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G-000-709.21

**FFCA MODIFICATION, UNITED STATES  
DEPARTMENT OF ENERGY, FEED MATERIALS  
PRODUCTION CENTER, FERNALD, OHIO  
OH6 890 008 976**

**06/10/88**

**DOE-FN/USEPA**

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**LETTER**



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

FEB 10 1988

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June 10, 1988

File

FFCA  
 Agreement

AR

Mr. Robert Schaefer  
 Regional Counsel  
 U.S. Environmental Protection Agency  
 Region V  
 230 South Dearborn Street  
 Chicago, Illinois 60604

Dear Mr. Schaefer:

FFCA MODIFICATION, UNITED STATES DEPARTMENT OF ENERGY, FEED MATERIALS PRODUCTION CENTER, FERNALD, OHIO, OH6 890 008 976

By letter dated May 13, 1988, received May 20, 1988, Ms. McCord of the Regional RCRA Enforcement Branch, forwarded to James A. Reafsnyder, DOE Site Manager at the Feed Materials Production Center (FMPC), a proposed First Modification to the FFCA, containing enforceability language on RCRA and CERCLA, as well as commitments relating to EPA's review of DOE's submittals.

Enclosed are two originals of the modification executed by Joe La Grone, Manager, Oak Ridge Operations. We look forward to receiving in return a original fully executed by the officials noted for signature on the modification.

I have advised Mr. La Grone, and others in DOE involved with the interpretation and implementation of the FFCA, that the Funding article found on page 21 of the FFCA controls the First Modification as well as the basic FFCA. That, of course, is consistent with the normal rules of construction applicable to an agreement of this type.

Paragraph C. of the Review of Submittals portion of the First Modification is understood to apply to DOE submittals other than those made under the approved RI/FS Work Plan, which contains its own DOE response requirements. And, as with the funding issue discussed above, Paragraph C. is understood to be controlled by all applicable provisions of the FFCA as modified, including the Dispute Resolution procedures found on pages 22 and 23 of the FFCA.

I should mention also something about the enforceability language, especially as it relates to penalties under CERCLA. The language in the modification is intended to reflect what is

Mr. Robert Schaefer

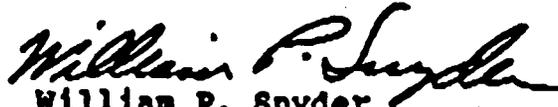
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provided by statute. DOE and EPA, obviously, cannot create on their own statutory obligations that have not otherwise been enacted by Congress, as interpreted by the courts.

Sincerely,

  
William P. Snyder  
Chief Counsel

Enclosures

cc w/encls.: Catherine A. McCord, EPA  
J. Reafsnyder, FMPC Site Office  
Graham Mitchell, OEPA-SWDO  
Michael Savage, OEPA-CO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

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IN THE MATTER OF:

UNITED STATES DEPARTMENT  
OF ENERGY

AND

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY

FEDERAL FACILITY  
COMPLIANCE AGREEMENT

U.S. EPA Docket No.: FFCA-HW-001

FIRST MODIFICATION

The Enforceability section of the Federal Facility Compliance Agreement is modified as follows:

ENFORCEABILITY

Resource Conservation and Recovery Act

A. U.S. DOE recognizes its obligations to comply with RCRA as set forth in Section 6001 of RCRA.

B. The RCRA provisions of this Agreement including those related to statutory requirements, regulations, permits, closure plans, or corrective action, including recordkeeping, reporting, and schedules of compliance, shall be enforceable under citizen suits pursuant to 42 U.S.C. 56972(a)(1)(A), including actions or suits by the States and its agencies. The U.S. DOE agrees that the State and its agencies are a "person" within the meaning of Section 7002(a) of RCRA.

C. In the event of any action filed under Section 7002(a) of RCRA alleging any violation of any such RCRA requirement of this Agreement, it shall be presumed that the RCRA provisions of this Agreement including those RCRA provisions which

address recordkeeping, reporting, and schedules of compliance are related to RCRA statutory requirements, regulations, permits, closure plans, or corrective action, and are thus enforceable under Section 7002(a) of RCRA.

**Comprehensive Environmental Response, Compensation, and Liability Act**

A. Upon the effective date of this Agreement, any standard, regulation, condition, requirement, or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such standard, regulation, condition, requirement, or order will be subject to civil penalties under Sections 310 (c) and 109 of CERCLA.

B. All timetables or deadlines associated with the development, implementation, and completion of the RI/FS shall be enforceable by any person pursuant to Section 310 of CERCLA, and any violation of such timetables or deadlines will be subject to civil penalties under Section 310(c) and 109 of CERCLA.

C. All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA.

The following Review of Submittals section is an addition to the Federal Facility Compliance Agreement:

REVIEW OF SUBMITTALS

The review process of each permit application, document, report, deliverable, or schedule (collectively referred to as "submittal") submitted by U.S. DOE to U.S. EPA under this agreement, shall proceed as follows:

A. U.S. DOE shall complete and transmit each draft report or report on or before the corresponding deadline established for the issuance of such reports.

B. Within twenty-one (21) calendar days after U.S. EPA received a submittal from U.S. DOE, U.S. EPA shall notify U.S. DOE if the submittal does not contain information sufficient for U.S. EPA's review; or whether and in what respects, if any, the submittal is deficient in the amount or type of information it provides.

C. Within thirty (30) calendar days of receipt by U.S. DOE of any notice by U.S. EPA of the substantive deficiency of any submittal, U.S. DOE shall submit revisions for complex or lengthy reports.

D. If U.S. EPA shall be unable to meet the review commitments within the times stated above, U.S. EPA shall provide notice and an explanation to U.S. DOE within the times stated above or its inability to meet the given timeframes and a projected date for completion of the review.

This modification is effective upon signature by U.S. EPA.

IT IS SO AGREED:

By: Joe La Grone  
Joe La Grone  
U.S. Department of Energy

6-10-88  
Date

By: \_\_\_\_\_  
Basil G. Constantelos, Director  
Waste Management Division  
U.S. Environmental Protection Agency  
Region V

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Valdas V. Adamkus  
Regional Administrator  
U.S. Environmental Protection Agency  
Region V

\_\_\_\_\_  
Date