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DUE  
DATE



Department of Energy

ROCKY FLATS OFFICE  
P.O. BOX 928  
GOLDEN, COLORADO 80402-0928

FEB 09 1994

94-DOE-01497

ACTION  
DIST LTR ENC

BENEDETTI, R.L.		
BENJAMIN, A.		
BERMAN, H.S.		
CARNIVAL, G.J.		
COPP, R.D.		
CORDOVA, R.C.		
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HEDAHL, T.G.		
HILBIG, J.G.		
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KIRBY, W.A.		
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McKENNA, F.G.	XX	
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SCHUBERT, A.L.		
SETLOCK, G.H.		
SULLIVAN, M.T.		
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Mr. William Yellowtail  
Regional Administrator  
U. S. Environmental Protection Agency, Region VIII  
999 18th Street, Suite 500  
Denver, Colorado 80202-2405

Mr. Thomas Looby  
Director, Office of Environment  
Colorado Department of Health  
4300 Cherry Creek Drive South  
Denver, Colorado 80222-1530



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FEB 11 10 19 AM '94  
RECEIVED  
CENTRAL

Gentlemen: *Tom*

This letter is in regard to the August 12, 1994, stop work order received from the U.S. Environmental Protection Agency (EPA), Region VIII, and the Colorado Department of Health (CDH) for baseline risk assessment activities. For details regarding the background on the data aggregation issue, please refer to Enclosure 1.

I believe it is appropriate to go directly to the Senior Executive Committee (SEC) at this time, since the Dispute Resolution Committee was unable to reach consensus on this issue in January, 1994. The SEC, along with their supporting technical staff need to have a meeting to discuss strategy to resolve this issue as soon as possible. I recommend that the technical staff be given until March 7, 1994, to reach a consensus on data aggregation for exposure calculation. If consensus is not reached by this date, we request that the stop work issue be resolved by the SEC according to the proposed amendment to the Interagency Agreement (IA) in Enclosure 2.

There are two issues that must be resolved as soon as possible. First, the IA must be amended to incorporate appropriate language for restarting work under IA. There is currently no procedure in place to accomplish this. Second, the IA parties must reach agreement on the stop work issue of data aggregation for exposure calculation in order that work may resume. This is critical since work has been stopped since August, 1993.

Please refer to Enclosure 2, a copy of the October 14, 1993, resolution of dispute for Operable Unit No. 2. I request that you review the proposed amendment to the IA in item B under Resolution of Dispute. Also, I request that you formally agree to insert the amendment into the IA by March 7, 1994. Please provide your concurrence to our request for a meeting and additional negotiations by February 15, 1994.

CORPES CONTROL	x	x
PATS/T130G		
ADMN RECORD/080	x	2

Reviewed for Addressee  
Corres. Control RFP

2-11-94 *Cis*  
DATE BY

Ref Ltr. #

2 Enclosures

DOE ORDER # 5400.1

Sincerely,

Mark N. Silverman  
Manager

W. Yellowtail & T. Looby

2

cc w/Enclosures:

T. Grumbly, EM-1, HQ  
E. Livingston-Behan, EM-20, HQ  
R. Scott, EM-20, HQ  
R. Lightner, EM-45, HQ  
R. Greenberg, EM-453, HQ  
A. Rampertaap, EM-453, HQ  
R. Duprey, EPA  
J. Sowinski, CDH  
S. Olinger, AMESH, RFO  
M. McBride, AMER, RFO  
R. Schassburger, DAMER, RFO  
M. Roy, OCC, RFO  
A. Howard, AMESH, RFO  
B. Thatcher, ER, RFO  
~~S. Stiger, EG&G~~

## ENCLOSURE 1

On January 11, 1994, Environmental Protection Agency (EPA) and Colorado Department of Health (CDH) transmitted a letter to Department of Energy /Rocky Flats Office (DOE/RFO) proposing risk assessment methodology as it relates to data aggregation that did not include our involvement. Therefore, on January 25, 1994, we transmitted a letter of nonconcurrency for two basic reasons; (1) we do not believe it serves risk management to perform two different risk assessments per source, and (2) the hot spot definition that EPA and CDH has proposed is in direct conflict with DOE Orders and proposed rules. Our position is that any methodologies used at the Rocky Flats Plant must not result in excessive and redundant work resulting from the integration of the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, and Colorado Hazardous Waste Act. In addition, we request that EPA and CDH be cognizant of, and recognize our need to comply with, our DOE Orders.

We ask that EPA and CDH revisit Section VII.D, Attachment II of the IA. This section clearly commits EPA, CDH and DOE/RFO to perform baseline risk assessment in conformance with EPA's Risk Assessment Guidance for Superfund (RAGS) document. It further commits us to evaluate risk at the source. Any agreement reached by the parties of the Interagency Agreement (IA) must satisfy these requirements. At a January 31, 1994, meeting for the IA technical staff where we thought consensus was imminent, EPA's toxicologist added additional requirements that took us back to where we began on August 12, 1993.

In preparations for pending negotiations, we request that EPA staff (1) provide specific references in RAGS that support their data aggregation requirements, and (2) provide examples where these requirements have been implemented by EPA at your fund-financed sites and potentially responsible parties within Region VIII.

## ENCLOSURE 2

### RESOLUTION OF DISPUTE

#### BACKGROUND

- 1) June 29, 1993 letter (93-DOE-07580), DOE to EPA/CDH, asking for clarification on the approach for the Operable Unit (OU) No. 2 Baseline Risk Assessment.
- 2) July 21, 1993 letter (93-DOE-08449), DOE to EPA/CDH, requesting that the "...clock" be stopped on the schedules for Operable Units 1 through 7, until such time that we receive and agree to guidance on the methodology for the baseline risk assessments..."
- 3) August 12, 1993, letter, EPA/CDH to DOE, notifying that our July 21 request to stop the "clock" was granted: "...because EPA and CDH believe that stoppage of work is necessary until such time as an agreement is reached among the parties to the IAG on how the above issues... will be resolved and implemented..." The schedule stopped as of June 21, 1993, for Operable Units 1, 2, and 7 and August 12, 1993, for Operable Units 4, 5, and 6. Operable Unit 3 as of July 23, 1993..."
- 4) August 12, 1993, letter (93-DOE-08698), DOE to EPA/CDH, notification that we would miss the August 9, 1993, milestone for the OU2 Final RFI/RI Report.
- 5) August 18, 1993, memorandum (ERD:SRG:08450), DOE to EG&G, authorization for EG&G to stop work on certain parts of the RFI/RI Reports for OUs 1-7.
- 6) Dispute Resolution Committee (DRC) determination (made verbally within 5 days of the August 12 EPA/CDH letter) that the schedule stoppage was appropriate, as per Part 24 (Work Stoppage) of the IAG.
- 7) Undated letter, (received DOE mailroom September 10, 1993), EPA/CDH to DOE, notification that "...By failure to submit that document [Final RFI/RI Report] ..., DOE has not met the milestone and is in violation of the IAG. ... you are hereby notified that stipulated penalties are accruing pursuant to Part 19 of the IAG ... penalties will begin to accrue on the date DOE receives this notice of violation..."
- 8) September 24, 1993, letter (93-DOE-10930), DOE to EPA/CDH, invoking Dispute Resolution on "...whether or not we are currently in violation of the IAG by missing the August 9, 1993, milestone for submittal of the Final ... RFI/RI ... Report..."

#### RESOLUTION OF DISPUTE:

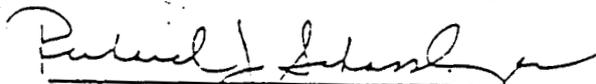
- A. It is agreed that DOE is in violation of the IAG for the missed Final RFI/RI Report submittal milestone. This violation continued for the period of August 9, 1993 through Augusts 12, 1993 (when the clock was stopped). In light of the retroactive nature of the EPA/CDH August 12 stop work letter, EPA agrees not to assess stipulated penalties for the period August 9 - 12, 1993.
- B. It is understood that there is no provision in the IAG to lift work stoppages agreed to by the Dispute Resolution Committee (DRC), as prescribed by Part 24 of the IAG, Work Stoppage. The IAG Coordinators agree to recommend to the Parties of the IAG to amend the IAG to incorporate language on how to rescind a work stoppage. The proposal to amend the IAG would be according to Part 41 of the IAG, Amendment of Agreement.

The proposed amendment to the IAG would be the addition of the text below to the existing language of Paragraph 164:

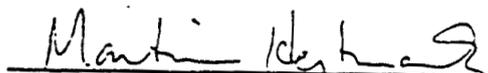
Any Party may request a work stoppage order to be rescinded. Such request shall be made in writing by the DRC member of the requesting Party, sent to the DRC members of all other Parties, and shall state the reason as to which the work stoppage order should be rescinded. If the DRC unanimously agrees to rescind the work stoppage order, work shall resume immediately, unless the DRC establishes an alternate time upon which the work shall resume. If the DRC fails to reach unanimous agreement within five (5) business days of the request to rescind the work stoppage, the issue shall be referred to the SEC. Once the issue is referred to the SEC, the Lead Regulatory Agency member of the SEC shall render its decision within five (5) business days and work shall proceed accordingly. The procedures of Parts 12 and 16 shall apply as appropriate.

- C. The Coordinators agree to use the above process to rescind the work stoppage currently in effect while the Parties undertake formal procedures to amend the IAG. At the time that the work stoppage is lifted, DOE shall submit proposed new milestones for OU 2, pursuant to Part 42, Extensions, of the IAG. The proposed new milestones shall be based on an extension period equivalent to the time in which work was stopped.

We, the IAG Coordinators, agree that the above resolves the dispute invoked by DOE on September 24, 1993 (background reference #8).

  
Richard Schassburger, DOE IAG Coordinator

10/14/93  
date

  
Martin Hestmark, EPA IAG Coordinator

10/14/93  
date

  
Gary Baughman, CDH IAG Coordinator

Oct - 14, 1993  
date