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**OU#5 ACCESS STIPULATED PENALTY DISPUTE
U.S. DOE - FERNALD
OH6 890 008 976**

12/08/91

**USEPA/DOE-FMPC
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LETTER
OU5**



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

1953

JAN 08 1991

REPLY TO ATTENTION OF:

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

5HR-12

Re: OU#5 Access
Stipulated Penalty Dispute
U.S. DOE Fernald
OH6 890 008 976

Dear Mr. Avel:

In a letter dated December 4, 1990, the United States Environmental Protection Agency (U.S. EPA) imposed stipulated penalties against the Department of Energy (U.S. DOE) for failure to refer certain access issues to the Department of Justice (Attachment A). On December 19, 1990, U.S. DOE responded to the letter by initiating dispute resolution regarding the assessment of penalties (Attachment B). Pursuant to Section XIV of the 1990 Consent Agreement, U.S. DOE was obligated to raise its dispute to the Dispute Resolution Committee by January 4, 1991, if no resolution was reached by that date. U.S. EPA interprets U.S. DOE's failure to so raise the dispute as indicative that the dispute is ended.

The dispute resolution process is governed by Section XIV of the Consent Agreement. Pursuant to Section XIV.B, the disputing party shall initiate informal dispute resolution during the thirty (30) days which follow any action which generates a dispute. If the parties cannot reach an agreement during this period, Section XIV.C provides "the disputing party shall forward the written statement of dispute to the Dispute Resolution Committee thereby elevating the dispute to the Dispute Resolution Committee for resolution". U.S. DOE provided a written statement of dispute on December 19, 1990, but did not attempt to engage U.S. EPA in informal dispute resolution before or after this date. Mid-day on January 4, 1991, U.S. EPA faxed a letter to U.S. DOE reminding U.S. DOE that its dispute would end unless it was raised to the Dispute Resolution Committee within thirty (30) days of U.S. EPA's imposition of stipulated penalties (Attachment

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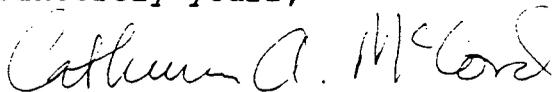
E-1204

C).¹ Despite U.S. EPA's reminder, U.S. DOE did not forward its statement of dispute to the Dispute Resolution Committee by the appropriate date.

The procedures for initiating and elevating disputes are described in detail in Section XIV of the Consent Agreement and are familiar to both parties. Pursuant to Section XIV, the burden of raising disputes rests on the disputing party. U.S. EPA views U.S. DOE's decision not to elevate its dispute to the Dispute Resolution Committee as indicative that the dispute is terminated and will proceed accordingly. Additionally, in a telephone conversation earlier today, U.S. DOE did not know of any intent to raise the dispute to the Dispute Resolution Committee and U.S. DOE was informed of U.S. EPA's determination that the dispute had ended. No opposing position was put forth by U.S. DOE.

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

Sincerely yours,



Catherine McCord
Remedial Project Manager

Attachments

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

¹U.S. DOE acknowledged the appropriateness of this procedure by formally raising its dispute over the Operable Unit #4 Remedial Investigation Report to the Dispute Resolution Committee on January 7, 1991.

bcc: David A. Ullrich, WMD-->William E. Muno -->Kevin Pierard
Bertram C. Frey, ORC
Len Robinson, ORC
Mary Butler, ORC
Sandra Lee, ORC
David Kee, ARD
Dan O'Riordan, OPA
Rose Freeman, ORA
Gordon Davidson, OS-530 -->William Duncan, OS-530
Ed Schuessler, PRC



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

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REPLY TO ATTENTION OF:

DEC 04 1990

5HR-12

Mr. William D. Adams
Acting Assistant Manager
for Environmental Restoration
and Waste Management
U.S. Department of Energy
Oak Ridge Operations
P.O. Box 2001
200 Administration Drive
Oak Ridge, Tennessee
37831-8501

Re: Notice of Violation
OU#5 Access
U.S. DOE - Fernald
OH6 890 008 976

Dear Mr. Adams:

On August 6, 1990, the United States Department of Energy (U.S. DOE) submitted a proposed Remedial Investigation/Feasibility Study (RI/FS) work plan addendum (dated August 3, 1990) for the above referenced site. Pursuant to this addendum, U.S. DOE proposed to install twelve 2000-series wells and an additional twelve contingency 3000-series wells. These wells were intended to characterize the groundwater in the Paddys Run area of the south plume for removal action #3 and Operable Unit (OU) #5. Figure 3 of the U.S. DOE addendum describes the locations of the proposed wells. (See Attachment A.) As provided in Attachment A, six of the 2000-series wells and six of the 3000-series wells proposed by U.S. DOE are located on property not owned by U.S. DOE. On September 7, 1990, the United States Environmental Protection Agency (U.S. EPA) approved the work plan addendum. (See Attachment B.)

Section XXVIII of the 1990 Consent Agreement obligates U.S. DOE to obtain access pursuant to its delegated authority under Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. § 9601 et seq. If voluntary access is not obtained within thirty (30) days of the approval of any work plan,

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Engineering Evaluation/Cost Analysis (EE/CA), or proposal that requires access to properties not owned by U.S. DOE, U.S. DOE is required by the terms of the Consent Agreement to refer the matter to the United States Department of Justice within thirty (30) days. This requirement applies to access to any property necessary to assure the timely performance of U.S. DOE's obligations under the agreement.

To implement the work plan addendum approved by U.S. EPA, U.S. DOE must obtain access from other property owners. Although U.S. DOE was unable to secure voluntary access within thirty (30) days of approval of the addendum, U.S. DOE failed to refer this matter to the Department of Justice within the following thirty (30) days (November 6, 1990) as provided by the Consent Agreement. This failure constitutes a violation of the express terms of Section XXVIII of the Consent Agreement and subjects U.S. DOE to stipulated penalties under Section XVII of the Agreement.

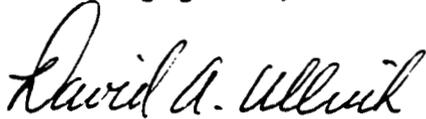
Pursuant to Section XVII, U.S. DOE may be assessed stipulated penalties at a rate not to exceed \$5,000 for the first week (or part thereof) and \$10,000 for each additional week (or part thereof). Stipulated penalties began to accrue on November 7, 1990, and will continue to accrue until the access issues raised by the work plan addendum are referred to the Department of Justice. Given the severity and extent of the violation and the effect of the violation on the implementation of the remedial action, U.S. EPA has determined that stipulated penalties in the amount of \$12,500 have accrued to date and should be assessed against U.S. DOE.

U.S. EPA hereby requests that U.S. DOE refer the relevant access issues to the Department of Justice and pay the stipulated penalties assessed above. The check for the stipulated penalties should be made payable to the Hazardous Substance Response Trust Fund, and should indicate the site name and the purpose of the check. The check should be mailed to:

U.S. EPA, Region V
ATTN: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

This letter constitutes written notification of violation as required by Section XVII of the Consent Agreement. As provided by the Agreement, U.S. DOE has fifteen days from receipt of this notice to invoke dispute resolution. If you have any questions regarding this matter, please contact Ms. Mary Butler at the Office of Regional Counsel at (312/FTS) 353-8514.

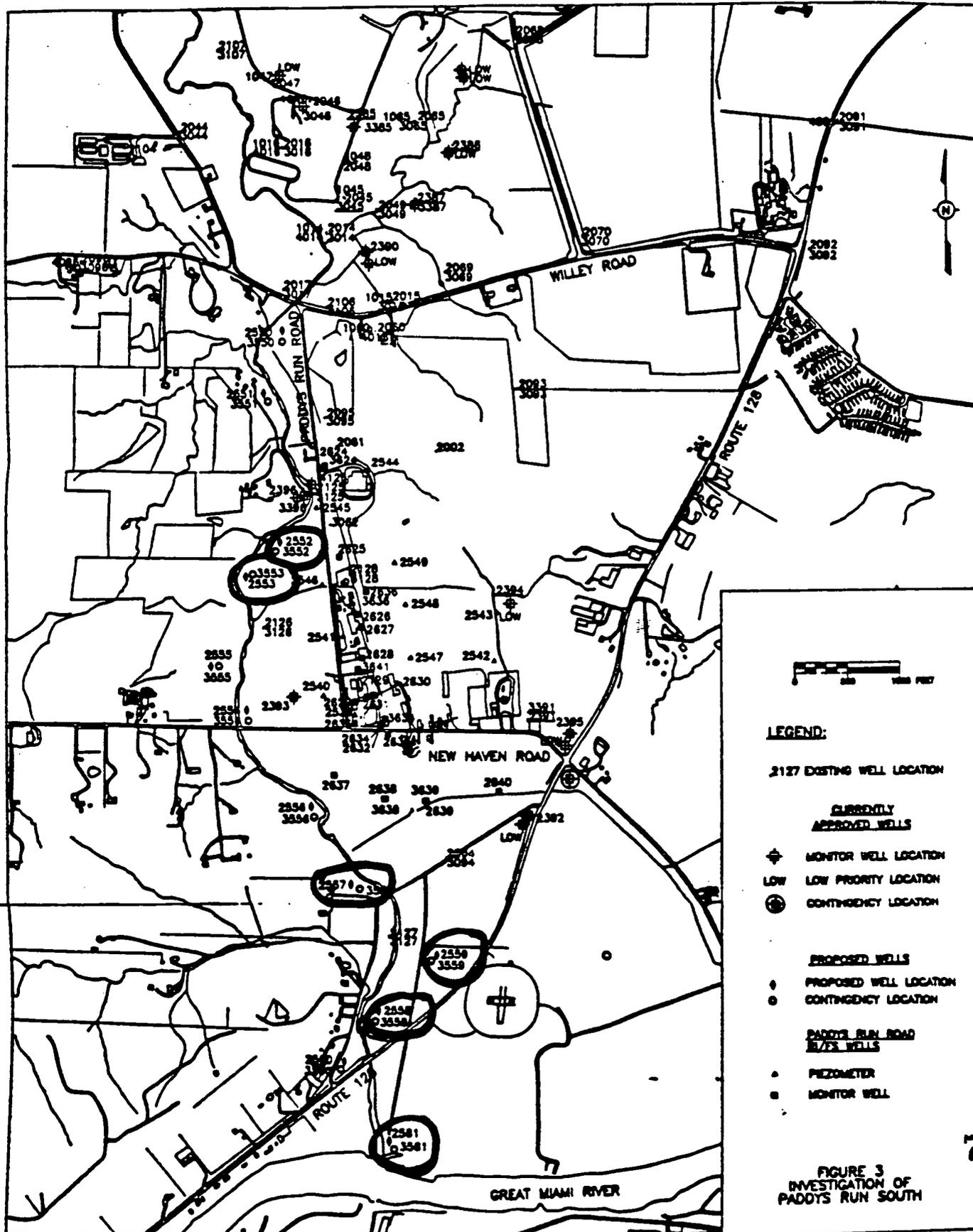
Sincerely yours,



David A. Ullrich, Director
Waste Management Division

Attachments

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



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

SEP 06 1990

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

5HR-12

RE: RI/FS WORK PLAN ADDENDUM
Seep Sampling
Operable Unit #5
U.S. DOE Fernald
OH6 890 008

Dear Mr. Davis:

The United States Environmental Protection Agency (U.S. EPA) has reviewed the remedial investigation/feasibility study (RI/FS) Work Plan Addendum for the seep sampling for Operable Unit #5 at the Feed Materials Production Center site in Fernald, Ohio. The United States Department of Energy (U.S. DOE) submitted this document to U.S. EPA on August 8, 1990.

U.S. EPA is approving U.S. DOE's proposal with the following modification:

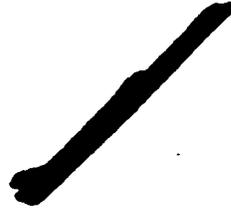
- 1. All references to 33 ug/l should be changed to 30 ug/l.

If you have any questions, I may be contacted at (312/FTS) 886-4436.

Sincerely,

Catherine A. McCord
Remedial Project Manager

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





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

JAN 04 1991

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

REPLY TO ATTENTION OF:5HR-12

RE: OU#5 Access Dispute
U.S. DOE - Fernald
OH6 890 008 976

Dear Mr. Avel:

The United States Environmental Protection Agency (U.S. EPA) acknowledges the receipt of the United States Department of Energy's (U.S. DOE) December 19, 1990, letter initiating dispute resolution. U.S. DOE disputed U.S. EPA's December 4, 1990, imposition of stipulated penalties for failure to comply with access requirements of Section XXVIII of the 1990 Consent Agreement for Operable Unit (OU) #5. U.S. EPA's Notice of Violation (NOV) was not disputed.

As you are aware, the dispute resolution process is defined in Section XIV of 1990 Consent Agreement. Section XIV.B allows for thirty (30) days of informal dispute resolution to attempt to resolve the dispute. In this case, the thirty day period started with U.S. EPA's December 4, 1990 NOV.

U.S. DOE has not initiated any informal dispute resolution discussions regarding this matter. Please inform U.S. EPA if U.S. DOE intends to initiate any discussions prior to raising the dispute to the Dispute Resolution Committee prior to thirty days from U.S. EPA's NOV. The dispute end unless it is raised to the Dispute Resolution Committee within thirty days from U.S. EPA's NOV.

Please contact me at (312/FTS) 886-4436, if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Catherine A. McCord".

Catherine A. McCord
Remedial Project Manger

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