



Department of Energy

Oak Ridge Office of Chief Counsel

Post Office Box 2001
Oak Ridge, Tennessee 37831

November 12, 2020

SENT VIA EMAIL

J. Peter Murrey
Assistant Attorney General
Environmental Division
Office of Tennessee Attorney General
P.O. Box 20207
Nashville, Tennessee 37202

Dear Mr. Murrey:

REQUEST FOR OFF-SITE DISPOSAL COST INFORMATION FOR THE PROPOSED ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY

This letter is in response to your letter dated October 14, 2020, subject as above, sent on behalf of the Tennessee Department of Environment and Conservation (TDEC) to Roger Petrie, Federal Facilities Agreement (FFA) Project Manager for the Department of Energy (DOE) Oak Ridge Office of Environmental Management.

Your letter requested that DOE provide certain information related to the cost of off-site disposal of various wastes needed to “support TDEC’s review of the forthcoming Record of Decision for the proposed Environmental Management Disposal Facility.” The letter further stated that the request is made “on behalf of TDEC pursuant to Section XXIX of the Federal Facilities Agreement (FFA)” for the Oak Ridge Reservation and that your office will maintain possession of all documents provided and “will maintain confidentiality of the records provided by DOE in accordance with Tenn. Code Ann. § 10-7-504(5)(A).” In conversations with TDEC Counsel following DOE’s receipt of the letter, we were informed that the request was made by your office as a result of DOE’s previous expressions of concern about confidentiality of records it had provided to TDEC.

Although it is indeed important to DOE that any records or information it provides to TDEC be handled appropriately, your office’s request for these materials is not the appropriate vehicle for requesting these documents from DOE in the first instance, nor is it necessary to protect the confidentiality of any documents DOE provides. The FFA outlines clear procedures for TDEC’s request for the documents and information in your October 14, letter, as well as the TDEC’s obligation to protect any documents provided from public disclosure. Section XXVII of the FFA provides that, to the maximum extent possible, the exchange of communications and documents should properly be directed through the FFA Project Managers.

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Therefore, DOE expects that requests for information or documents and subsequent exchanges of such should be handled between the FFA Project Managers. Paragraph D. of Section XXIX of the FFA states:

Information, records, or other documents (including D1 primary and secondary documents) produced under the terms of this Agreement by EPA, TDEC, and DOE shall be available to the public except (a) those identified to EPA and TDEC by DOE as classified within the meaning of and in conformance with the AEA or (b) those that could otherwise be withheld pursuant to the Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the originating agency. Documents or information so identified shall be handled in accordance with those regulations.

It is DOE's expectation that documents it provides to TDEC appropriately marked should be handled in accordance with this provision; however, we have asked TDEC Counsel to confirm if these provisions provide adequate protection to DOE or whether the provision should be modified. TDEC's counsel has informally represented that TDEC can abide by this provision and prevent properly-marked documents from improper release.

Our office has had further discussions with TDEC Counsel about the specific documents and information requested in your letter and in previous communications. DOE remains committed to provide information to TDEC as necessary to comply with the terms of the FFA and other agreements and will do so following the processes set out in the FFA.

Finally, if there is a specific matter for which your office is seeking information, please direct those communications directly to this office, either to me or Ms. Jill Fortney.

If you have any questions or need additional information, please do not hesitate to contact me at (865) 340-3678.

Sincerely,



Kimberly S. Walling
Assistant Chief Counsel
for Regulatory and General Law

**REQUEST FOR OFF-SITE DISPOSAL COST INFORMATION FOR THE PROPOSED ENVIRONMENTAL
MANAGEMENT DISPOSAL FACILITY**

cc:

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