



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

JUN 21 2017

Mr. John Blevins
Senior Adviser
Oak Ridge Office of Environmental Management
P.O. Box 2001
Oak Ridge, Tennessee 37831

Re: Remedial Investigation/Feasibility Study for
CERCLA Oak Ridge Reservation Waste Disposal
Oak Ridge, Tennessee (Environmental Management
Disposal Facility)

Dear Mr. Blevins:

The purpose of this letter is to confirm that the U.S. Environmental Protection Agency will meet with the U.S. Department of Energy, Oak Ridge Reservation (DOE-ORR) and the Tennessee Department of Environment and Conservation (TDEC) on Thursday, June 22nd, in Oak Ridge to engage in formal dispute resolution regarding issues surrounding the adequacy of the D5 Remedial Investigation/Feasibility Study (RI/FS) for the Environmental Management Disposal Facility (EMDF).

The EPA will also discuss the other issues that DOE has laid out in its elevation to formal dispute. DOE appears to propose to use the dispute resolution process to address not only the inadequacies of the current version of the EMDF RI/FS, but apparently to expand the dispute to include the inadequacies of and issues that arose under the former versions of the RI/FS that the EPA is no longer reviewing, as well as the Record of Decision (and RI/FS?) for the existing waste disposal facility, the Environmental Management and Waste Minimization Facility (EMWMF). While the EPA believes that this kind of dispute is inconsistent with the Federal Facility Agreement (FFA) and appears to distract from finalization of the RI/FS, the EPA will engage in the discussion as requested by DOE in hopes that it will lead to an approvable RI/FS for EMDF.

As a fundamental matter, however, the EPA stresses that DOE's elevation of a formal dispute on a primary report is inconsistent with the FFA. Under FFA Section XXVI, "[w]ithin 30 days after (1) the period established for review of a D2 primary document pursuant to Section XXI (Review/Comment)¹ 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 . . ." In the case of review of a Primary document, the EPA and TDEC, and not DOE, are the disputing Parties. DOE is also not a disputing Party under the following clause "any action which leads to or generates a dispute. . ." In a dispute at Naval Air Station Brunswick, the

¹ Section XXI of the FFA provides the structure for review, comment and finalization of primary reports. Under Section XXI.1 of the FFA, the D2 primary report becomes the final report if no Party (i.e., a regulator) invokes dispute resolution. If invoked, the dispute will be resolved informally or one Party can notify the other parties that informal dispute resolution has failed, beginning a 30-day clock for formal dispute elevation.

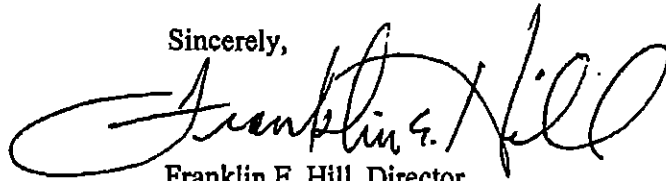
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question whether the federal agencies may invoke a dispute by relying upon the more general language "any action which leads to or generates a dispute," instead of the more specific FFA language has been reviewed and decided by the EPA Administrator. The Administrator decided that the federal agencies may not.² The next appropriate FFA step for DOE to transition from informal to formal dispute, was for DOE to declare that informal dispute resolution had failed. The regulators, as disputing Parties, would then have thirty days to either elevate the dispute for formal resolution or accept the resolution of issues as agreed to date among the Parties. This process, from informal to formal dispute resolution, is straightforward and both refines the discussion and focuses on the substantive issues that must be resolved in order to obtain regulatory approval of a Primary document.

As indicated above, the EPA will engage in the dispute requested by DOE, and will, by July 10³, raise to formal dispute the issues that prevent its approval of the RI/FS, if these issues have not been already resolved. In addition, the EPA requests that going forward, the Parties also follow the process for informal dispute resolution under the FFA, so that issues can be expeditiously resolved at the lowest possible level instead of involving the policy decision-makers of the Environmental Program Council in informal and generally-technical disputes, and leave the EPC to discuss issues not addressed by the FFA dispute process.

I will attend the meeting as the EPA's Dispute Resolution Committee representative. If you have any questions, please feel free to contact me.

Sincerely,



Franklin E. Hill, Director
Superfund Division

Cc: Steve Goins, TDEC
Jay Mullis, DOE
Shari Megreblian, TDEC
V. Anne Heard, ARA-EPA Region 4

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² At Brunswick, [t]he Navy argues that the FFA provides, generally, that all issues are subject to the FFA's dispute resolution process. However, EPA does not accept a reading of the more general FFA language cited by the Navy to render superfluous the more specific language in Section 21.1 of the dispute resolution provision itself. To the contrary, it is a fundamental axiom of contract interpretation that specific provisions control general provisions . . ." Decision of the EPA Administrator, *EPA Decision on Dispute and response to the Navy's Elevation of Dispute to the Administrator Concerning the Naval Air Station Brunswick*, June 12, 2008.

³ July 10 is 30 days after the failure of informal dispute resolution as indicated by the official start date of the dispute in email from John Blevins, dated June 9, 2017 9:00 a.m. to EPA and TDEC.