



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Remediation - Oak Ridge
761 Emory Valley Road
Oak Ridge, Tennessee 37830

September 4, 2019

Mr. John Michael Japp
DOE FFA Project Manager
Oak Ridge Office of Environmental Management
U.S. Department of Energy
Post Office Box 2001
Oak Ridge, Tennessee 37831-2001

Re: DOE Federal Facility Agreement (FFA) Milestone Extension Request for the Environmental Management Disposal Facility (EMDF) Record of Decision (ROD) and Follow-on Documents

Dear Mr. Japp

The Tennessee Department of Environment and Conservation (TDEC) received the referenced milestone extension request for the proposed Environmental Management Disposal Facility (EMDF) Record of Decision (ROD) and follow-on documents on September 3, 2019. The U.S. Department of Energy (DOE) letter requests extension of the ROD milestone from August 30, 2019 to September 30, 2019. If the ROD selects onsite disposal, additional submittal dates include July 2, 2020 for the EMDF RDWP and June 8, 2021 for the EMDF Remedial Design Report/Remedial Action Work Plan (RDR/RAWP).

In accordance with the Federal Facility Agreement (FFA) for the Oak Ridge Reservation, TDEC approves DOE's milestone extension request. DOE's request provides the following basis for the extension:

"The reason for this extension is given under Federal Facility Agreement Subsection XXX.B.5 (delay caused by additional work agreed to by the Parties). The reason for the delay is to allow the discussion among the U.S. Environmental Protection Agency Administrator, representatives from DOE, and the Tennessee Department of Environment and Conservation on the *Focused Feasibility Study for Water Management for the Disposal of CERCLA Waste on the Oak Ridge Reservation, Oak Ridge, Tennessee* (DOE/OR/01-2664&D2) dispute concerning the regulation of wastewater effluents containing source, special nuclear and byproduct materials scheduled for September 6, to inform the draft ROD."

DOE's request also states, "Previous ROD extension request approval letters from the Tennessee Department of Environment and Conservation have reiterated requests to incorporate the key concerns of the state in the draft document. The D1 ROD submittal will address those concerns." As a point of clarification, TDEC's previous letters say that the ROD must *resolve* the State's key concerns. Therefore, TDEC will continue working in good faith with DOE and EPA to develop a final ROD that achieves this CERCLA requirement, in addition to CERCLA threshold criteria—overall protection of human health and the environment and compliance with (or justified waivers for) ARARs¹.

As the State of Tennessee continues to work with DOE and EPA to seek innovative solutions to the challenges of CERCLA waste disposal, TDEC appreciates DOE's statements of willingness to allow the time needed for review and approval of all necessary aspects of the ROD. In the spirit of partnership and cooperation, TDEC reiterates its August 12, 2019, request for DOE to provide a schedule for resolving the State's key concerns. The schedule needs to align with FFA review periods for the D1 and D2 ROD, and it should include an additional public comment opportunity after DOE updates community members on new information developed after DOE issued the Proposed Plan.

Please direct any questions or comments regarding the contents of this letter to Brad Stephenson at 865-220-6587.

Sincerely

A handwritten signature in black ink, appearing to read "Randy C. Young". The signature is fluid and cursive, with the first name "Randy" being the most prominent part.

Randy C. Young
TDEC FFA Manager

cc: Connie Jones, EPA
Pat Halsey, DOE
Amanda Daugherty, ORRCA
Amy Fitzgerald, ORRCA
Ron Woody, ORRCA
Shelley Kimel, SSAB

¹ ARAR means Applicable or Relevant and Appropriate Requirements. DOE, the State, and EPA need to agree on legal requirements and whether it is proper to waive any requirements.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

August 29, 2019

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Michael Japp
Federal Facility Agreement Manager
Oak Ridge Office for Environmental Management
Department of Energy
Post Office Box 2001
Oak Ridge, Tennessee 37831

Dear Mr. Japp:

This purpose of this letter is to respond to the Department of Energy's (DOE) August 29, 2019, request for an extension, under Section XXX of the Oak Ridge Reservation Federal Facility Agreement (FFA), of the D1 Record of Decision (ROD) for the Environmental Management Disposal Facility.

DOE provided as its basis for an extension

... under Federal Facility Agreement Subsection XXX.B.5 (delay caused by additional work agreed to by the Parties). The reason for the delay is to allow the discussion among the U.S. Environmental Protection Agency Administrator, representatives from DOE, and the Tennessee Department of Environment and Conservation on the *Focused Feasibility Study for Water Management for the Disposal of CERCLA Waste on the Oak Ridge Reservation, Oak Ridge, Tennessee* (DOE/OR/01-2664&D2) dispute concerning the regulation of wastewater effluents containing source, special nuclear and byproduct materials scheduled for September 6, to inform the draft ROD.

While the DOE extension request references the dispute concerning wastewater effluents containing source, special nuclear and byproduct materials (Atomic Energy Act (AEA) materials), the EPA dispute addresses all waste waters, including those containing AEA materials, generated from Comprehensive Response, Compensation, and Liability Act (CERCLA) activities and discharged to surface waters.

Because it is not clear that "additional work" is being conducted as described in FFA Section XX, and consistent with EPA's July 31, 2019, response to DOE's July 30, 2019, extension request, the EPA agrees that DOE has established good cause under FFA Section XXX.B.3 (a delay caused by the good faith invocation of dispute resolution) for the extension request. The EPA will continue to work with the DOE to maintain open communication concerning project status, issues, and schedules as we progress toward determining the site suitability and protectiveness of the EMDF at Site 7c in Central Bear Creek Valley.

The EPA is approving the request as submitted with the new milestones to be reflected as follows:

D1 ROD: September 30, 2019

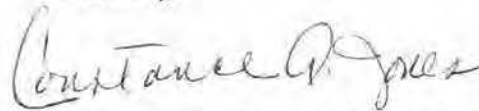
RDWP: July 2, 2020

RDR/RAWP: June 8, 2021

Due to the cost of the EMDF project as proposed, the EPA Administrator will select the remedy, and Region 4 will brief the EPA Administrator prior to remedy selection. Finally, EPA notes that, the formal dispute regarding the EMWMF-EMDF Wastewater Focused Feasibility Study should be resolved and its results incorporated into DOE's submission of the D1 ROD, consistent with FFA Section XXVI.J.

If you have any questions regarding this matter, please contact Carl Froede, Jr. at (404) 562-8550 or me at (404) 562-8551.

Sincerely,



Constance A. Jones, FFA Project Manager
Restoration and DOE Coordination Section
Restoration and Site Evaluation Branch
Superfund Division

cc: Randy Young, TDEC (electronic copy)
Cathleen Burnette, TDEC (electronic copy)
Brad Stephenson, TDEC (electronic copy)
Beth Rowan, TDEC (electronic copy)
Dave Adler, DOE (electronic copy)
Brian Henry, DOE (electronic copy)
Pat Halsey, DOE (electronic copy)
ORSSAB (electronic copy)



Department of Energy

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

August 29, 2019

CERTIFIED MAIL

Ms. Constance A. Jones
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Mr. Randy C. Young
State of Tennessee
Department of Environment and Conservation
Division of Remediation – Oak Ridge
761 Emory Valley Road
Oak Ridge, Tennessee 37830-7072

Dear Ms. Jones and Mr. Young:

FEDERAL FACILITY AGREEMENT MILESTONE EXTENSION REQUEST FOR ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY RECORD OF DECISION AND FOLLOW-ON DOCUMENTS

In accordance with the Federal Facility Agreement for the Oak Ridge Reservation, the U.S. Department of Energy (DOE) requests your approval to modify the Appendix E milestone dates for submission of the Record of Decision (ROD), the Remedial Design Work Plan (RDWP), and the Remedial Design Report/Remedial Action Work Plan (RDR/RAWP) for the Environmental Management Disposal Facility. This extension requests moving the milestones out four weeks for the ROD and eight weeks for the RDWP and RDR/RAWP.

Schedule and dates sought to be extended: The current milestones are as follows:

ROD: August 30, 2019
RDWP: May 5, 2020
RDR/RAWP: April 9, 2021

Length of extension sought: About four weeks (22 working days) for the ROD and 43 working days for the RDWP and RDR/RAWP.

New milestone dates: The requested new milestone dates are as follows:

ROD: September 30, 2019
RDWP: July 2, 2020
RDR/RAWP: June 8, 2021

CERTIFIED – RETURN RECEIPT REQUESTED
(JONES 7009 2820 0001 9922 8360)
(YOUNG 7009 2820 0001 9922 8391)

FEDERAL FACILITY AGREEMENT MILESTONE EXTENSION REQUEST FOR ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY RECORD OF DECISION AND FOLLOW-ON DOCUMENTS

Good cause for extension: The reason for this extension is given under Federal Facility Agreement Subsection XXX.B.5 (delay caused by additional work agreed to by the Parties). The reason for the delay is to allow the discussion among the U.S. Environmental Protection Agency Administrator, representatives from DOE, and the Tennessee Department of Environment and Conservation on the *Focused Feasibility Study for Water Management for the Disposal of CERCLA Waste on the Oak Ridge Reservation, Oak Ridge, Tennessee* (DOE/OR/01-2664&D2) dispute concerning the regulation of wastewater effluents containing source, special nuclear and byproduct materials scheduled for September 6, to inform the draft ROD.

Related schedules impacted if extension granted: The delay in these milestones should not impact any other schedules or milestones.

Description of project implementation strategy: The implementation strategy is to allow sufficient time for discussions between the U.S. Environmental Protection Agency and DOE to inform the submittal of the draft (D1) ROD.

Previous ROD extension request approval letters from the Tennessee Department of Environment and Conservation have reiterated requests to incorporate the key concerns of the state in the draft document. The D1 ROD submittal will address those concerns.

If you have any questions, or if we can be of further assistance, please contact John Michael Japp at (865) 241-6344 or Brian Henry at (865) 241-8340.

Sincerely,



Brian T. Henry
Portfolio Federal Project Director



John Michael Japp
Federal Facility Agreement Project Manager

cc:

Carl Froede, EPA Region 4
Susan DePaoli, Pro2Serve
Sidney Garland, RSI, K-1580, MS-7119
SSAB
Brad Stephenson, TDEC, Oak Ridge
Julie Pfeffer, UCOR

Tanya Salamacha, UCOR
ETTPDMC@ettp.doe.gov
Dave Adler, EM-94
Joy Sager, EM-921
Pat Halsey, EM-942

CERTIFIED – RETURN RECEIPT REQUESTED
(JONES 7009 2820 0001 9922 8360)
(YOUNG 7009 2820 0001 9922 8391)