

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

# of pages 5 of 5

894

To <b>JOHNNY BIESING</b>	From <b>JABLONOWSKI</b>
Dept./Agency <b>U.S. DOE</b>	Phone # <b>(312) 886-4591</b>
Fax # <b>(313) 648-3076 / 3071</b>	Fax #

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

IN THE MATTER OF:

U.S. DEPARTMENT OF ENERGY ) Administrative  
 FERNALD ENVIRONMENTAL MANAGEMENT PROJECT ) Docket No. #V-W-90-  
 ) C-057  
 FERNALD, OHIO )  
 )  
 )  
 OH6 890 008 976 )

AGREEMENT IN PRINCIPLE TO RESOLVE DISPUTE CONCERNING EXTENSION OF TIME TO MEET OPERABLE UNIT 4 MILESTONES

On the basis of the Agreement in Principle set forth below and in accordance with Section 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 amend certain sections of the ACA in order to extend the time for Informal Dispute Resolution regarding U.S. EPA's denial of U.S. DOE's September 26, 1996, request for an extension of time to meet Operable Unit 4 ("OU4") milestones.

BACKGROUND

1. On November 3, 1995, U.S. DOE informed U.S. EPA that an evaluation of the Vitrification Pilot Plant ("VITPP") schedule indicated that schedule slippages would occur to the Fernald Residues Vitrification Plant.

2. From the period between January 1996 and the date of this Agreement, U.S. DOE has conducted weekly telephone conferences with U.S. DOE's Prime Contractor for the Fernald Environmental Management Project, U.S. EPA and Ohio EPA in order to provide status updates and to seek regulatory input and guidance.

3. On September 26, 1996, U.S. DOE requested an extension of time under Section XVIII of the ACA to meet the initial OU 4 regulatory milestones associated with the full scale vitrification facility identified in the Remedial Design ("RD") and Phase I Remedial Action ("RA") Work Plans.

4. On October 2, 1996, U.S. EPA notified U.S. DOE of its denial of the September 26, 1996, extension request and its intent to assess stipulated penalties under the ACA.

5. On October 9, 1996, U.S. DOE and U.S. EPA entered into an Agreement to suspend the ACA time periods for initiation of the Formal Dispute Resolution Process until May 15, 1997 ("the October 9, 1996 Agreement"), while continuing to engage in Informal Dispute Resolution.

6. Pursuant to the October 9, 1996 Agreement the Parties engaged in Informal Dispute Resolution resulting in this Agreement In

894

-2-

Principle. Specifically, the Parties met to discuss the path forward on dispute resolution on October 30, 1996, January 14, 1997, February 19, 1997, March 24, 1997, April 16, 1997 and April 29, 1997 in addition to participating in the weekly telephone conferences.

7. During the Informal Dispute Resolution, the Fernald Citizen's Task Force ("CTF") reviewed the issues with OU4 and reported its initial recommendations to the U.S. DOE, U.S. EPA and the Ohio E.P.A. on March 15, 1997. An Independent Technical Review Team was also convened to examine issues associated with remediation of the Silos' contents. The IRT reported its findings and conclusions on April 28, 1997.

8. The Parties agree that U.S. EPA will provide public notice of the Final Modification of the ACA that results from this Agreement In Principle announcing that public comments will be accepted for a thirty (30) day period and will conduct a public meeting concerning this Agreement. The Parties agree to review any public comments and revise this proposed final modification as appropriate under Section XXXVI of the ACA.

Public  
Comment  
~~ACA~~  
ACA

9. Throughout this dispute, the Ohio Environmental Protection Agency ("Ohio EPA") has been a participant in the telephone conference calls and the Informal Dispute Resolution process.

10. Pursuant to Section XXXIII of the ACA, the ACA may be amended upon the written consent of the Parties.

#### GOOD FAITH

11. Among other factors, U.S. EPA's assent to the terms of this Agreement 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. Establishment of an Independent Review Team ("IRT") composed of nationally and internationally recognized experts in vitrification and stabilization technologies to evaluate and provide recommendations on the OU 4 Remedial Action;

b. Development of "Value-Engineering" studies that will be an overall evaluation process of OU4 including the path forward and cost estimates;

c. Development and preparation of a "Lessons Learned" document from OU4.

d. Participation in weekly conference calls;

e. Public participation efforts with the CTF and the IRT on the OU4 technical issues; and

2

894

-3-

f. Establishment and documentation of reviews relating to the December 1996 melter incident. The review teams included nationally recognized experts from the vitrification industry.

#### TERMS OF AGREEMENT

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 on a path forward as follows:

12. A. U.S. DOE accepts U.S. EPA's position that the anticipated cost increase associated with the remediation of Silos 1 and 2 constitutes a fundamental change in the original remedy and that, therefore, consistent with the national contingency plan, the 1994 OU4 ROD must be amended. U.S. DOE agrees to supplement the original Feasibility Study and Proposed Plan ("FS/PP") to evaluate vitrification and other potential alternatives for the Silo 1 and 2 remedial action, on the basis of which the Parties will amend the OU4 ROD.

B. U.S. DOE accepts U.S. EPA's position that because the Silo 3 materials will be stabilized and disposed of off-site at an expected cost of essentially the same as the estimated cost for vitrification, changing from vitrification of those materials to another stabilization technology does not fundamentally change the scope, performance or cost of the remedy specified in the OU4 ROD. Therefore, U.S. DOE agrees to issue an Explanation of Significant Difference ("ESD") for the Silo 3 remedial action.

C. By no later than June 15, 1997, U.S. DOE agrees to submit to U.S. EPA: (1) a draft schedule for development, submission to the U.S. EPA for review and approval, and issuance of an FS/PP and ROD amendment for Silos 1 and 2; (2) a draft schedule for the development, submission to U.S. EPA for review and approval, and issuance of and ESD for Silo 3; and (3) a proposal for resolution of stipulated penalties.

D. Within seven (7) days of receipt of the U.S. DOE submittals pursuant to Paragraphs 12.C., U.S. EPA will either approve or disapprove the proposal. Within seven (7) days of receipt of any U.S. EPA disapproval, U.S. DOE shall revise and resubmit its draft proposal, taking into account U.S. EPA comments. U.S. EPA will then have seven (7) days to either approve or disapprove the revised proposal. The Parties agree that they will in good faith continue to negotiate in this fashion until at least, if necessary, July 14, 1997. In order to meet the terms of this agreement, an agreement amending the ACA and resolving all disputed matters relating to U.S. EPA's denial of U.S. DOE's September 26, 1996, request for an extension of time to meet Operable Unit 4 ("OU 4") milestones, including (but not limited to) the assessment of stipulated penalties and all issues specified in Paragraphs 12.A., 12.B. and 12.C., must be executed by both Parties by

3

894

-4-

no later than July 14, 1997.

13. In consideration of the U.S. DOE's agreement to supplement the original FS/PP for Silos 1 and 2 and to submit an ESD for Silo 3 and other good faith, and upon final modification of the ACA in accordance with this Agreement and formal resolution of stipulated penalty issues, the U.S. EPA agrees not to pursue any remedies it may have under the ACA or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. or any other authority available to it for the alleged violations described in its October 2, 1996 Notice of Violation which would otherwise accrue after the date of this Agreement In Principle.

14. Should U.S. DOE fail to timely meet any term of Agreement herein, Paragraph 13 shall be of no effect.

15. In further consideration of this Agreement In Principle and upon final modification of the ACA in accordance with this Agreement, the U.S. DOE agrees not to further dispute the U.S. EPA October 2, 1996, "good cause" determination in any proceeding by U.S. EPA to enforce the terms of this Agreement.

#### MODIFICATION

16. Solely with respect to U.S. EPA's denial of U.S. DOE's September 26, 1996, request for an extension of time to meet OU4 milestones, the Parties agree to modify the ACA with a suspension of the following deadlines for initiation of Formal Dispute Resolution:

A. Section XVIII(G), EXTENSIONS (which requires U.S. DOE to invoke Dispute Resolution within 7 days of a nonconcurrence of a request for an extension);

B. Section XVII(A)(1) (which requires U.S. DOE to invoke Dispute Resolution within 30 days of a notification of intent to assess a stipulated penalty); and

C. Section XIV(A) (which requires U.S. DOE to invoke Dispute Resolution within 30 days of any action which leads to or generates a dispute)

until July 14, 1997.

#### OTHER MATTERS

4

894

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

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

19. 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, respectively, to the requirements of this Agreement.

IT IS SO AGREED:

By: Robert Folker Date: 5/14/97  
Robert Folker, Acting Manager  
U.S. Department of Energy  
Ohio Field Office

By: William E. Muno Date: 5/15/97  
William E. Muno, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

101