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**FEDERAL FACILITIES COMPLIANCE  
AGREEMENT (FFCA) - FEED MATERIALS  
PRODUCTION CENTER (FMPC)**

**XX/XX/XX**

**DOE-FN/USEPA**

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**LETTER**



Department of Energy  
Oak Ridge Operations  
P. O. Box E  
Oak Ridge, Tennessee 37831

GEO III

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*ARC*

Mr. Valdas V. Adamkus  
Regional Administrator  
U.S. Environmental Protection Agency  
Region V  
230 South Dearborn Street, 5AR-14  
Chicago, Illinois 60604

Dear Mr. Adamkus:

**FEDERAL FACILITY COMPLIANCE AGREEMENT (FFCA) - FEED MATERIALS PRODUCTION CENTER (FMPC)**

Reference is made to your February 14, 1986, letter to Joe La Grone on the above subject.

The U.S. Department of Energy (DOE) - Oak Ridge Operations acknowledges your proposed FFCA for our FMPC at Fernald, Ohio. While an FFCA is certainly an appropriate vehicle to ensure compliance with Federal environmental statutes and regulations for the FMPC, we believe that the proposed FFCA goes far beyond the intent and substance of Executive Order 12088. Specifically, we originally proposed to undertake many of the elements outlined in the proposed agreement. However, the agreement incorrectly reflects our input and covers areas for which we are self-regulating.

We believe that a good agreement can be reached, one which is solidly based on a sound and correct legal foundation and represents the best interests of the U.S. Government as a whole. Certainly, it would be prudent to anticipate, at the onset, the uncertainty of the funding process and the limitations that are imposed by the Anti-Deficiency Act.

Also, it is incumbent to the agreement-development process that this agreement reflect the policy of both agency headquarters. We have enclosed a list of general and specific comments on the proposed agreement for the U.S. DOE/FMPC at Fernald, Ohio. We fully hope to expeditiously avail ourselves of the resolution process which you have outlined.

Vincent Fayne of our Environmental Protection Branch will coordinate with your staff on future discussions during the week of March 24, 1986, regarding the responses provided in the enclosure. Your cooperation is appreciated.

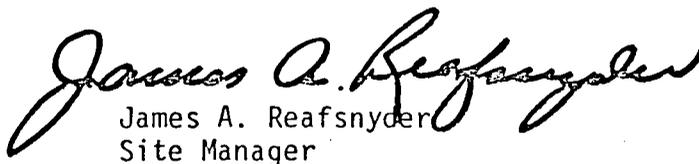
Mr. Valdas V. Adamkus

-2-

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If you have questions or require additional information, please contact Vince at (FTS) 626-0847.

Sincerely,

  
James A. Reafsnyder  
Site Manager

SE-331:Fayne

Enclosure:  
Comments

cc w/enclosure:  
W. D. Franz, EPA-V  
M. B. Boswell, WMCO

COMMENTS  
ON THE  
FEDERAL FACILITY COMPLIANCE AGREEMENT  
FOR THE  
FEED MATERIALS PRODUCTION CENTER

Page 1, First Paragraph, Line 1

Insert "Region V" after "United States Environmental Protection Agency."

Page 1, First Paragraph, Line 2

Insert "Oak Ridge Operations, Oak Ridge, Tennessee" after "United States Department of Energy."

Page 1, First Paragraph, Line 2

Change "(DOE)" to "(U.S. DOE)."

Page 1, First Paragraph, Line 7

Insert "will" after "(DOJ)."

Page 1, Scope, First Paragraph

Place a numerical one at the beginning of this paragraph to be consistent with remainder of document.

Page 1, Scope, First Paragraph, Line 2

Insert "Oak Ridge Operations" after "DOE."

Page 1, Scope, General Comment

The DOE has not been judged to be presently in noncompliance with the Clean Air Act, Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act. Section 1-601 of Executive Order (EO) 12088 states:

Whenever the Administrator or the appropriate State, interstate, or local agency notified an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

Clearly, a compliance plan need only cover those statutes and implementing regulations by which a facility has factually been judged to be in noncompliance. To cover general statutes in this agreement appears to go beyond the authority of EO 12088.

Page 2, Scope, Paragraph Continuing From Previous Page, Last Sentence

This statement is judgmental and presumptuous. It assumes that DOE will not thoroughly and adequately investigate and take appropriate remedial response actions to environmental situations as warranted. This is clearly "guilty until proven innocent." This is not the intent of Section 1-301 "Technical Advise and Oversight" of EO 12088.

Page 2, Scope, Paragraph 3, General Comment

This paragraph should have the heading "Authorities."

Page 3, Findings of Fact, General Comment

Consider changing the title to "Statement of Facts."

Page 3, Paragraph 1, General Comment

Indicate that the plant was operated by NLO, Inc., from 1952 to 1986. Westinghouse Materials Company of Ohio officially took over in January 1986.

Page 3, Paragraph 2, First Sentence

Consider changing the sentence to read "The primary function of the FMPC is the production of metallic uranium fuel cores and other uranium compounds for use in production reactors operated by the U.S. DOE."

Page 3, Paragraph 2, Third Sentence

Either delete the word "hazardous" from this sentence or insert "waste" after "radioactive."

Page 3, Paragraph 2, Eighth Sentence

Consider changing "determine the universe of" to "qualitatively assess the" or to "determine the nature and extent of."

Page 4, Paragraph 3, Line 3

Change "three silos containing approximately 1800 curies" to "two silos containing approximately 1,700 curies."

Page 4, Paragraph 3, General Comment

It is a gross assumption/speculation that all six waste pits and lagoons contain RCRA hazardous wastes.

Page 4, Paragraph 4

Insert after the second sentence the following information:

U.S. EPA Region V was informed in a letter, dated July 28, 1982, that the original compliance schedule for the project could not be met. The project was dropped from the 1981 and 1982 Congressional budgets. Funding was included in the 1983 budget, however, and DOE advised the Ohio EPA of the new schedule for the Bionitrification Project in a Permit-to-Install application, submitted on April 11, 1984. The new schedule identified a "begin operation" date of September 30, 1986.

Page 5, Paragraph 5, Fifth Sentence

DOE has submitted this information to U.S. EPA and Ohio EPA. What is the purpose of this paragraph?

Page 5, Paragraph 6, Lines 4

"(recodified OAC 3745-7-10)" should be "(recodified OAC 3745-17-10)."

Page 5, Paragraph 6, Line 5

"(recodified OAC-3745-11)" should read "(recodified OAC-3745-17-11)."

Page 5, Paragraph 6, General Comment

What is the point of this section? Why not just state that the FMPC is subject to applicable regulations pursuant to the Ohio Air Pollution Control Laws.

Page 6, Paragraph 7, First Sentence

Delete "many" from the sentence.

Page 6, Paragraph 7, Second Sentence

Consider deleting "large" from the sentence.

Page 6, Paragraph 7, Last Sentence

Consider changing "demonstrated" to "proven."

Page 6, Paragraph 7, Last Sentence

Consider changing "leaking" to "releasing." Even if the silos were structurally sound, the radon gas would be diffusing (thus being released) through the concrete silos.

Page 6, Paragraph 7, Last Sentence

Consider deleting "and radon decay products" since only the radon gas would be released.

Page 6, Paragraph 7, Last Sentence

Even structurally sound facilities release radon. The issue should be whether or not the guidelines are exceeded by the emissions.

Page 6, Paragraph 8

Consider changing this section to read as "Liquid effluents from the uranium metal production processes are generated and sent to the general sump for treatment prior to release to the Great Miami River."

Page 6, Paragraph 9

Additional information "During 1981, representatives from the Ohio EPA contacted the operator (NLO, Inc.) of the FMPC regarding elevated radioactivity in wells located downgradient from the FMPC. NLO shared samples with the Ohio EPA and determined that the elevated gross alpha readings were attributed to uranium and the elevated gross beta readings to Potassium-40. Subsequently, the Ohio Department of Health and the well owners were notified of the results in February 1982. This information is reported to the general public in the FMPC Environmental Monitoring Annual Report for 1983."

Page 6, Paragraph 10

DOE would not agree that as a result of the aforementioned releases, an imminent and substantial endangerment may be present to the public health and welfare and the environment, thus requiring remedial response activities. This section mistakenly links routine atmospheric discharges and liquid effluent discharges with a need for remediation. This section is based on speculation and should not be listed as "Findings of Fact."

If paragraph 10 remains as presently stated, please indicate that DOE does not share the same opinion.

Page 6, Paragraph 10, Line 2

Insert "Region V" after "U.S. EPA."

Page 7, Paragraph 11, General Comment

Indicate that DOE has responded to the letter from U.S. EPA.

Page 7, Paragraph 12, Last Line

Consider deleting "achieve and maintain" and replacing with "assure" or "enhance."

Page 7, Paragraph 13

Consider deleting "As a result of these meetings,.." DOE did not agree to a remedial investigation in accordance with CERCLA for both on- and offsite investigations. DOE informed EPA at previous meetings that DOE would conduct a remedial investigation, in accordance with guidelines under CERCLA, of the waste storage facilities at the FMPC and that further characterization studies/assessments would be conducted both on and off the FMPC sites.

Page 7, Paragraph 13

Consider including a statement that Section 3004(u) of the 1984 Hazardous and Solid Waste Amendment does not apply to the FMPC if we are required to perform a remedial investigation pursuant to CERCLA

Page 7, Paragraph 14

Consider replacing this paragraph with the following:

14. The compliance schedule for the facility named in Paragraph 1 of Findings of Fact is intended to achieve compliance as expeditiously as practicable, pursuant to Section 1-601 of EO 12088, and is set forth as Attachment 1 to this agreement. The attachment is incorporated into and made a part of this agreement. The schedule was determined after consultation between DOE and U.S. EPA Region V. The schedule contains interim requirements reflecting milestones dates. Wherever reasonably possible, DOE will expedite the schedule.

15. DOE shall request all funds and/or authorizations from Congress necessary to achieve the compliance schedule. This schedule is fixed and definite except to the extent that the Congress of the United States may fail to approve authorization and/or budget requests for this project. Steps to be taken in seeking funding shall be consistent with Section 1-4 and 1-5 of EO 12088 as implemented by the Office of Management and Budget Circular A-106 (as amended).

Page 8, I. Remedial Investigation Study, Paragraph A, Line 1

Change "60 calendar days" to "120 calendar days."

Page 8, I.A, Line 4 & 5

Delete "or threatened release."

Page 8, Paragraph I.A, Last Sentence

Delete the last sentence.

Page 8, Paragraph I.A.1

Change paragraph "A.1" to paragraph "B."

Page 8, Paragraph I.A.1, Last Line

This exclusion should also apply to that which is in compliance with DOE Orders (i.e., concentration guides for radioactive materials).

Page 9, Paragraph I.A.2

Change paragraph "A.2" to paragraph "C."

Page 9, Paragraph I.A.3

Change paragraph "A.3" to paragraph "D."

Page 10, Paragraph I.A.3.e.v

What is meant by "continuous" in this sentence?

Page 11, Paragraph I.A.3.f, First Sentence

What "initial set of groundwater analyses" is being referenced? The "initial set" after this agreement is signed?

Page 11, Paragraph I.A.3.f, Last Sentence

Duplicate reporting requirement should be eliminated.

Page 11, Paragraph I.A.4

Delete all of paragraph A.4. This item is covered in a separate vehicle as a result of a request from Senator Glenn's office to the Centers for Disease Control (CDC). U.S. EPA Headquarters and Region V and the State of Ohio agencies are involved in the review of this information. The information will be prepared in a format most useful to CDC. All data and reports will be made available to the U.S. EPA.

Page 12, Paragraph I.A.5

Change paragraph "A.5" to paragraph "E." Also, this would be covered under the EIS.

Page 12, Paragraph I.A.5, Line 3

Insert "hazardous" after "identified."

Page 12, Paragraph I.B

Change paragraph "B" to paragraph "F."

Page 12, Paragraph I.B, General Comment

Indicate the time period in which EPA will respond (e.g., U.S. EPA shall within 45 days evaluate it...."

Page 12, Paragraph I.B., Second Sentence

Change "30 calendar days" to "90 calendar days."

Page 12, Paragraph I.C

Change paragraph "C" to paragraph "G."

Page 12, Paragraph I.C, General Comment

Our understanding of a CERCLA cleanup activity allows for negotiation and agreement by DOE/EPA before EPA unilaterally specifies them in the Record of Decision.

Page 13, Paragraph I.D

Change paragraph "D" to paragraph "H."

Page 13, Paragraph I.D, Fourth Sentence

Change "30" calendar days to "90."

Page 13, Paragraph I.D, General Comment

These needs to be a statement recognizing the budget process as any corrective measure will probably be a "line item" suggesting approximately five to ten years from identification to completion. Also, consideration for the National Environmental Policy Act (NEPA) process must be recognized.

Page 13, II. Clean Air Act, Paragraph A

Delete paragraph "A" as we are presently in compliance.

Page 13, Paragraph II.B, Line 2

Delete "HEPA" and insert "emission controls."

Page 14, Paragraph II.B, Line 3

Change "completed" to "initiated."

Page 14, Paragraph II.B.1

What is meant in this paragraph? Additional clarification of the need for alarms is required. Consider deleting this section.

Page 14, Paragraphs II.B.2, II.B.3, and II.B.4

Delete these sections.

Page 14, Paragraph II.C

Delete this paragraph.

Page 14, Paragraph II.D

These are excessive requirements and are not required per regulation. A frequency of every seven years would be sufficient. We think this section should be deleted.

Page 14, Paragraph II.D, Third Sentence

Change "thirty" days to "sixty."

Page 15, Paragraph II.E

It is inappropriate to put a past date in this section. What is the purpose of a yearly schedule? Is it really needed?

Page 15, Paragraph II.F

Monthly emission records are kept. There is no need to provide quarterly reports above and beyond established NESHAP reporting regulations.

Page 15, Paragraph II.G

The schedule in this section is inconsistent with the schedule and intent of paragraph II.H.

Page 15, Paragraphs II.G and II.H, General Comment

Make the days for both to be 240 days.

Page 15, Paragraph II.I

The schedule is too short. The radon and radon-decay product are presently being controlled and monitoring is currently being performed. There is no need for this paragraph.

Page 16, III. Clean Water Act, Paragraph B

Delete paragraph III.B.

Page 16, Paragraph III.B.1

It is unreasonable and impossible to eliminate all discharge. We believe this should be tied to some storm event recurrence frequency, such as the 10-year, 24-hour storm event. DOE has not control over "Acts of God."

Page 16, Paragraph III.B.2

This statement presumes that the general sump can "treat" anything spilled. This may not be true. In any event, we need the flexibility to contain and treat spills in the most effective manner possible.

Page 16, Paragraph III.B.3

The FMPC has already achieved this, given present treatment capabilities.

Pages 16 & 17, Paragraphs III.A, C, & D

There are conflicting requirements among these paragraphs.

Page 17, Paragraph III.C, Schedule

The schedule for this project is presently not tractable. We propose the following schedule:

1. April 30, 1986
2. May 15, 1986
3. September 30, 1986
4. July 31, 1987
5. September 1, 1987

Page 17, Paragraph C & D, General Comment:

A statement needs to be added which indicates that these dates are for bringing the biodentrification up and operational as a demonstration unit, that the unit might not be capable of meeting the lower nitrate limit, that the unit will only be operational during non-winter months, and that the unit might be shutdown next summer to add engineering changes to make the unit a more reliable production unit.

Page 17, Paragraph III.D, First Sentence

This statement does in effect modify the requirements of the NPDES.

Page 17, Paragraph III.D, Second and Third Sentence

Change "December 30, 1986" to "September 1, 1987" and "December 31, 1986" to "September 2, 1987" respectively.

Pages 18 & 19, Paragraphs III.E, F, & G

Delete these paragraphs.

Page 18, Paragraph III.E

This is an unreasonable schedule. Such a study which is conducted and reported in only two months would be essentially worthless. We suggest 180 days.

Page 18, Paragraph III.E, Second Sentence

This is inconsistent with the permit-issuing authority held by the Ohio EPA.

Page 18, Paragraph III.F, First Sentence

A requirement to meet water quality standards in wastewater effluents cannot be mandated under State or Federal laws.

Page 18, Paragraph III.F, Second Sentence

The schedule is unreasonable. We suggest two years.

Page 19, Paragraph III.G, First Sentence

This implies that DOE can respond in one month, no matter what is requested. This is not a reasonable requirement.

Page 19 & 20, Paragraph III.H, First Sentence

This schedule is unreasonable. Ninety days is not sufficient time to develop a credible BMP. We suggest 270 days.

Page 21, Paragraph III.H.1.d.ii

Neither an NPDES permit nor FFCA BMP requirement can reasonably "assure" compliance with RCRA regulations. This would imply that any RCRA noncompliance would automatically result in a Clean Water Act violation.

Page 22, Paragraph III.H.2

The authority to require this is not implicit in the Clean Water Act.

Page 22, Paragraph III.H.5

The statement is too vague.

Page 24, Table 1

The uranium should not be listed on the NPDES permit or this agreement. The uranium limits were dropped from the Nonferrous Metal Regulations based on U.S. EPA HQ review of the source, special nuclear, and byproduct materials exemption. The NPDES regulations and Clean Water Act do not allow it.

Page 24, Table 1, Item 2

Change "January 31, 1986" to "September 30, 1986."

Page 24, IV. RCRA, Paragraph A

The FMPC is in compliance with interim status regulations. This section is not needed. U.S. EPA has inappropriately assumed that all surface impoundments are RCRA facilities.

Page 25, General Comment

In general, if we are doing a CERCLA cleanup as called for earlier in this agreement, then the RCRA closures and characterizations should not be required.

Page 25, Paragraph IV.A.1, Line 2

The RCRA regulations do not cover radioactivity which is source, special nuclear, or byproduct materials. If waste is classified as mixed waste at FMPC, it is subject to RCRA.

Page 25, Paragraph IV.A.2

This presupposes that all pits contain RCRA hazardous waste. If they do not, then no inspection and documentation per RCRA is required.

Page 25, Paragraph IV.A.5

Same comment as for paragraph IV.A.2 above.

Page 25, Paragraph IV.A.6

Presently promised for Pit No. 4, not necessary for the other unless they are RCRA.

Page 25, Paragraph IV.B

This section again presupposes that all pits are RCRA. If they are not, this section is not required. This whole section on the pits should be reworded to recognize that if no RCRA hazardous waste are found outside of Pit No. 4, then RCRA does not apply to the pit area. It appears that this is trying to circumvent due process with the compliance agreement.

Page 26, Paragraph IV.B.4

This paragraph should deal with the RCRA pits only. The CERCLA monitoring will cover all the other pits.

Page 27, Paragraph IV.B.6, General Comment

It does not seem appropriate to separate groundwater monitoring into classes. Groundwater is groundwater, so let's do the evaluation, etc., under an integrated program without nit-picking over which is subject to what.

Page 27, V. Radiation Compliance Conditions, Paragraph A

Delete this section. DOE has already implemented work practices for the control of radon and radon-decay product emissions. Meeting the standards/guidelines is the important part. The FMPC concentrations are within acceptable standards/guidelines.

Page 27, Paragraph V.B

The same requirements as listed on Page 15, Paragraph II.I. Delete this paragraph.

Page 28, Paragraph V.C

DOE has provided this report to U.S. EPA. Delete this paragraph.

Page 28, Paragraph V.D

DOE has a comprehensive offsite environmental monitoring program at the FMPC.  
Delete this section.

Page 30, Second Centered Heading

Change "EFFECTIVE DATA" to EFFECTIVE DATE."

Page 31, Signature Page

Delete "IT IS SO AGREED:" and "IT IS SO ORDERED:"

General Comment

Additional areas of concern were identified in the letter, from C. H. Seehorn to B. Neuberger, dated March 10, 1986, regarding related issues.