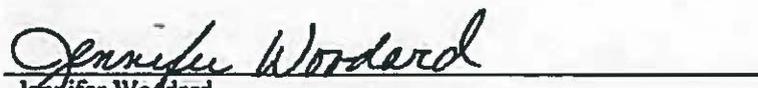
Franklin E. Hill, Director
Superfund Division
U.S. Environmental Protection Agency, Region 4

2/7/2018
Date



Jon Maybriar
Director, Division of Waste Management
Kentucky Department of Environmental Protection

01/29/2018
Date



Jennifer Woodard
Paducah Site Lead
U.S. Department of Energy, Portsmouth/Paducah Project Office

01/26/2018
Date

Attachments:

1. WDA RI/FS Dispute MOA Table: Summary of Resolution to EPA/KDWM Conditions
2. Attachments 1 through 10 to the WDA RI/FS Dispute MOA Table