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G-000-601 .7

**U.S. DEPARTMENT OF ENERGY FEED MATERIALS PRODUCTION
CENTER #3X**

09/02/94

**USEPA
18
INVOICE**

DOE-FN



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

5914

H-5666

SEP 02 1994

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Johnny Reising
U.S. Department of Energy
P.O. Box 538705
Cincinnati, Ohio 45253-8705

RE: U.S. Department of Energy Feed
Materials Production Center # 3X

Dear Sir:

This billing invoice is for recovery of stipulated penalties incurred, due the U.S. Environmental Protection Agency (EPA) under authority of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended. EPA is due \$150,000.00 (\$100,000.00-dispute to the assessment of stipulated penalties and \$50,000.00-failure to submit Operable Unit 2 Reports). This bill is solely for recovery of government stipulated penalties costs.

This billing invoice is being forwarded to you for payment based upon Section XVII of the Consent Agreement and the enclosed Dispute Resolution and Agreement Resolving Dispute Concerning Denial Of Request For Extension Of Time To Submit Operable Unit 2 Documents. Please make your check payable to EPA Hazardous Substance Superfund and forward your payment to:

Environmental Protection Agency
Region 5
Attention: Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

If there are any questions or comments please contact Vanessa Mbogo (312) 353-4885 or mail them to the following address:

U.S. Environmental Protection Agency
ATTN: Vanessa Mbogo
77 West Jackson - MFS-10J
Chicago, Illinois 60604

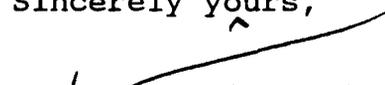
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To ensure that your payment is properly recorded by EPA the following information must be included on the face of your payment:

U.S. Depart. of Energy Fee Materials Production Center
Account No. 4T019 (\$100,000.00)
Account No. 4T020 (\$50,000.00)
Site No. 3X

Thank you for your cooperation.

Sincerely yours,


Anthony Audia, Chief
Superfund Accounting Section

Enclosures

cc: James Saric, HRE-8J

000002

U.S. ENVIRONMENTAL PROTECTION AGENCY
U.S. DEPARTMENT OF ENERGY
FERNALD (OHIO) DISPUTE RESOLUTION

A. In December of 1990, pursuant to Section XVII of the 1990 Fernald "Consent Agreement Under CERCLA Section 120 and 106(a)," Administrative Docket Number: V-W-90-C-057, (hereinafter referred to as "Consent Agreement"), the U.S. Environmental Protection Agency (EPA) issued three notices of violation and assessed three stipulated penalties against the U.S. Department of Energy (DOE).

B. The substantive issues and disputes related to the notices of violation have been resolved by DOE and EPA. The only dispute remaining relates to the application of stipulated penalties to these matters. DOE invoked the dispute resolution provisions of Section XIV of the Consent Agreement to contest the application of the stipulated penalty provision of the Consent Agreement in the given cases. The dispute was subsequently raised in accordance with terms of the Consent Agreement to the Senior Executive Committee (SEC) for resolution. Following review by the SEC, the Regional Administrator for EPA Region V issued a written decision on February 15, 1991, supporting the Region's assessment of stipulated penalties against DOE. Under the terms of the Consent Agreement, DOE elevated the dispute to the EPA Administrator on March 22, 1991.

C. Without admitting liability for the assessed penalties, in order to resolve the dispute related to the assessment of stipulated penalties, and to concentrate the efforts of the parties on the cleanup challenge posed by the Fernald facility, EPA and DOE agree as follows:

1. DOE agrees to the assessment of a monetary penalty in the amount of \$100,000, to be paid from funds authorized and appropriated for that specific purpose in accordance with Section XVII of the Consent Agreement.
2. DOE will expend an additional \$150,000 to conduct supplemental environmental projects at or in the vicinity of Fernald. The parties agree that funds for the supplemental environmental projects will not affect the obligation of funds to implement the Consent Agreement. These projects will be established upon the mutual agreement of the parties and will consist of environmental projects not already required by the Consent Agreement or committed to by DOE.¹

¹ DOE will use as a guide for the supplemental environmental projects EPA's February 12, 1991, policy entitled, "EPA Policy on the Use of Supplemental Environmental Projects in Enforcement Settlements."

D. To clarify the parties' interpretation of the appropriate use of stipulated penalties, and to avoid future disputes as to the application of the stipulated penalty provision, the parties agree that the Fernald Consent Agreement authorizes document review and stipulated penalty assessments under any of the following circumstances:

1. In the event that DOE fails to submit a primary document (including a draft Record of Decision or Responsiveness Summary) to EPA pursuant to the applicable timetable or deadline, or fails to comply with a term or condition of the Consent Agreement which relates to the implementation of:
(a) removal actions in Section IX of the Consent Agreement, or (b) the remedy at each operable unit (i.e., remedial design and remedial action), or (c) related activities, including DOE's obligations under Section XXVIII of the Consent Agreement, that will affect the timely completion of the removal or remedial action to be performed under the Consent Agreement, EPA may issue a notice of intent to assess a stipulated penalty against DOE. DOE shall have thirty (30) days after receipt of this notice of intent to invoke formal dispute resolution under Section XIV of the Consent Agreement. If DOE does not invoke formal dispute resolution within this period, DOE will be deemed to have concurred in EPA's assessment of a penalty. EPA may assess penalties only after the conclusion of the thirty (30) day period, or following conclusion of the dispute resolution proceedings, whichever is later. Any such penalties shall relate back to the date of the violation.
2. Draft primary documents² shall be submitted by DOE to EPA for review and comment as set forth in Section XII of the Consent Agreement. EPA shall review, evaluate and comment upon draft primary documents as set forth in Section XII, Paragraph G.2, of the Consent Agreement. Within the time period set forth in Section XII, Paragraphs G.5 and G.6 of the Consent Agreement, DOE shall respond to all EPA comments received on the draft primary document and shall submit a draft final primary document to EPA which complies with the terms of the Consent Agreement, CERCLA, the NCP, and any applicable EPA guidance or policy. The draft final primary document shall become the final primary document unless EPA

² The terms "primary document," "draft primary document" and "draft final primary document" shall have the same meaning as in the Consent Agreement.

subjects the document to dispute resolution³ within thirty days of receipt of the draft final primary document. If, upon review of the draft final primary document, EPA determines that the document does not comply with the requirements of the Consent Agreement, CERCLA, the NCP, or any applicable EPA guidance or policy, EPA may issue a notice of intent to assess a stipulated penalty against DOE. However, the parties agree that the draft final primary document shall go through the dispute resolution process prior to EPA's actual assessment of a stipulated penalty. If DOE's position as to the adequacy of the draft final primary document is upheld in dispute resolution, EPA agrees not to assess a stipulated penalty with respect to the document and that its notice of intent to assess will be deemed withdrawn. However, if EPA's position as to the adequacy of the draft final primary document is upheld in the dispute resolution process, EPA may assess a stipulated penalty against DOE which relates back to the date of the notice of intent to assess a stipulated penalty. Further, if EPA's position is upheld in the dispute resolution process, DOE shall revise the draft final primary document as set forth in Section XII, Paragraph I of the Consent Agreement.

E. For a period of four months, beginning on the date this Agreement is signed by both parties, EPA and DOE will negotiate in an effort to develop modified schedules for the completion of the response actions required under the Consent Agreement. The modified schedules may include acceleration of some schedules and lengthening of some schedules. DOE agrees to use its best efforts to propose modification of any schedules which can be accelerated. The four month negotiation period may be extended by agreement of both parties. EPA agrees not to issue a notice of violation or notice of intent to assess a stipulated penalty for activities to be performed under the Consent Agreement during this period. If modified schedules for the completion of the response actions are not agreed to in writing, then stipulated penalties that may have accrued during the negotiation period may be assessed.

F. Any modification of schedules agreed to by the parties pursuant to Paragraph F shall be set forth as a written modification to the Consent Agreement, and shall be submitted to

³ The parties agree that any dispute associated with EPA's review of a draft final primary document shall proceed directly to the Dispute Resolution Committee, eliminating the thirty (30) day period for informal dispute resolution.

the public for review and comment. Following public review and comment, and any appropriate response by EPA and DOE to public comment, the schedules contained in the modification shall operate in lieu of the original schedules contained in the Consent Agreement.

G. In the future, when controversies arise at Fernald which appear likely to result in the need for formal dispute resolution or an assessment of stipulated penalties, the parties will, as soon as practicable, use their best efforts to provide written notice of the circumstances of the controversy as follows: (1) by the DOE Fernald Site Manager to the Associate Director of DOE's Office of Environmental Restoration, and (2) by the EPA Region V Project Manager to the Director of EPA Region V's Waste Management Division. The Associate Director of DOE's Office of Environmental Restoration and the Director of EPA Region V's Waste Management Division shall thereafter use their best efforts to assist in resolution of the controversy so as to minimize the need for formal, time-consuming dispute resolution pursuant to Section XIV of the Consent Agreement. This "early warning system" shall operate in addition to, not in lieu of, the dispute resolution process set forth in Section XIV of the Consent Agreement.

H. EPA and DOE agree that establishment of a technical support group may assist EPA and DOE in performing their obligations under the Consent Agreement. The parties agree to establish such a group, composed of technical experts from DOE and EPA and mutually agreed upon independent experts representing organizations or interests that are external to DOE and EPA. The precise roles, functions, membership and charter of the technical support group will be developed jointly by DOE and EPA at a later date.

I. The parties agree that this Agreement resolves the dispute elevated by DOE to the Administrator of EPA on March 22, 1991.

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

K. Nothing in this Agreement shall be interpreted or construed as an admission of liability.

IT IS SO AGREED:

BY: Raymond B. Ludwiczewski
Raymond B. Ludwiczewski
Acting Assistant Administrator
U.S. Environmental Protection Agency

MAY 13 1991

Date

BY: Leo P. Duffy
Leo P. Duffy, Director
Office of Environmental Restoration
and Waste Management
U.S. Department of Energy

MAY 13 1991

Date

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.

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

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

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.

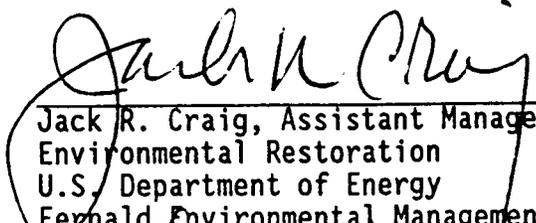
24. The Parties agree that this Agreement resolves all disputed matters relating to U.S. EPA's denial of U.S. DOE's February 2, 1993, request for an extension of time to submit OU 2 documents.

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.

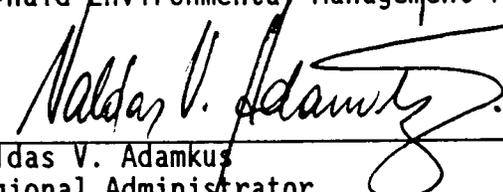
26. Nothing in this Agreement or in the ACA shall be interpreted or construed as an admission of liability by U.S. DOE.

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.