

U.S. Department of Justice
Land and Natural Resources Division



Office of the Assistant Attorney General

Washington, D.C. 20530

April 25, 1990

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United States Environmental Protection Agency,
Region 5
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Chicago, Illinois 60604

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Manager
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Oak Ridge Operations
P.O. Box E
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Gentlemen:

I have reviewed the Consent Agreement under CERCLA sections 120 and 106(a) between the Environmental Protection Agency and the Department of Energy, recently signed by each of you, which will govern certain remedial actions at the Department of Energy's Feed Materials Production Center located in Fernald, Ohio.

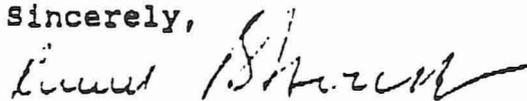
Article XVI., "Enforceability", at paragraph A.1., states that any violation of the Consent Agreement "will be subject to civil penalties under . . . section 3008 of RCRA." As you know, there is no waiver of sovereign immunity for the imposition of civil penalties under RCRA, and the Department of Justice vigorously contests any action seeking such penalties. While only Congress can waive immunity to such penalties, this language could be read to suggest that the agencies have attempted to agree to such a waiver. The language is erroneous and misleading. Accordingly, the words "and Section 3008 of RCRA" should be deleted from the end of Article XVI, paragraph A.1.

Subject to that revision, I concur in this Consent Agreement. It is appropriate to note that although DOE has consented to the use of EPA's CERCLA section 106 authorities in this agreement, there is no consensus among other federal agencies regarding the use of that authority for sites otherwise

subject to CERCLA section 120. My concurrence to this specific agreement should not be viewed as any indication of the position of the Department of Justice on that question.

I commend the hard work and dedication of both agencies which is reflected in this agreement.

Sincerely,



Richard B. Stewart
Assistant Attorney General