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**AGREEMENT RESOLVING DISPUTE
CONCERNING DENIAL OF REQUEST FOR
EXTENSION OF TIME TO SUBMIT OPERABLE
UNIT 2 DOCUMENTS**

EPA/DOE-FN

**14
LEGAL AGREE**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
U.S. DEPARTMENT OF ENERGY) Administrative
FEED MATERIALS PRODUCTION CENTER) Docket Number: V-W-90-C-057
FERNALD, OHIO)
)
OH6 890 008 976)

AGREEMENT RESOLVING DISPUTE CONCERNING DENIAL OF REQUEST
FOR EXTENSION OF TIME TO SUBMIT OPERABLE UNIT 2 DOCUMENTS

On the basis of the facts set forth below and in accordance with Sections XIV, XVII, and XXXIII of the September 1991 Amended Consent Agreement ("ACA"), the United States Department of Energy ("U.S. DOE") and the United States Environmental Protection Agency ("U.S. EPA") hereby agree to resolve all disputed matters relating to U.S. EPA's denial of U.S. DOE's February 2, 1993, request for an extension of time to submit Operable Unit 2 ("OU 2") documents.

BACKGROUND

1. On October 17, 1992, U.S. DOE submitted a Remedial Investigation ("RI") report to U.S. EPA.
2. On December 17, 1992, U.S. EPA disapproved the RI report.
3. On February 2, 1993, U.S. DOE requested an extension of time under Section XVIII of the ACA to submit the RI, Feasibility Study ("FS"), and Proposed Plan ("PP") reports and the Proposed Draft Record of Decision ("ROD") for OU 2.
4. On February 9, 1993, U.S. EPA notified U.S. DOE that it did not concur with the February 2, 1993, extension request and that U.S. EPA intended to assess stipulated penalties for U.S. DOE's failure to submit the OU 2 RI report by February 8, 1993.
5. On February 16, 1993, U.S. DOE invoked the dispute resolution provisions of Section XIV of the ACA regarding U.S. EPA's February 9, 1993, non-concurrence.
6. On March 16, 1993, U.S. EPA notified U.S. DOE that it intended to assess stipulated penalties for U.S. DOE's failure to submit OU 2 FS and PP reports by March 15, 1993.
7. On March 19, 1993, U.S. DOE invoked the dispute resolution provisions of Section XIV of the ACA regarding U.S. EPA's March 16, 1993, notice.

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8. On March 8, 1993, U.S. DOE submitted to U.S. EPA a "Sampling and Analysis Plan for RI/FS Work Plan Addendum Operable Unit 2" which U.S. EPA conditionally approved on March 23, 1993.

9. Pursuant to Sections XIV.B. and XIV.K. of the ACA, U.S. DOE and U.S. EPA engaged in informal dispute resolution concerning the OU 2 extension request for the period from February 9 through April 2, 1993. During this period, the parties met to discuss this dispute on February 17 and 23, March 4 and 19, 1993, and, in addition, participated in several telephone conferences.

10. By no later than April 12, 1993, U.S. EPA will provide public notice of this Agreement announcing that public comments will be accepted for a thirty (30) day period. In addition, during the public comment period, U.S. EPA will conduct a public meeting concerning this Agreement. The parties agree to review any public comments and revise this agreement as appropriate under Section XXXVI of the ACA.

11. Throughout this dispute, the Parties have consulted with, and accepted input from, the Ohio Environmental Protection Agency.

GOOD FAITH

12. Among other factors, U.S. EPA's assent to the terms of this Agreement, including the penalty provisions, is based upon U.S. DOE's demonstration of good faith in resolving this matter. Specific instances of U.S. DOE good faith include, but are not limited to, the following:

a. Development and accelerated implementation of the March 8, 1993, "Sampling and Analysis Plan for RI/FS Work Plan Addendum Operable Unit 2;"

b. Acceleration of the Operable Units 1, 3, and 5 ROD submittal dates;

c. Commitment to conduct an early comprehensive data review for each Operable Unit;

d. Willingness to implement a significant supplemental environmental project; and

e. Cooperation in resolving this matter within the informal dispute resolution period.

TERMS OF RESOLUTION

In order to resolve this dispute, and to concentrate the parties' efforts on environmental restoration activities at the Fernald Environmental Management Project (FEMP), U.S. DOE and U.S. EPA agree as follows:

13. In recognition that U.S. DOE missed the OU 2 milestones for the RI, FS, and PP reports, and will miss the draft ROD milestone, U.S. DOE agrees to spend no less than \$2.0 million to implement the Supplemental Environmental Project ("SEP") described in Attachment 1 to this Agreement. Successful implementation of the project will reduce total uranium discharged to the Great Miami River from the FEMP.

14. U.S. DOE agrees to the assessment of a monetary penalty in the amount of \$50,000, to be paid from funds specifically authorized and appropriated for that purpose in accordance with Section XVII of the ACA.

15. In the event U.S. DOE fails to submit the OU 2 ROD by no later than January 5, 1995, U.S. DOE agrees that U.S. EPA may assess a monetary penalty of \$25,000, to be paid from funds specifically authorized and appropriated for that purpose in accordance with Section XVII of the ACA, regardless of any other consideration including the presence or absence of good cause as defined in Section XVIII of the ACA. U.S. DOE expressly waives any right to invoke dispute resolution or in any other way contest the assessment of the \$ 25,000 penalty. If assessed, the provisions of this paragraph would be in addition to, and in no way affect, U.S. EPA's rights to assess stipulated penalties, or U.S. DOE's rights to dispute any such proposed assessment, under the ACA.

16. If U.S. DOE believes that it will be prevented from meeting the January 5, 1995, OU 2 ROD submittal date because of one or more of the force majeure events described in Section XIX of the ACA, U.S. DOE may request that U.S. EPA defer assessment of the contingent penalty specified in paragraph 15 of this Agreement. Any such request must be submitted to U.S. EPA in accordance with the requirements of Section XIX.B. of the ACA. In its sole discretion, U.S. EPA may defer assessment of the contingent penalty for a period equal to the period of delay attributable to the force majeure event. However, the parties expressly recognize that the purpose of the contingent penalty is to ensure that U.S. DOE makes extraordinary efforts, as opposed to the "reasonable diligence" required by Section XIX of the ACA, to overcome any circumstances that may delay submittal of the OU 2 ROD. Therefore, U.S. EPA may determine that deferring assessment of the contingent penalty is not warranted even upon the occurrence of certain force majeure events. U.S. DOE agrees

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that the waiver described in paragraph 15 of this Agreement shall also apply to any U.S. EPA determination under this paragraph.

17. U.S. DOE agrees to request funds in its Fiscal Year (FY) 1995 budget request for the monetary penalty assessed in paragraph 14 of this Agreement. In the event U.S. DOE misses the OU 2 ROD deadline, it agrees to request funds for the contingent penalty in paragraph 15 in its FY budget request following the OU 2 ROD deadline. In accordance with Section XVII.C. of the ACA, U.S. DOE shall make any penalty payments payable to the Hazardous Substances Response Trust Fund and remit such payments within ninety (90) days of receiving authorization to spend funds appropriated for the penalty payments to:

Hazardous Substances Response Trust Fund
P.O. Box 70753
Chicago, IL 60673

Or, if sent by overnight mail service:

First National Bank
525 West Monroe Street
7th Floor Mailroom
Chicago, IL 60661

Any penalty payments made under this agreement should include a reference to the DOE - Fernald Site. Copies of such payments shall be mailed to:

RCRA Enforcement Branch
OH/MN Technical Enforcement Section
77 West Jackson Blvd.
Chicago, IL 60604

ATTN: James Saric

18. This agreement shall modify Section X., paragraph C.2. of the ACA by revising the submission dates for OU 2 as follows:

RI Report/Baseline Risk Assessment	February 18, 1994
FS Report/Comprehensive Response Action Risk Evaluation	April 29, 1994
Proposed Plan Report	April 29, 1994
Proposed Draft Record of Decision	January 5, 1995

19. U.S. DOE further agrees to accelerate by thirty (30) days, each of the submittal dates for the Proposed Draft Record of Decision Reports for Operable Units 1, 3, and 5. The modifications described in this paragraph will modify paragraphs

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C.1., C.3., and C.5. of the ACA, making the revised Draft ROD submission dates:

For OU 1	November 6, 1994
For OU 3	April 2, 1997
For OU 5	July 3, 1995

20. In order to incorporate into the ACA the revised OU 2 RI, FS, and PP reports and ROD submittal dates and the revised Operable Units 1, 3, and 5 ROD submittal dates, the Parties have revised pages 34, 35, and 36 which are attached hereto as Attachment two (2). In accordance with Section XXXIII.B., these revised submittal dates are effective on the date U.S. EPA signs this Agreement, and revised pages 34, 35, and 36 are hereby incorporated into and made part of the ACA.

21. U.S. DOE agrees to perform, in consultation with U.S. EPA, a comprehensive review of data collected for each operable unit as far in advance as is practicable of the submittal due dates for the respective RI reports. The purpose of this early review is to attempt to identify and resolve any potential concerns in the area of data adequacy. While U.S. EPA agrees to consult with U.S. DOE concerning data adequacy, U.S. DOE remains solely responsible for ensuring that sufficient data or other information is obtained to meet the objectives of the RI reports.

22. In the event U.S. DOE fails to comply with any term of this Agreement, including implementation of the SEP as described in Attachment 1 hereto, U.S. EPA reserves the right to pursue any remedies it may have available to it under the ACA or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.

23. U.S. DOE agrees not to further dispute the U.S. EPA February 9, 1993, "good cause" determination in any proceeding by U.S. EPA to enforce the terms of this Agreement.

24. The Parties agree that this Agreement resolves all disputed matters relating to U.S. EPA's denial of U.S. DOE's February 2, 1993, request for an extension of time to submit OU 2 documents.

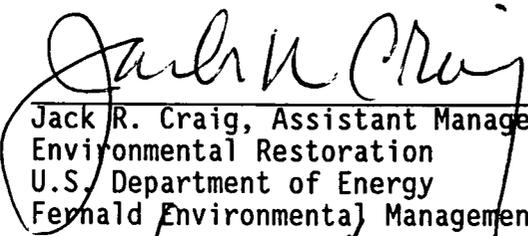
25. No provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

26. Nothing in this Agreement or in the ACA shall be interpreted or construed as an admission of liability by U.S. DOE.

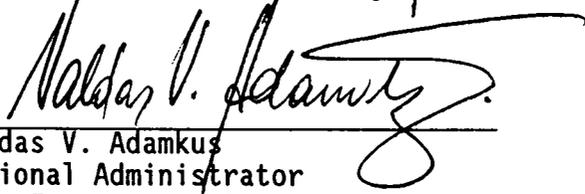
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27. U.S. DOE and U.S. EPA individually certify that the signatories to this Agreement have the authority to bind U.S. DOE and U.S. EPA to the requirements of this Agreement.

IT IS SO AGREED:

By: 
Jack R. Craig, Assistant Manager
Environmental Restoration
U.S. Department of Energy
Fernald Environmental Management Project

Date: 4/7/93

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

Date: 4/09/93.

ATTACHMENT I

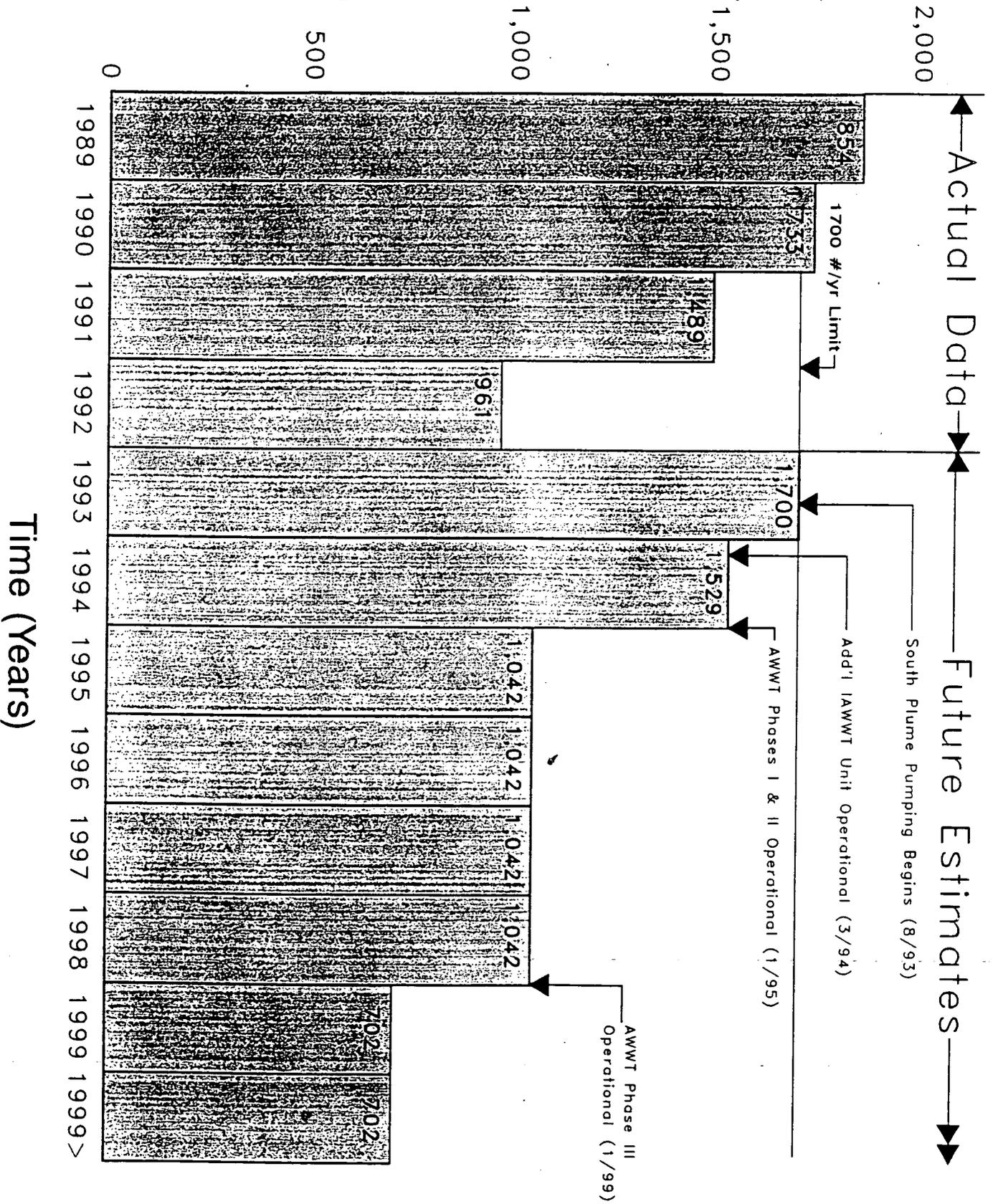
ATTACHMENT I

The Department of Energy agrees to conducting a Supplemental Environmental Project (SEP) in the amount of \$2 Million with the objective of reducing Uranium discharges from the Fernald Environmental Management Project (FEMP) to the Great Miami River. The project will consist of the following:

- Procure and install one additional Interim Advanced Wastewater Treatment (IAWWT) trailer unit to treat 200 gpm South Plume flow reducing the Uranium in the discharge by approximately 105 lbs./year. This unit would be operational by March, 1994.
- Extend the planned operational life of the IAWWT Stormwater Retention Basin (SWRB) unit and convert from treating stormwater to South Plume. Also, the capacity would be increased from 300 gpm to approximately 400 gpm reducing the Uranium in the discharge by approximately 211 lbs./year. This reduction will be realized in January, 1995.
- Utilize off peak capacity in Phase I AWWT for South Plume Treatment when no stormwater is available for treatment. Estimated to be an average of 350 gpm. This should reduce the Uranium in the discharge by approximately 184 lbs./year. This reduction will be realized in January, 1995.

- Eliminate low Uranium streams (Sewage Treatment Plant and "Clean Side" General Sump) from Phase II AWWT and utilize this capacity to treat a portion of the South Plume. Estimated to be approximately 200 gpm. This should reduce the Uranium in the discharge by approximately 105 lbs./year. This would be implemented in March, 1995.
- DOE will report on the progress and the expenditures associated with this project in the monthly Remedial Investigation/Feasibility Study (RI/FS) progress reports.

Mass Loading of Uranium To GMR (#/Yr)



ATTACHMENT II

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treatability studies and shall include a level of study sufficient to evaluate the various treatment options during the detailed analysis of alternatives.

C. For completion of the RI/FS and implementation of the remedial actions, the Site has been divided into five operable units and a Comprehensive Site-Wide Operable Unit ("the Operable Units") as identified below. U.S. DOE shall finalize in accordance with Section XII of this Agreement, the listed draft primary documents for each operable unit in accordance with the requirements of this Agreement, CERCLA, the NCP, applicable U.S. EPA guidance and policy, and schedules set forth below:

- #1. Operable Unit 1: Waste Pit Area.** Waste pits 1-6, clearwell, burnpit, berms, liners and soil within the operable unit boundary as approved in the RI/FS work plan addendum.
 - a. Initial Screening of Alternatives: January 4, 1991;
 - b. RI Report/Baseline Risk Assessment: October 12, 1993;
 - c. FS Report/Comprehensive Response Action Risk Evaluation: March 7, 1994;
 - d. Proposed Plan: March 7, 1994;

Proposed Draft Record of Decision: November 6, 1994.

- #2. Operable Unit 2: Other Waste Units.** Flyash piles, other south field disposal areas, lime sludge ponds, solid waste landfill, berms, liners, and soil within the operable unit boundary as approved in the RI/FS work plan addendum.

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- a. Initial Screening of Alternatives: April 18, 1991;
- b. RI Report/Baseline Risk Assessment: February 18, 1994;
- c. FS Report/Comprehensive Response Action Risk Evaluation: April 29, 1994;
- d. Proposed Plan: April 29, 1994;

Proposed Draft Record of Decision: January 5, 1995.

#3. Operable Unit 3: Production Area. Production area and production-associated facilities and equipment (includes all above and below-grade improvements) including, but not limited to, all structures, equipment, utilities, drums, tanks, solid waste, waste, product, thorium, effluent lines, K-65 transfer line, wastewater treatment facilities, fire training facilities, scrap metals piles, feedstocks, and coal pile.

- a. RI/FS Work Plan Addendum: June 2, 1992;
- b. Initial Screening of Alternatives: March 28, 1995;
- c. RI Report/Baseline Risk Assessment: March 13, 1996;
- d. FS Report/Comprehensive Response Action Risk Evaluation: August 7, 1996;
- e. Proposed Plan: August 7, 1996;

Proposed Draft Record of Decision: April 2, 1997.

#4. Operable Unit 4: Silos 1-4. Silos 1, 2, 3, and 4, berms, decant tank system, and soil within the operable unit boundary as approved in the RI/FS work plan addendum.

- a. Initial Screening of Alternatives: October 31, 1990;
- b. RI Report/Baseline Risk Assessment: April 19, 1993;

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c. FS Report/Comprehensive Response Action Risk Evaluation: September 10, 1993;

d. Proposed Plan: September 10, 1993;

Proposed Draft Record of Decision: June 10, 1994

#5. Operable Unit 5: Environmental Media. Groundwater, surface water, soil not included in the definitions of OU #1-4, sediments, flora, and fauna.

a. Initial Screening of Alternatives: April 16, 1993;

b. RI Report/Baseline Risk Assessment*: June 24, 1994;

c. FS Report/Comprehensive Response Action Risk Evaluation: November 16, 1994;

d. Proposed Plan: November 16, 1994;

Proposed Draft Record of Decision: July 3, 1995.

* The Site-Wide Ecological Assessment shall be included in the Baseline Risk Assessment for OU 5.

Comprehensive Site-Wide Operable Unit: An evaluation of remedies selected for OUs 1-5, above (including remedial and removal actions) to ensure that they are protective of human health and the environment on a site-wide basis, as required by CERCLA, the NCP and applicable U.S. EPA policy and guidance.

a. Site-Wide RI/Projected Residual Risk Assessment Work Plan Addendum: No later than six (6) months following signature of the ROD for OU 3;

b. Site-Wide RI/Projected Residual Risk Assessment Report: The Site-Wide RI/Projected Residual Risk Assessment Report shall be submitted in accordance with the schedule approved in the Work Plan Addendum above;

c. FS Report: If required by U.S. EPA, the FS Report shall be provided in accordance with the schedule approved in the Work Plan Addendum above.