



**Department of Energy**

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

June 30, 2017

**CERTIFIED MAIL**

**RECEIVED**

Ms. Anne Heard  
Superfund Division  
U.S. Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3103

JUL 03 2017

**ENVIRONMENT AND CONSERVATION  
COMMISSIONER'S OFFICE**

Mr. Robert J. Martineau, Jr.  
Commissioner of the Tennessee Department  
of Environment and Conservation  
312 Rosa L. Parks Avenue  
Tennessee Tower, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243

Dear Ms. Heard and Mr. Martineau:

**FORMAL DISPUTE UNDER SECTION XXVI, RESOLUTION OF DISPUTES, OF THE  
OAK RIDGE RESERVATION FEDERAL FACILITY AGREEMENT REGARDING THE  
ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY**

The U.S. Department of Energy (DOE) Oak Ridge Office of Environmental Management appreciates the U.S. Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) participation in the discussion held on June 22, 2017, to seek resolution of the formal dispute regarding the Federal Facility Agreement (FFA) parties' inability to move forward with the remedy selection process for the Oak Ridge Comprehensive Environmental Response, Compensation, and Liability Act waste disposal.

However, in light of Franklin Hill's letter dated June 21, 2017, in regards to DOE acting inconsistently with the FFA in invoking formal dispute and an email from Mr. Hill dated June 28, 2017 (enclosed), I do not believe that the Dispute Resolution Committee (DRC) can unanimously resolve the dispute within the prescribed time period (the FFA affords 21 days, which expires on June 29, 2017). I do not believe additional time will lead to a timely resolution based on current status of negotiations; therefore, I am elevating the dispute to the Senior Executive Committee (SEC) level. Per the FFA, the SEC has 21 days to use their best efforts to unanimously resolve the dispute.

**CERTIFIED – RETURN RECEIPT REQUESTED**  
(Heard 7009 2820 0001 9926 2654 and Martineau 7009 2820 0001 9926 2661)

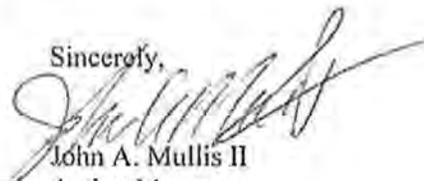
**FORMAL DISPUTE UNDER SECTION XXVI, RESOLUTION OF DISPUTES, OF THE OAK RIDGE RESERVATION FEDERAL FACILITY AGREEMENT REGARDING THE ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY**

In regards to EPA's statement that DOE's elevation of a formal dispute of a primary report is inconsistent with the FFA, DOE would like to be clear that EPA's interpretation of the FFA is not shared by DOE.<sup>1</sup> DOE, in good faith, followed the appropriate dispute resolution protocol per my letter to you dated May 22, 2017 (enclosed), which included our formal statement of dispute. Our many informal dispute meetings over the last six months have failed to resolve the central issues that continue to hold up the remedy selection process.

DOE has not modified its original statement of dispute. I will make it a priority to be available to discuss this issue with you, so please let me know your availability.

If you have any questions or if we can be of further assistance, please contact John Blevins at (865) 241-8327 or me at (865) 576-0742.

Sincerely,



John A. Mullis II  
Acting Manager

Enclosures (2)

cc w/enclosures:

Martha Brook, EPA Region 4  
Franklin Hill, EPA Region 4  
Ken Lapierre, EPA Region 4  
Steve Goins, TDEC, Nashville  
Shari Meghreblian, TDEC, Nashville

Steve Stout, TDEC, Nashville  
Colin Colverson, CC-10, SC-OR  
John Blevins, EM-90

<sup>1</sup> As you are aware, FFA Section XXVI A. states that "Within 30 days after: (1) the period established for review of a D2 primary document pursuant to Section XXI (Review/Comment) of this agreement or (2) any action which leads to or generates a dispute (including a failure of the informal dispute resolution process), the disputing Party shall submit to the other Parties a written statement of dispute ...." Section XXI H. 1. further states, "Dispute resolution shall be available to the Parties for D2 primary reports as set forth in Section XXVI (Resolution of Disputes)." DOE believes this clearly indicates that any primary document can be disputed by any FFA party. Further, DOE invoked this dispute based on number (2) on the previous page ("... any action which leads to or generates a dispute ..."), specifically the FFA parties' inability to move the remedy selection process forward.

In regards to Mr. Hill's email message, DOE understood a commitment from EPA and TDEC leadership to create a list of issues to be discussed and potentially resolved by the DRC; if that list did not support resolution of the dispute, then the DRC would elevate the dispute to the SEC. While DOE supports EPA and TDEC's right to invoke a dispute under the FFA, that right does not negate DOE's right to initiate and carry forth a dispute nor unilaterally impact DOE's prerogative to vigorously adhere to the 21 day FFA window in which the DRC or SEC can unanimously resolve the dispute before elevating the dispute to the next tier of management.

**CERTIFIED – RETURN RECEIPT REQUESTED**  
**(Heard 7009 2820 0001 9926 2654 and Martineau 7009 2820 0001 9926 2661)**

## Mullis, Jay

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**From:** Mullis, Jay  
**Sent:** Friday, June 30, 2017 11:33 AM  
**To:** Mullis, Jay  
**Subject:** FW: DRC

**From:** Dorsey, Claudette [mailto:Dorsey.Claudette@epa.gov]  
**Sent:** Wednesday, June 28, 2017 10:55 AM  
**To:** Blevins, John <john.blevins@orem.doe.gov>  
**Cc:** Steve.Goins@tn.gov  
**Subject:** DRC

On behalf of Franklin E. Hill, I am sending this email:

Thank you, John. As a point of clarification, however, the EPA will, by July 10, provide a written statement of dispute, not a list of issues, in order to initiate formal dispute on the inadequacy of the RI/FS. We agree that if we can provide it to the DRC prior to that date, we will. As to scheduling a DRC meeting on July 11, I would suggest a few more days for DOE to understand EPA's and TDEC's positions. My calendar is open on July 25<sup>th</sup> and 26<sup>th</sup>, and I would suggest that we set aside those dates for meetings in Chattanooga.

It is my expectation that we will provide sufficient time for the DRC to attempt a resolution of the issues that the EPA and TDEC raise in their statements of dispute. Under the FFA, the time period for DRC resolution is 21 days; but since we have already had one meeting to hear DOE's position, the EPA is open to a shorter time period. If, after good faith attempts to resolve those issues at the DRC level does not result in unanimous agreement, all statements of disputes will be elevated to the SEC.

One housekeeping matter that we should address is that it is my understanding that the first DRC period is set to expire tomorrow, on June 29<sup>th</sup>. I am agreeable to extending the DRC period 30 days, to July 31<sup>st</sup> (July 29<sup>th</sup> falls on a Saturday), to allow for engagement on the EPA's and TDEC's issues. I will have my staff prepare an extension agreement, as we have done in the past, and will forward to you and TDEC for execution. Please let Richard Campbell know if this is acceptable.

*Claudette T. Dorsey*

Executive Staff Assistant to  
Division Director, Superfund Division R4  
Environmental Protection Agency  
61 Forsyth Street  
Atlanta, Georgia 30303  
Phone: (404) 562-8540  
Cell: (404) 670-4877  
Email: [Dorsey.claudette@epa.gov](mailto:Dorsey.claudette@epa.gov)



## Department of Energy

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

May 22, 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

-2-

May 22, 2017

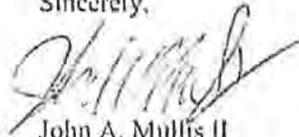
**INVOCATION OF FORMAL DISPUTE UNDER SECTION XXVI, RESOLUTION OF DISPUTES, OF THE OAK RIDGE RESERVATION FEDERAL FACILITY AGREEMENT**

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

# 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/01-2895&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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## **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.