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G-000-709.23

**DRAFT INTERAGENCY AGREEMENT (IAG)  
BETWEEN THE FMPC AND EPA REGION V**

**06/22/89**

**DOE-1229-89  
DOE-FN/USEPA  
6  
LETTER**

Attachment D



Department of Energy

FMPC Site Office  
P.O. Box 398705  
Cincinnati, Ohio 45239-8705  
(513) 738-6319

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June 22, 1989  
DOE-1229-89

*copy sent*

Mr. William Constantelos  
U.S. Environmental Protection Agency  
Region V  
Waste Management Division (5HR-12)  
230 South Dearborn Street  
Chicago, Illinois 60604

Dear Mr. Constantelos:

DRAFT INTERAGENCY AGREEMENT (IAG) BETWEEN THE FMPC AND EPA  
REGION V

Reference: Letter, V.V. Adamkus to Joe La Grone,  
dated June 12, 1989

As a result of the teleconference discussions held on June 15, 1989, DOE is providing comments on the draft IAG for your use in either revising the current Federal Facilities Compliance Agreement (signed July, 1986) or for preparing a three-party agreement which allows the Ohio EPA an opportunity to be a signatory to a joint USEPA-V/Ohio EPA/DOE agreement.

Our comments on the draft IAG can be found in the enclosures to this letter. The comments are in two forms; (1) a summary of major comments, and (2) a marked-up copy of the draft IAG. The summary of major comments addresses sections of the IAG that received extensive comments. You will note that consistency in approach between the Remedial Investigation and Feasibility Study (RI/FS), removal actions, remedial actions, and the proposed National Contingency Plan (proposed rule issued: 12-21-89) is emphasized in a majority of the comments. For this reason we believe it is prudent to rewrite the sections on removal actions and the RI/FS and to provide these to you. We would like to meet with you to discuss our comments on or about July 14, 1989. We will provide the revised sections of the draft IAG prior to this date.

If you have any questions on the enclosed comments, please contact Margaret Wilson of my staff at FTS 774-6161 or (513) 738-6161 or Larry Sparks of our Environmental Protection Division at FTS 626-9428 or (615) 576-9428.

Sincerely,



James A. Reafsnyder  
Site Manager

SE-31:Sparks

Enclosures:

- 1) Summary of Major Comments on the Draft IAG
- 2) Marked-Up copy of the Draft IAG

cc w/encl.:

C. McCord, USEPA  
G. Mitchell, Ohio EPA  
L. Dever, EH-23  
W. R. Bibb, DP-80, DOE/ORO  
L. Sparks, SE-31, DOE/ORO  
R. Allen, DP-122

SUMMARY OF MAJOR COMMENTS  
ON THE  
DRAFT INTERAGENCY AGREEMENT  
BETWEEN THE  
FEED MATERIALS PRODUCTION CENTER  
AND THE  
ENVIRONMENTAL PROTECTION AGENCY REGION V

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Under the Jurisdiction Section, the following comments are offered:

1. Section 106(a) gives the President the authority to take action when an imminent and substantial endangerment to public health and welfare or the environment is determined to exist. This authority has been delegated to the Secretary of Energy for facilities under his jurisdiction or control via Executive Order 12580. DOE will use this authority to carry out removal actions, but it should not be cited as an authority by which DOE enters into the IAG.
2. This section does not reference RCRA Section 3004(u) corrective action authorities. Section 3004(u) should be included in this section of the IAG. In this manner, the section on RCRA-CERCLA integration can state that when the RCRA permit is issued, the IAG will form the basis for how corrective actions under RCRA will be carried out.

Under the Application Section, it is DOE's intent is to eliminate the FFCA with the execution of this IAG. In this regard, we are reviewing the FFCA to determine what actions still remain to be accomplished that are not being incorporated into this IAG and exploring options on how to handle them.

In an appropriate section, a discussion of the State of Ohio involvement in the RI/FS process needs to be added. Even if the State will not be a party to the IAG, their involvement should be explained for the benefit of other parties.

In the Findings of Fact and Conclusions and Determinations of Law Section, there are some statements that are not appropriate for this section. Also, there has been no demonstration of a release of hazardous waste constituents from a regulated unit within the meaning used in this section.

In the Definitions Section, all terms that are defined in the regulations should be deleted and the appropriate regulation cited instead (e.g., the NCP). Where CERCLA and RCRA both define a term, the CERCLA definition should take precedence since an RI/FS under CERCLA is the primary vehicle of investigation. Only terms unique to this IAG should be contained in this IAG. This will reduce the size of the IAG and allow for changes in the regulations with respect to definitions to be immediately implemented.

B. Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA.

C. The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

*Penalties for EPA not fulfilling these roles?*

XVII. STIPULATED PENALTIES

*should only be operative only after we are listed on the NPL.*

*Not listed as primary document in Section III C.*

A. In the event that the U.S. DOE fails to submit a primary document

(i.e., ~~FS Work Plan, Risk Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan, Record of Decision, Remedial Design, Remedial Action Work Plan~~) to U.S. EPA pursuant to the appropriate timetable

*create primary documents have already been defined.*

or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an interim or final remedial action, U.S. EPA may assess a stipulated penalty against the U.S. DOE. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

*removal(?)*

B. Upon determining that the U.S. DOE has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify the U.S. DOE in writing. If the failure in question is not already subject to dispute resolution at the time



A. In the event that the U.S. DOE fails to submit a primary document [(i.e., FS Work Plan, Risk Assessment, RI Report, Initial Screening of Alternatives, FS Report, Proposed Plan,) OR draft Record of Decision to U.S. EPA pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to a [interim] removal or final remedial action, U.S. EPA may assess a stipulated penalty against the U.S. DOE. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

B. Upon determining that the U.S. DOE has failed in a manner set forth in Paragraph A, U.S. EPA shall so notify the U.S. DOE in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the U.S. DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The U.S. DOE shall not be liable for the stipulated penalty assessed by U.S. EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.