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OU#3 AND #5 EXTENSION REQUEST FERNALD, OHIO
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USEPA/DOE-FN
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LETTER

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

4100

APR 15 1991

REPLY TO ATTENTION OF:

5HR-12

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

RE: OU #3 and #5
Extension Request
Fernald, Ohio
OH6 890 008

Dear Mr. Craig:

On April 8, 1991, the United States Department of Energy (U.S. DOE) submitted a request for an extension of time under Section XVIII of the 1990 Consent Agreement for the submission of Remedial Investigation (RI) reports for Operable Units (OU) 3 and 5. This request was dated April 5, 1991, and was received by the United States Environmental Protection Agency (U.S. EPA) on April 8, 1991.
Section XVIII provides that U.S. EPA shall extend a timetable, deadline or schedule upon timely request by U.S. DOE. This request must specify the schedule sought to be extended, the length of the extension, any related timetables, deadlines or schedules affected by the extension and good cause for the extension. U.S. EPA finds that the request for extension referenced above does not satisfy the requirements as described in Section XVIII of the Consent Agreement.

First, U.S. DOE's request does not specify the length of the extension sought; rather the request states "[t]he length of time requested for the extension will be determined through the preparation by DOE and approval by U.S. EPA of a revised Remedial Investigation/Feasibility Study (RI/FS) schedule". Not only does this statement fail to provide a specific time period for the extension as required by the Agreement, it presupposes that the Agencies have agreed to revise the RI/FS schedule. As of this writing, there has been no commitment from U.S. EPA to revise <u>any</u> schedules in the Consent Agreement. Additionally, the request of extension is deficient because it does not indicate whether any related timetables, deadlines or schedules will be affected. Although U.S. DOE has not described the length of extension, given the structure of the remediation schedule, an extension could impact other schedule deadlines.

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Finally, the request fails to show good cause why the RI schedules should be extended. U.S. DOE states that additional work requests for OU #s 3 and 5, dated January 29, 1991 and March 13, 1991, establish good cause for an extension of time under Section XVIII of the 1990 Consent Agreement. U.S. EPA disagrees. U.S. EPA expressly rejected U.S. DOE's finding of additional work for OU #3 in a letter dated February 5, 1991. In that letter, U.S. EPA stated that remedial investigation work which was the subject of U.S. DOE's January 29, 1991 letter was not additional work, but "was known to U.S. DOE and its project manager since the 1990 Consent Agreement was negotiated in late 1989". With regard to the notice of additional work in U.S. DOE's letter of March 13, 1991, U.S. EPA similarly finds that the work outlined in that letter does not constitute good cause for extension of the OU #5 RI schedule. First, the work outlined in U.S. DOE's March 13, 1991 letter is work contemplated by the scope of the 1990 Consent Agreement. Second, to the extent this work was "additional work" under Section XV of the Agreement, it does not entitle U.S. DOE to an extension of time under Section XVIII. The OU #5 work plan addendum referenced by U.S. DOE was proposed in writing to U.S. EPA on August 3, 1990, and approved by U.S. EPA on September 6, 1990. In accordance with Section XV.C of the Consent Agreement, the work in the August 3, 1990 addendum was to be completed "in accordance with the standards, specifications, and schedules approved by U.S. EPA". U.S. DOE did not request and U.S. EPA did not grant any extension to perform the work outlined in the addendum; rather that work was to be completed within the time frames provided in the existing RI schedule. If U.S. DOE believed that the addendum would "adversely affect the work scheduled", Section XV.C required U.S. DOE to notify U.S. EPA "immediately of the situation . . . followed by a written explanation within five (5) days of the initial notification".

Additional work is not an express example of good cause under Section XVIII of the Consent Agreement; thus, the existence of additional work does not automatically entitle U.S. DOE to an extension of time. Moreover, U.S. DOE's request for an extension to perform the work in the August 3, 1990 addendum is neither timely or appropriate. If U.S. DOE believed that the addendum would delay scheduled work, U.S. EPA should have been notified immediately. U.S. DOE did not request an extension in August when the addendum was submitted, nor has U.S. DOE provided any explanation of changed circumstances since the August submittal. U.S. EPA finds that pursuant to Section XV.C of the Consent Agreement, the work in the addendum was scheduled to be completed within the time frames provided in the RI schedule. U.S. DOE has not established good cause for extending this schedule.

For the reasons set forth in this letter and in U.S. EPA's letter of February 5, 1990, U.S. EPA hereby denies U.S. DOE's request for an extension of time under Section XVIII. Thus, the RI reports which were due on April 8, 1990, are late. This letter also serves as a response to U.S. DOE's March 13, 1991, notification of additional work.

If there are any questions regarding this matter, I may be contacted at (312/FTS) 886-4436.

Sincerely,

Catherine A. McCord
Remedial Project Manger

cc: Gerry Ionnides, OEPA
Graham Mitchell, OEPA - SWDO
Pat Whitfield, U.S. DOE - HDQ
Joe LaGrone, U.S. DOE - ORO

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