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U-004-710 .3

**RE: U. S. DOE REQUEST FOR EXTENSION OF OU #2 DRAFT
RECORD OF DECISION (FORMAL AMENDMENT TO THE AMENDED
CONSENT AGREEMENT)**

12/14/94

USEPA DOE-FN
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COMMENTS



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

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FILE: _____
REPLY TO THE ATTENTION OF: _____

DEC 14 1994

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

HRE-8J

RE: U.S. DOE Request for Extension
of OU #2 Draft Record of Decision

Dear Mr. Craig:

On November 30, 1994, the United States Department of Energy (U.S. DOE) submitted a request for a (30) thirty-day extension in the submittal of the Operable Unit (OU) 2 Draft Record Of Decision (ROD). The United States Environmental Protection Agency (U.S. EPA) may grant such an extension pursuant to Section XVIII of the 1991 Amended Consent Agreement (ACA) and the April 9, 1993, OU 2 dispute agreement.

On November 21, 1994, U.S. DOE received a formal request from the Ross Township Board of Trustees to extend the OU 2 public review period for an additional thirty (30) days to allow the trustees adequate time to review the OU 2 Proposed Plan. U.S. DOE recommends granting the thirty (30) day extension to minimize schedule impacts and to provide adequate time for public review. Pursuant to Section XVIII of the ACA, U.S. EPA may grant this extension request if it determines there is good cause for an extension.

As you know, the OU 2 draft ROD due date has been previously extended pursuant to the dispute agreement. Paragraph 15 of that agreement states:

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. . . regardless of any other consideration including the presence or absence of good cause as defined in Section XVIII of the ACA.

Paragraph 16 of the dispute agreement provides that in the event of delay caused by force majeure events, U.S. DOE may request that U.S. EPA defer assessment of the \$25,000 penalty for a period equal to the period of delay attributable to the force majeure event. U.S. DOE's November 30, 1994, request concerns delay attributable to good cause and, therefore, Paragraph 16 is not here applicable. However, we reference it now because it demonstrates that U.S. EPA may in its discretion defer the contingent penalty without permanently waiving its right to assess such a penalty.

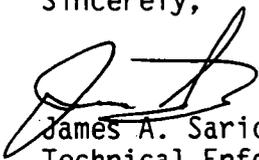
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The extended public review period will result in a thirty (30) day schedule delay in the submittal of the draft ROD to U.S. EPA. Sections XVIII.B.5. and XVIII.D. specifically include requests for additional time for public participation as good cause for an extension. Therefore, U.S. EPA grants the extension for submittal of the draft ROD from January 5, 1995, to February 4, 1995. In addition, U.S. EPA defers assessment of a penalty pursuant to Paragraph 15 of the dispute agreement. In the event U.S. DOE fails to submit the draft OU 2 ROD by February 4, 1995, U.S. EPA may at that time assess this penalty.

A formal amendment to the ACA is required when a change in a milestone is necessary. Attached is an amendment to the ACA. Please sign the Amendment and submit it to U.S. EPA within fourteen (14) days receipt of this letter.

If you have any questions regarding the above matter, please do not hesitate to contact me at (312) 886-0992, or Brian Barwick at (312) 886-6620.

Sincerely,



James A. Saric, Remedial Project Manager
Technical Enforcement Section #1
RCRA Enforcement Branch

cc: Graham Mitchell, OEPA-SWDO
Tom Schneider, OEPA-SWDO
Jack Baublitz, U.S. DOE-HDQ
Don Ofte, FERMCO

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 TO AMEND SCHEDULE FOR SUBMISSION OF
OPERABLE UNIT TWO DRAFT RECORD OF DECISION DOCUMENT

On the basis of the facts set forth below and in accordance with Sections XVIII.B.5., and XXXIII of the September 1991 Amended Consent Agreement ("ACA") and the April 9, 1993, Dispute Agreement, the United States Department of Energy ("U.S. DOE") and the United States Environmental Protection Agency ("U.S. EPA") hereby agree to extend the schedule for submission of the Operable Unit 2 ("OU 2") Draft Record of Decision (ROD) document.

BACKGROUND

1. On November 21, 1994, U.S. DOE received a formal request from the Ross Township Board of Trustees to extend the OU 2 public review period for an additional thirty (30) days to allow the trustees adequate time to review the OU 2 proposed plan.
2. On November 30, 1994, U.S. DOE submitted a request for extension for submittal of the OU 2 draft ROD document. This request was based on U.S. DOE's desire to grant the thirty (30) day extension to minimize schedule impacts and to provide adequate time for public review.
3. On April 9, 1993, the OU 2 draft ROD due date was extended pursuant to the Dispute Agreement.
4. Paragraph 15 of that Agreement states:

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. . .regardless of any other consideration including the presence or absence of good cause as defined in Section XVIII of the ACA.

5. Paragraph 16 of the dispute agreement provides that in the event of delay caused by force majeure events, U.S. DOE may request that U.S. EPA defer assessment of the \$25,000 penalty for a period equal to the period of delay attributable to the force majeure event. U.S. DOE's November 30 request concerns delay attributable to good cause and, therefore, Paragraph 16 is not here applicable. However, it demonstrates that U.S. EPA may in its discretion defer the contingent penalty without permanently waiving its right to assess such a penalty.

6. Pursuant to Section XXXIII of the ACA, U.S. EPA and U.S. DOE may amend or modify the ACA solely upon written consent of both U.S. DOE and U.S. EPA. In addition, such amendments or modifications shall have as the effective date that date on which they are signed by U.S. EPA.

7. In establishing the new OU 2 Draft ROD due date, U.S. EPA and U.S. DOE have consulted with, and accepted input from, the Ohio Environmental Protection Agency.

AGREEMENT

8. This agreement shall modify Section X., paragraph C.2. of the ACA by revising the submission date for the OU 2 Draft ROD from January 5, 1994, to February 4, 1995. In order to incorporate into the ACA the revised Draft ROD submittal date, U.S. EPA and U.S. DOE have revised page 35 which is attached hereto as Attachment one (1). In accordance with Section XXXIII.A., the revised submittal date is effective on the date U.S. EPA signs this Agreement, and revised page 35 is hereby incorporated into and made part of the ACA.

9. In the event U.S. DOE fails to submit the draft OU 2 ROD by February 4, 1995, U.S. EPA may at that time assess the monetary penalty described in paragraphs 4 and 5 above and in the April 9, 1993, OU 2 dispute resolution settlement.

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

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

REVISED / /1995

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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: February 4, 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. RI Report: September 11, 1995;
- c. FS Report/Comprehensive Response Action Risk Evaluation (Initial Screening of Alternatives): September 11, 1995;
- d. Proposed Plan: September 11, 1995;

Proposed Draft Record of Decision: July 25, 1996.

#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;