



PROGRAM	SITE	PROJECT #	FILE SEQUENCE

Department of Energy

Oak Ridge Office of Environmental Management  
P.O. Box 2001  
Oak Ridge, Tennessee 37831  
May 22, 2017

ROUTE TO: CPT

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MAY 30 2017

Dr. Shari Meghreblian  
Deputy Commissioner  
Tennessee Department of Environment  
and Conservation  
William R. Snodgrass, Tennessee Tower  
312 Rosa L. Parks Avenue, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243-0435

Mr. Franklin Hill, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3103

Dear Dr. Meghreblian and Mr. Hill:

**INVOCATION OF FORMAL DISPUTE UNDER SECTION XXVI, RESOLUTION OF DISPUTES, OF THE OAK RIDGE RESERVATION FEDERAL FACILITY AGREEMENT**

The purpose of this letter is to invoke formal dispute under Section XXVI of the Oak Ridge Reservation Federal Facility Agreement. The U.S. Department of Energy (DOE) objective with this dispute is to advance establishment of a mutually acceptable plan for disposition of wastes generated by the Oak Ridge Reservation environmental restoration activities. In particular, DOE seeks to obtain public comment on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Proposed Plan proposing building a second onsite CERCLA disposal facility.

Enclosure 1 is a written statement of dispute with supporting documentation.

CERCLA remedy selection efforts for this project have been underway for several years. Extensive informal dispute resolution efforts have failed to advance the remedy selection process. I am hopeful that our engagement under formal dispute resolution protocols can resolve this matter.

Under Section XXVI of the Oak Ridge Reservation Federal Facility Agreement (Enclosure 2), each Party is to designate one individual and an alternate to serve on a Dispute Resolution Committee. The DOE principal designee will be John Blevins.

Dr. Shari Meghreblian/Mr. Franklin Hill

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May 22, 2017

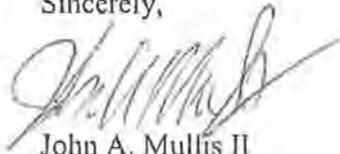
**INVOCATION OF FORMAL DISPUTE UNDER SECTION XXVI, *RESOLUTION OF DISPUTES*, OF THE OAK RIDGE RESERVATION FEDERAL FACILITY AGREEMENT**

Also, as required by Section XXVI, if the Dispute Resolution Committee is unable to unanimously resolve the dispute within 21 days, we will forward the Written Statement of Dispute to the Senior Executive Committee for resolution. I will serve as the DOE principal designee to the Senior Executive Committee.

Thank you in advance for your attention to this matter. In order to schedule a prompt meeting of the Dispute Resolution Committee, I will work with your offices to schedule meeting logistics on the assumption that you or your designee will participate.

If you have any questions or if we can be of further assistance, please contact me at (865) 576-0742.

Sincerely,



John A. Mullis II  
Acting Manager

Enclosures (2)

cc w/enclosures:

Rich Campbell, EPA Region 4

Carl Froede, EPA Region 4

Don Rigger, EPA Region 4

Steve Goins, TDEC, Nashville

Chris Thompson, TDEC, Oak Ridge

Randy Young, TDEC, Oak Ridge

## **Enclosure 1**

### **STATEMENT OF FORMAL DISPUTE CONCERNING THE ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY PROJECT**

#### **Nature of the Dispute**

The U.S. Department of Energy (DOE) Oak Ridge Office of Environmental Management Program is placing the Environmental Management Disposal Facility (EMDF) project remedy selection process into formal dispute to promote finalization of a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Proposed Plan and Record of Decision (ROD). DOE holds that a sufficient Remedial Investigation/Feasibility Study (RI/FS) (consistent with CERCLA and the National Contingency Plan) has been provided to the U.S. Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) on numerous occasions. The RI/FS has been captured in several drafts (D1-D5), and all Parties should work expediently to issue a Proposed Plan and ROD for the management of future Oak Ridge Reservation (ORR) cleanup wastes. This dispute is necessitated by the failure of DOE, EPA, and TDEC to issue a Proposed Plan for this project.

#### **Work Affected by the Dispute**

Failure to resolve this dispute will broadly impact the remaining ORR cleanup activities since (by volume) most cleanup waste is planned to be managed in the onsite disposal facilities. The existing disposal capacity is inadequate for completion of ORR cleanup. While offsite disposal is possible for these wastes, it is cost-prohibitive and presents additional implementation hazards and project risks.

#### **DOE's Position with Respect to the Dispute**

DOE requests that EPA and TDEC engage in good faith to support completion of the Proposed Plan initially submitted by DOE on June 28, 2016. DOE holds that extensive and adequate analyses, consistent with CERCLA and the National Contingency Plan, establish the protectiveness and the applicable/relevant and appropriate regulation/requirement compliance, as well as the feasibility and cost-effectiveness, of onsite disposal as a component of future cleanup actions. DOE recognizes the CERCLA process necessitates additional Tri-Party agreements (ROD approval, Remedial Design approval, etc.) are needed to initiate construction and operation of the preferred remedy; however, these agreements are not required to begin formal public dialogue on the current proposal. DOE holds that engaging the public soon is timely and necessary, and public input will help properly scope additional site-specific characterization and evaluation activities. Resolution of this dispute is time sensitive given the pace of waste generation and the time required to site and construct additional disposal capacity. The Oak Ridge National Laboratory and the Y-12 National Security Complex facility cleanup success is dependent upon resolution of this dispute.

### **Information DOE is Relying Upon to Support its Position**

- DOE, EPA, and TDEC previously selected onsite disposal for the ORR cleanup wastes via a ROD issued in calendar year 1999. This ROD selected onsite disposal as a protective and cost-effective approach for management of soil and facility demolition debris generated by ORR cleanup. (Attachment 1: Environmental Management Waste Management Facility ROD)
- DOE, EPA, and TDEC have overseen successful construction and safe operation of the current facility for 14 years. Construction of a second facility is expected to also provide a protective disposition alternative for the remaining high volume, low hazard cleanup wastes. (Attachment 2: EPA- and TDEC-approved Environmental Management Waste Management Facility Phased Construction Completion Reports)
- DOE, EPA, and TDEC collectively agreed to significantly expand the ORR program in 2008 via inclusion of extensive legacy facilities and associated soils in 2008, necessitating additional disposal capacity. (Attachment 3: 2008 Major Federal Facility Agreement Modification)
- DOE has completed extensive analysis documenting that expansion of disposal capacity in Bear Creek Valley is feasible and presents a cost-effective cleanup protective alternative for future CERCLA clean up wastes. (Attachment 4: D5 RI/FS)
- DOE has made extensive efforts to accommodate comments received from EPA, TDEC, and their support contractors on the EMDF RI/FS over a six-year period, at an expense approximating \$4 million. (Attachment 5: Documentation showing efforts undertaken to resolve EPA and TDEC comments)
- DOE submitted a draft CERCLA Proposed Plan based upon the RI/FS in June 2016. (Attachment 6: D1 EMDF Proposed Plan Transmittal Package)
- EPA and TDEC declined to review or provide any comments on the Proposed Plan. (Attachment 7: EPA and TDEC letters)

### **Outcome Desired**

The Department respectfully requests that EPA and TDEC expeditiously work with DOE to produce and issue a Proposed Plan for public review, with the objective of issuing the document no later than July 30, 2017. Assuming no significant changes are warranted based on public comment, the Department requests that EPA and TDEC expeditiously work to produce and issue a ROD within six months after closure of public comment of the Proposed Plan.

# Backup Information for Formal Dispute of the Environmental Management Disposal Facility Project

## Table of Contents

Attachment 1 *Record of Decision for the Disposal of Oak Ridge Reservation Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) Waste, Oak Ridge, Tennessee (DOE/OR/01-1791&D3) November 1999.*

**Evidence** This Record of Decision documents the acceptance by all three parties that waste disposal of significant volumes of CERCLA radiological and/or hazardous waste on the Oak Ridge Reservation is acceptable under CERCLA and is preferred over offsite disposal.

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Attachment 2

- *2013 Phased Construction Completion Report (PCCR) for the Oak Ridge Reservation Environmental Management Waste Management Facility (EMWMF) (DOE/OR/01-2603&D2) September 2013.*
- *2014 Phased Construction Completion Report (PCCR) for the Oak Ridge Reservation Environmental Management Waste Management Facility (EMWMF) (DOE/OR/01-2643&D2) September 2014.*
- *2015 Phased Construction Completion Report (PCCR) for the Oak Ridge Reservation Environmental Management Waste Management Facility (EMWMF) (DOE/OR/01-2683&D2) September 2015.*

**Evidence** These Phased Construction Completion Reports for the EMWMF demonstrate successful construction and safe operation of this facility for 14 years. Construction of a second facility is expected to provide a similarly protective disposal alternative for remaining contaminated media currently exposed to the elements.

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Attachment 3

- *Federal Facility Agreement for the ORR: Major Modification Record signatures of Triparties to include Integrated Facility Disposition Program Scope in the Oak Ridge Cleanup*
- *Addition of significant facilities and media cleanup to the FFA Appendix C list in 2009 and EPA approval letter thereof.*
- *Current 2016 Appendix C listing of contaminated facilities and media on the Oak Ridge Reservation.*

**Evidence** The first document is the signed agreement to the major modification of the FFA to include Y-12 and ORNL cleanup scope from the Integrated Facility Disposition Program (IFDP) in the FFA. These additions in 2009 to the Appendix C listing of legacy facilities and soils indicate Triparty agreement to expand the ORR cleanup and generate additional waste beyond that indicated for disposal at EMWMF with the initial Appendix C listing, therefore necessitating additional disposal capacity. The 2016 current Appendix C listing is provided as well.

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Attachment 4 *Remedial Investigation/Feasibility Study for Comprehensive Environmental Response, Compensation, and Liability Act Oak Ridge Reservation Waste Disposal Oak Ridge, Tennessee (DOE/OR/01-2535&D5) February 2017*

**Evidence** This D5 version of the Remedial Investigation/Feasibility Study (RI/FS) for disposal of future CERCLA waste is indicative of DOE's efforts to define the alternatives, address comments, and incorporate Triparty strategies to move forward with future CERCLA waste disposal capacity planning.

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## Table of Contents (continued)

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Attachment 5 *D1, D2, D3, D4 RI/FS Comment/Response Matrix documents*

**Evidence** DOE has made extensive efforts to accommodate comments received from EPA and TDEC and their support contractors on the EMDF RI/FS over a six year period through submittal of five versions of the RI/FS, at an expense of approximately four million dollars.

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Attachment 6 *Proposed Plan for the Disposal of Future Oak Ridge Reservation Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Waste (DOE/OR/01-2695&D1) June 2016.*

**Evidence** DOE submitted to TDEC and EPA a D1 Proposed Plan based upon the D4 RI/FS in June 2016.

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Attachment 7

- EPA letter submitted to DOE on July 7, 2016 addressing the D1 Proposed Plan submitted by DOE on June 28, 2016 (see Attachment 6).
- TDEC letter submitted to DOE on August 24, 2016 addressing a proposed path forward at that time.

**Evidence** EPA's letter indicates no comments will be provided on the D1 Proposed Plan. TDEC's letter does not reference the submitted Proposed Plan. It documents a path forward that was outlined in the D5 RI/FS as well.

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