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**U.S. ENVIRONMENTAL PROTECTION AGENCY OCTOBER 2, 1996,
NONCONCURRENCE WITH EXTENSION REQUEST AND NOTICE OF INTENT
TO ASSESS STIPULATED PENALTIES**

10/09/96

DOE-0036-97
DOE-FN USEPA
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LETTER



Department of Energy

**Ohio Field Office
Fernald Area Office**
P. O. Box 538705
Cincinnati, Ohio 45253-8705
(513) 648-3155

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DOE-0036-97



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**Mr. James A. Saric, Remedial Project Manager
U.S. Environmental Protection Agency
Region V - SRF-5J
77 West Jackson Boulevard
Chicago, IL 60604-3590**

Dear Mr. Saric:

U. S. ENVIRONMENTAL PROTECTION AGENCY OCTOBER 2, 1996, NONCONCURRENCE WITH EXTENSION REQUEST AND NOTICE OF INTENT TO ASSESS STIPULATED PENALTIES

Reference: Letter from James A. Saric to Johnny W. Reising, "U.S. DOE Request for Extension of OU 4 Milestones," dated October 2, 1996.

The United States Department of Energy (U.S. DOE) intends to invoke the formal dispute resolution procedures of Section XIV (RESOLUTION OF DISPUTES) of the Consent Agreement as Amended under CERCLA Sections 120 and 106(a) (1991) (ACA) in response to the subject letter. However, due to the required continuing evaluation of the technical path forward, and because DOE and the regulators, in conjunction with the stakeholders, will not have the information necessary to make the decision to proceed with vitrification or to pursue an alternative form of stabilization until the spring of 1997 at the earliest, DOE is proposing a modification to the Consent Agreement as Amended under CERCLA Sections 120 and 106(a) (1991) (ACA), for the purposes of this matter only.

DOE agrees with the United States Environmental Protection Agency's (U.S. EPA) recommendation that the parties use their best efforts to resolve all existing and reasonably foreseeable disputes in a consolidated manner, and to keep the dispute at the informal level until such time that the dispute is resolved or all parties agree the dispute must be escalated. The modification proposed below will prevent escalation of the dispute until DOE and the regulators, in conjunction with the stakeholders, have sufficient information to make an informed decision.

Pursuant to Section XXXIII, AMENDMENT OF AGREEMENT, of the ACA, the ACA can be modified upon written consent of the United States Environmental Protection Agency and United States Department of Energy. U.S. DOE proposes to modify the ACA with a suspension of the following ACA deadlines for initiation of formal dispute resolution:

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

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

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

until May 15, 1997, by which time DOE expects to obtain the information necessary for it and the regulators, in conjunction with the stakeholders, to make the decision to proceed with vitrification or to pursue an alternative form of stabilization. Matters covered by this suspension include DOE's right to dispute U.S. EPA's October 2, 1996, nonconcurrence with U.S. DOE's request for extensions, U.S. EPA's finding that DOE's request did not demonstrate good cause, U.S. EPA's finding that DOE's request for extension does not meet the requirements for schedule extensions established in Section XVIII of the ACA, U.S. EPA's notice of intent to assess stipulated penalties, and other related issues raised by the allegations contained in U.S. EPA's October 2, 1996 notification.

Assessment of any stipulated penalties or application for judicial enforcement of the affected milestones shall be tolled for the period of the suspension and any subsequent dispute resolution procedures; however, nothing in this agreement shall modify the period of accrual of any stipulated penalties, should it be subsequently determined that imposition of stipulated penalties is appropriate.

Either DOE or U.S. EPA may terminate this agreement after 14 days' written notice to the other party.

If you have any questions or concerns, please contact me at (513) 648-3139.

Sincerely,



Johnny W. Reising
Fernald Remedial Action
Project Manager

Concurrence:

James A. Saric Date
Remedial Project Manager
U.S. Environmental Protection Agency

cc:

S. Fauver, EM-425/GTN
R. L. Nace, EM-425-GTN
G. Jablonowski, USEPA-V, 5HRE-8J
R. Beaumier, TPSS/DERR, OEPA-Columbus
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AR Coordinator/78

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Fernald Remedial Action
Project Manager

Concurrence:

Roger Grimes

for

James A. Sarlo Date
Remedial Project Manager
U.S. Environmental Protection Agency

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