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**EXTENSION REQUEST OU #4 FS REPORT
U.S. DOE FERNALD
OH6 890 008 976**

12-19-90

**USEPA/DOE
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LETTER**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

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DEC 19 1990

REPLY TO ATTENTION OF:
5HR-12

Mr. Andrew P. Avel
United States Department of Energy
Feed Materials Production Center
P.O. Box 398705
Cincinnati, Ohio 45239-8705

Re: Extension Request
OU #4 FS Report
U.S. DOE Fernald
OH6 890 008 976

Dear Mr. Avel,

On December 13, 1990, the United States Environmental Protection Agency (U.S. EPA) received your letter requesting an opportunity to "renegotiate the scheduled [FS] milestone" under Section XVIII of the 1990 Consent Agreement. Your letter states that good cause for this "renegotiation" exists due to the "necessity to complete and obtain U.S. EPA approval of the Remedial Investigation (RI) Report prior to finalizing the FS Report". U.S. EPA has considered your request along with the terms of the 1990 Consent Agreement and determined that U.S. EPA's disapproval of the RI Report does not constitute good cause to "renegotiate" the FS schedule. However, as described below, U.S. EPA recognizes that, during the pendency of the RI Report dispute resolution process, the Department of Energy (U.S. DOE) is entitled to an extension of time to submit the FS Report.

Section XVIII of the 1990 Consent Agreement provides that U.S. DOE may request an extension of time upon a showing of good cause. Good cause under the Agreement specifically includes "delay caused by good faith invocation of dispute resolution". The dispute resolution language in Section XIV further provides that although U.S. DOE must continue to meet all schedule deadlines during dispute resolution, "work affected by the dispute shall be extended for a period not to exceed the actual time of the dispute".

U.S. EPA finds that good cause does not exist to renegotiate the FS schedule. U.S. EPA currently believes that U.S. DOE has violated the terms of the Consent Agreement by submitting an RI Report which fails to comply with the National Contingency Plan (NCP). This failure cannot be "good cause" for an otherwise unjustified renegotiation of the FS schedule.

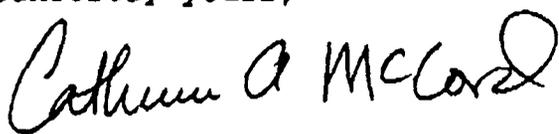
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U.S. EPA agrees, however, that the FS Report scheduled for delivery to U.S. EPA on December 17, 1990 is "affected" by the ongoing dispute regarding the RI Report. Thus, good cause exists for an extension in the FS milestone while the RI dispute resolution proceeds.¹ According to the express terms of the Consent Agreement, this extension shall not exceed the actual period of the dispute. Further, should the RI dispute resolution conclude that U.S. DOE violated the Consent Agreement, stipulated penalties related to an untimely FS Report which accrued during the dispute period may be due and owing. Additionally, U.S. DOE may be responsible for the payment of stipulated penalties related to the RI Report which accrued during the dispute period.

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If you have any questions regarding this letter, please feel free to contact me at (FTS/312) 886-4436.

Sincerely yours,



Catherine A. McCord
Remedial Project Manager

cc: Richard Shank, OEPA - CO
Graham Mitchell, OEPA - SWDO
Joe LaGrone, U.S. DOE - ORO
Leo Duffy, U.S. DOE - HDQ

¹ Your December 13, 1990 letter also states that the proposed plan and the Record of Decision for OU #4 are "affected by this milestone renegotiation". U.S. EPA disagrees. As detailed in this letter, U.S. EPA finds that U.S. DOE has not shown good cause to "renegotiate" schedules. Thus, since milestones for the proposed plan and the Record of Decision are several months away, those deliverables are not currently affected by the RI dispute and are not entitled to an extension of time under Section XVIII of the Consent Agreement.