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U.S. DOE REQUEST FOR EXTENSION OF NITRATE TANK MILESTONES

12/18/96

USEPA DOE-FEMP
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COMMENTS

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

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K-0558

REPLY TO THE ATTENTION OF:

SRF-5J

Mr. Johnny W. Reising
United States Department of Energy
Feed Materials Production Center
P.O. Box 398705
Cincinnati, Ohio 45239-8705

RE: U.S. DOE Request for Extension of Nitrate Tank Milestones

Dear Mr. Reising:

The United States Environmental Protection Agency (U.S. EPA) has carefully reviewed and considered the United States Department of Energy's (U.S. DOE) December 11, 1996, Operable Unit (OU) 3 Request for Extension Under Section XVIII (Extensions) of the 1991 Amended Consent Agreement (ACA). This extension specifically addressed milestones associated with the implementation plan for the above-grade dismantlement of the high and low nitrate tanks. Based on the specific circumstances described in the December 11, 1996, letter and as defined below, U.S. EPA concurs with the extension request.

U.S. DOE requests extensions for completion/submittal of the following OU 3 milestones: certification of construction completion, and submittal of the draft remedial action report to U.S. EPA.

Pursuant to Section XVIII, paragraph A, of the ACA, "a timetable, deadline, or a schedule shall be extended when good cause exists." Good cause is defined in Section XVIII, paragraph B, of the ACA and includes delay caused by (1) an event of Force Majeure, (2) the fault of another party, (3) the good faith invocation of dispute resolution, (4) the grant of any other extension, or (5) any other event or series of events that the parties agree constitutes good cause. In its request, U.S. DOE states that good cause for the requested extensions exists as a result of among other things, "...unexpected conditions in the field..."

Specifically, the schedule slippage was a result of: underestimation of sludge contents as tank access made accurate measurements impractical; the presence of thorium contamination and required safety precautions; equipment failures in the biodenitrification facility limiting processing ability; and

(reising (j) partial action response (1019) to Joe-0296-97)

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heavy rainfall in 1996 delaying material removal and requiring additional wastewater processing.

However, U.S. DOE's request does not specify, nor can U.S. EPA find, any evidence of an event of Force Majeure (See Section XIX of the ACA), fault attributable to another party, dispute resolution, or any other extension. Consequently, if good cause exists, it must be an event or series of events that both U.S. EPA and U.S. DOE agree constitutes good cause (See Section XVIII. B. of the ACA).

U.S. EPA considered the following factors when reviewing U.S. DOE's request for extension. Since adequate tank access was impractical due to the presence of a thick membrane cover on the tank surface, accurate estimations of the sludge content were not feasible. The presence of thorium contamination required necessary safety precautions to be followed. Unforseen equipment failures occurred in the biodenitrification facility, vacuum truck and filtration equipment in Plant 8 delaying dismantlement activities. Heavy rainfall in 1996 delayed required monitoring of the vacuum truck, added more liquid to the tanks, and required additional wastewater processing at plant 8.

Other considerations included the fact that the tank dismantlement schedule was accelerated from 2001 to 1996 to accommodate the construction of the OU 1 waste treatment facility and construction of the OU 2 haul road. The delays in tank dismantlement will not delay these construction activities and no significant project impacts are associated with the requested extensions. Also, since the December 11, 1996, request for extension U.S. DOE has made significant progress and demonstrated using best efforts to rectify the situation.

Therefore, considering the circumstances of this request, the lack of impact on other projects, and tank dismantlement progress that has been on-going since the December 11, 1996, request U.S. EPA believes good cause has been demonstrated to support the requested extensions.

The new completion/submittal dates for the high and low nitrate tank dismantlement are:

Certification of Construction Completion:	February 28, 1997
Submit Draft Remedial Action Report:	March 31, 1997

If you have any questions regarding this matter, please contact me at (312) 886-0992.

Sincerely,

James A. Saric
Remedial Project Manager
Federal Facilities Section
SFD Remedial Response Branch #2

cc: Tom Schneider, OEPA-SWDO
Jack Baublitz, U.S. DOE-HDQ
John Bradburne, FERMCO
Charles Little, FERMCO
Terry Hagen, FERMCO
Tom Walsh, FERMCO