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**U.S. DOE REQUEST FOR EXTENSION OF OU 5 SOIL CERETIFICATION  
MILESTONES**

**03/07/97**

**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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FILE:

REPLY TO THE ATTENTION OF:

MAR 07 1997

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

SRF-5J

RE: U.S. DOE Request for  
Extension of OU 5  
Soil Certification  
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) February 28, 1997, Operable Unit (OU) 5 request for extension under Section XVIII (Extensions) of the 1991 Amended Consent Agreement (ACA). For the following reasons, and with some reservations and conditions, U.S. EPA concurs with U.S. DOE's extension request.

U.S. DOE requests extensions for submittal of the following OU 5 soil certification milestones: 1) Area 1, Phase 1 Certification Report (March 1, 1997); 2) Insitu Radiological Characterization Comparability Study Report (March 14, 1997); 3) Sitewide Excavation Plan (SEP) (March 14, 1997); and 4) Area 2, Phase 1 Integrated Remedial Design Work Package (March 14, 1997).

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 the Area 1, Phase 1 Certification report is delayed due to abnormal weather and the need for additional sampling and that the other reports, being contingent upon the Area 1 report, will also be delayed. U.S. DOE proposes July 1, 1997, as the new submission date for the Area 1 report and May 1, 1997, as the date by which it will propose submission dates for the other three reports. As explained below, we concur with the Area 1 Report submission date

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and will concur with an extension of the submission dates for the other three reports of until July 14, 1997.

U.S. EPA agrees that 29 rain days within a three month soil excavation construction schedule constitutes adverse weather conditions that could not be reasonably anticipated. In addition, considering the remedial investigation data, removing six inches of soil from Area 1, Phase 1, should have achieved final remediation levels. Under those limited and unique circumstances, U.S. EPA also agrees that having to remove additional soils could not be reasonably anticipated. Therefore, U.S. EPA finds that adverse weather coupled with additional soil removal constitutes good cause for delay and justifies a revised submission date of July 1, 1997, for the Area 1 Report.

With respect to the other three reports, U.S. DOE has proposed replacing a date for submission of the reports with a date by when U.S. DOE will propose a submission date. Without final submission dates, it is not presently possible to determine whether the delay is reasonably attributable to the good cause identified above. For example, the current schedule calls for those reports to be submitted within two weeks following the Area 1 Report. U.S. EPA believes that U.S. DOE has adequately demonstrated that those reports are contingent on the Area 1 Report and, therefore, good cause exists for an extension until July 14, 1997. For any additional time beyond that date, U.S. DOE must provide additional justification.

U.S. EPA recognizes that a variety of factors, some of which may constitute good cause for delay beyond July 14, 1997, prohibit U.S. DOE from identifying specific submission dates now. Over the next two months, U.S. DOE plans to sort through these factors and propose submission dates. At this time U.S. EPA will concur with an extension of the submission date for the three other reports of until July 14, 1997, but expressly recognizes that U.S. DOE may, on the basis of additional good cause, request that U.S. EPA amend that submission date again.

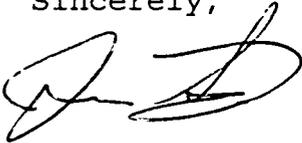
U.S. EPA believes that other circumstances and events, not constituting good cause, occurred which may not have caused additional delay but which certainly did not contribute to timely submission of these reports. For example: (1) despite U.S. EPA's requests U.S. DOE delayed the initiation of development of a soil certification process for several months, (2) U.S. DOE repeatedly failed to adequately address and incorporate some of U.S. EPA's comments into draft soil certification work plans, (3) U.S. DOE continually changed the scope of previous work plans requiring U.S. EPA's extensive review, and (4) U.S. DOE did not heed U.S. EPA's warning considering the anticipated length of time required to develop such a sitewide certification plan. U.S. DOE should avoid such events and circumstances in the future.

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We want to emphasize that our view is that sufficient time exists to submit all of these reports this summer without impacting other, related, schedule dates, including the first placement of waste in the On-Site Disposal Cell, March 27, 1998. Therefore, the good cause identified herein shall not be considered as justification for any future extension request. U.S. EPA anticipates that U.S. DOE will use its best efforts to expeditiously overcome this delay while keeping the overall project on schedule.

In summary, U.S. EPA concurs with an extension of the submission dates for the Area 1 Report of until July 1, 1997, and for the other three reports of until July 14, 1997. Because that latter date differs from the date U.S. DOE requested, we request your express concurrence with that date. 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  
Bill Murphie, U.S. DOE-HDQ  
John Bradburne, FERMCO  
Charles Little, FERMCO  
Terry Hagen, FERMCO  
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