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**NOTICE OF DISPUTE - U.S. ENVIRONMENTAL
PROTECTION AGENCY (U.S. EPA) NOTICE OF
DISAGREEMENT WITH ADDITIONAL WORK FOR
OPERABLE UNITS 1 AND 2**

03/26/91

**DOE-FN/EPA
DOE-981-91
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LETTER**



Department of Energy

FMPC Site Office
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MAR 26 1991

DOE-981-91

Ms. Catherine A. McCord
 Remedial Project Manager
 U. S. Environmental Protection Agency
 Region V - 5HR-12
 230 South Dearborn Street
 Chicago, IL 60604

Mr. Graham E. Mitchell, DOE Coordinator
 Ohio Environmental Protection Agency
 40 South Main Street
 Dayton, OH 45402

Dear Ms. McCord and Mr. Mitchell:

NOTICE OF DISPUTE - U. S. ENVIRONMENTAL PROTECTION AGENCY (U. S. EPA) NOTICE OF DISAGREEMENT WITH ADDITIONAL WORK FOR OPERABLE UNITS 1 AND 2

Your March 4, 1991 letter (Reference 1) indicated that the additional sample collection identified (References 2 and 3) for Operable Units 1 and 2 does not meet the criteria for the definition of "additional work" under Section XV of the 1990 Consent Agreement. The work described is "additional work" under provisions of the Consent Agreement based on the following premise: the Consent Agreement was signed in April, 1990, and the additional sampling for Operable Units 1 and 2 was not identified as a requirement as of that time.

The referenced correspondence transmitted plans for accomplishing the additional sampling as a part of the established review/approval process required in the Consent Agreement. On July 25, 1990 (Reference 4), a work plan for additional sampling in the waste pits was submitted for your review and approval. The approval process ended with the proposed sampling being expanded to include installation of additional wells and increased sample analyses at U. S. EPA's and OEPA's request. U. S. EPA approved this sampling on October 25, 1990, with an acknowledgement that this was considered additional effort (Reference 5). OEPA approval was obtained prior to the U. S. EPA approval. This approval was contingent upon concurrence of the OEPA RCRA staff for sampling of Waste Pit 4. Similar correspondence was provided for Operable Unit 2, with subsequent approval by U. S. EPA on December 13, 1990 (Reference 6).

PUBLIC ENVIRONMENTAL INFORMATION CENTER

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Several discussions and meetings have occurred in addition to the referenced correspondence, where the issue of additional sampling in these areas has been discussed with U. S. EPA; agreement was expressed that additional sampling was required. On the basis that it has been defined as "additional sampling," our position is that this is "additional work" as provided for in the 1990 Consent Agreement.

For the reasons cited above, it is inappropriate and unnecessary to disapprove the "additional work" or to establish or assess fines or other penalties under the provisions of the Consent Agreement. Plans have been submitted by DOE and approved by U. S. EPA for the additional sampling indicating acknowledgement by U. S. EPA and OEPA that the additional sampling, i.e., additional work, is necessary. Suggest your March 4, 1991 letter be withdrawn.

If you have any questions, please contact Oba Vincent at FTS 774-6937/(513) 738-6937 or me at FTS 774-6159/(513) 738-6159.

Sincerely,


Jack R. Craig
FMPC Remedial Action
Project Director

DP-84:Vincent

Enclosure: References

cc w/encl.:

R. P. Whitfield, EM-40, FORS
J. J. Fiore, EM-42, GTN
K. A. Hayes, EM-424, GTN
G. G. Ioannides, OEPA-Columbus
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C. R. Holmes, USEPA-HQ
W. E. Muno, USEPA-V, 5HR-13
K. J. Pierard, USEPA-V, 5HR-12
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H. F. Daugherty, WMCO
S. W. Coyle, WMCO
S. M. Peterman, WMCO
J. D. Wood, ASI

cc: ERA File
AR File

Enclosure

- References: 1) Letter, C. A. McCord to J. R. Craig, "Operable Units 1 and 2, Additional Work, U. S. DOE Fernald OHD-890-008-976," dated March 4, 1991
- 2) Letter, DOE-699-91, J. R. Craig to C. A. McCord and G. E. Mitchell, " Additional Work Under the Consent Agreement - Operable Unit 1," dated February 4, 1991
- 3) Letter, DOE-582-91, J. R. Craig to C. A. McCord and G. E. Mitchell, "Additional Work Under the Consent Agreement - Operable Unit 2," dated February 4, 1991
- 4) Letter, DOE-1429-90, G. W. Westerbeck to C. A. McCord and G. E. Mitchell, "RI/FS Document Change Requests (DCRs)," dated July 25, 1990
- 5) Letter, C. A. McCord to A. P. Avel, "Operable Unit 1, RI Work Plan Addendum U. S. DOE Fernald OHD-890-008-976," dated October 25, 1990
- 6) Letter, C. A. McCord to A. P. Avel, "Operable Unit 2, RI Work Plan Addendum, U. S. DOE Fernald OHD-890-008-976," dated December 13, 1990