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Department of Energy
Office of Legacy Management

August 12, 2010

Mr. Richard Karl, Director, Superfund Division
U.S. Environmental Protection Agency
Region V
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Mr. Raymond Plieness
U.S. Department of Energy/LM-20
2597 B 3/4 Road
Grand Junction, CO 81503

Dear Mr. Karl and Mr. Plieness:

SUBJECT: Agreement to Amend the "Agreement Resolving Dispute Concerning Denial of Request for Extension of Time for Certain Operable Unit 4 Milestones" (OU4 Dispute Resolution)

As a result of discussions with U.S. Environmental Protection Agency staff and having incorporated their suggested edits, attached for your signature is the revised agreement amending the subject agreement.

After signature, please return to me and I will distribute copies for your records.

I appreciate your cooperation in this matter. Please call me at (513) 648-3148 should you have any questions regarding this matter.

Sincerely,

Jane Powell
Fernald Preserve Manager
DOE-LM-20.1

Enclosure

Mr. Richard Karl
Mr. Raymond Plieness
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cc: B. Barwick, USEPA
T. Fischer, USEPA
T. Pauling, DOE-LM
T. Schneider, OEPA
R. Tormey, DOE-LM
Project File (Thru W. Sumner)
Administrative Records (Thru W. Sumner)

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)

On the basis of the facts 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 the "Agreement Resolving Dispute Concerning Denial of Request for Extension of Time for Certain Operable Unit 4 Milestones" (OU4 Dispute Resolution) by modifying the requirements of Project Number 3 in the OU4 Dispute Resolution.

BACKGROUND

1. On November 3, 1995, U.S. DOE informed U.S. EPA that an evaluation of the Vitrification Pilot Plant schedule indicated that schedule slippage would occur.
2. 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 and Remedial Action Work Plans.
3. 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.
4. From October 9, 1996 through May 15, 1997, U.S. DOE and U.S. EPA participated in informal dispute resolution culminating with an agreement in principle to resolve the dispute.
5. On July 22, 1997, the OU4 Dispute Resolution was signed, the terms of which included an agreement for the creation of a wild bird/wild flower habitat area providing aesthetic appeal to visitors and neighbors in the area (Project 3 in the OU4 Dispute Resolution; now known as the Ecological Park). Pursuant to Section XIV.K. of the ACA, U.S. DOE is obligated to abide by all terms and conditions of any dispute resolution.
6. On June 23, 1998 the Work Plan for constructing the approximately ten acre Ecological Park was approved by U. S. EPA. The Ecological Park consists of less than approximately one acre supporting public access and approximately ten acres of prairie the public access overlooks. Pursuant to Section XXXIII.B. of the ACA, the Ecological Park Work Plan was incorporated into the ACA upon approval by U.S. EPA.
7. Between September 14, 1998 and November 20, 1998 the Ecological Park was constructed and opened to the public and remained open to the public through

the completion of remediation and into the DOE program of Legacy Management. Public access to the Ecological Park is located off of Paddys Run Road, which is separate from the main public access to Fernald located off of Willey Road.

8. Remedial actions at the Fernald Preserve (with the exception of the continuing groundwater remedy) were completed on October 29, 2006. Sitewide ecological restoration continues through the present.
9. Jurisdictional transfer of the Fernald Preserve from U.S. DOE Office of Environmental Management to the U.S. DOE Office of Legacy Management occurred on November 25, 2007. U.S. DOE Office of Legacy Management is responsible for the long-term surveillance and maintenance of the Fernald Preserve as well as all other site operations
10. On August 20, 2008 the Fernald Site was opened to the public as a nature preserve containing a visitors center and multiple trails and overlooks for the observation of a variety of habitat and wildlife including:
 - Over 140 acres of wetland habitat, including open water, marshland, wet prairies, retention basins, and mud flats.
 - 400 acres of forests including early, successional, riparian, and mature woodlots.
 - 360 acres of grassland including tallgrass prairies, savanna, and pasture.
 - over 170 varieties of birds, ranging from waterfowl and shorebirds to wild turkeys and songbirds and a variety of mammals, reptiles, and amphibians.
11. Pursuant to Section XXXVIII of the ACA, the ACA may be modified upon written consent of the parties.

AGREEMENT

12. The construction, maintenance, and separate public access to the Ecological Park from the Fall of 1998 through the Spring of 2010 met the requirements of the ACA and the OU4 Dispute Resolution.

13. Now that the site has been opened to the public as a nature preserve, separate public access to the Ecological Park is unnecessary.

14. The Ecological Park has become an attractive nuisance with a number acts of vandalism being experienced including defacing signs and postings, illegal dumping of sanitary waste, and minor arson.

15. U.S. DOE will eliminate separate public access to Ecological Park,

remove public access features such as the deck, walkways, and signage, and no longer advertise the Ecological Park as an area of interest. Maintenance of the Ecological Park ecological features will be subsumed into U.S. DOE's sitewide ecological restoration program.

16. 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 _____

Raymond M. Plieness, Director

Office of Site Operations, US Department of Energy, Office
of Legacy Management

IT IS SO AGREED:

By: _____ Date _____

Richard C. Karl, Director, Superfund Division
U.S. Environmental Protection Agency
Region V