



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

January 6, 2017

John A. Mullis II
Acting Manager
Oak Ridge Office of Environmental Management
Department of Energy
P.O. Box 2001
Oak Ridge, Tennessee 37831

Dear Mr. Mullis:

I am writing in response to your December 20, 2016, letter (received December 29, 2016), regarding the ongoing informal dispute on the Remedial Investigation/Feasibility Study (RI/FS) for the Environmental Management Disposal Facility (EMDF). Specifically, I want to address what appears to be a misunderstanding of the process to finalize the RI/FS and to assure you that, as we stated to you in our December 9, 2016, letter, the U.S. Environmental Protection Agency (EPA) supports the identification of Site 7c as the most promising on-site disposal option.

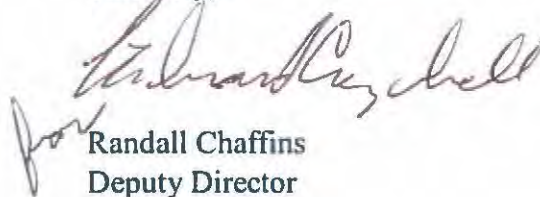
My staff informs me that we have made progress on resolving issues in the RI/FS and that only a few issues require further attention to resolve. EPA and TDEC sent the enclosed December 9 letter in response to the Department of Energy Oak Ridge Reservation's (DOE ORR's) November request that it be provided assurance that the regulators support Site 7c as a favorable site. With the progress being made and our letter of December 9, I was surprised to receive your letter describing DOE ORR's plan to elevate the matter to formal dispute if EPA and the State did not sign an enclosed dispute resolution agreement by January 6. DOE ORR stated that it needed assurance expressed in the December 9 letter so that DOE ORR could proceed toward contracting the additional characterization work. If the letter did not provide DOE ORR with sufficient assurance, the EPA has not been informed of that concern. Since the enclosed dispute resolution agreement repeats language from the "assurance" letter and provides little additional detail, the purpose of signing this agreement prior to finalizing a resolution on all issues is unclear.

I also want to correct a statement in your letter. The EPA did not request DOE ORR send an informal dispute resolution agreement. I believe our staffs have discussed that signing such an agreement should track with the timing of approval of the RI/FS, so that we could sign one agreement (to the degree that it is necessary) and approve one document to finalize the RI/FS. Instead of a premature, or even an unnecessary elevation of the dispute, completion of the informal dispute via review of a new draft of the RI/FS will allow the Parties to verify whether

they have reached agreement on specific issues and resolve matters at the lowest level possible, consistent with the spirit of the Federal Facility Agreement (FFA). New drafts of RI/FS chapters are still being developed and will be transmitted by DOE ORR to EPA staff for review after DOE ORR's requested date for an informal dispute resolution agreement. EPA and state staff will review these new drafts, and to the degree that disagreements remain, will identify only those issues on which we are not in agreement for elevation to formal dispute, if resolution cannot be reached informally.

In summary, I urge that our staffs be given every opportunity to resolve these disputed matters per the FFA informally, prior to any elevation to a formal dispute involving agency policymakers that may not even be necessary. If you have any questions, please contact me at (404) 562-8910.

Sincerely,

A handwritten signature in cursive script, appearing to read "Randall Chaffins".

Randall Chaffins
Deputy Director
Superfund Division

Enclosures

Cc: Shari Megreblan, TDEC
Andy Binford, TDEC
Chris Thompson, TDEC



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December 9, 2016

Mr. Dave Adler
Mr. Brian Henry
Oak Ridge Office of Environmental Management
Department of Energy
Post Office Box 2001
Oak Ridge, Tennessee 37831-8540

Dear Mr. Adler and Mr. Henry:

The Tennessee Department of Environment and Conservation (TDEC) and the Environmental Protection Agency (EPA) recognize the urgency for selecting a waste disposal option for the Department of Energy's (DOE's) Oak Ridge Reservation (ORR). Disposal options include a potential new DOE ORR landfill referred to as the Environmental Management Disposal Facility (EMDF). The purpose of this letter is to support identification of Site 7c, pending further characterization, as the most promising on-site disposal option. This site provides the potential to meet the DOE ORR's estimated capacity needs, and will not require a permanent underdrain.

TDEC and EPA also accept the concept of a "caveated" approach, proposed by DOE ORR, that will continue additional assessment activities prior to the Record of Decision (ROD). This enables completion of the work after approval of two "caveated" Primary Documents submitted for the EMDF project: 1) Remedial Investigation/Feasibility Study (RI/FS) for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Oak Ridge Reservation Waste Disposal, Oak Ridge, Tennessee; and, 2) the proposed plan (PP). Under this approach, the Federal Facility Agreement (FFA) parties must agree on caveats and expectations. The caveats and expectations would be documented in an Informal Dispute Resolution Agreement (IDRA), and in the RI/FS and PP, which would allow TDEC and EPA to approve the caveated RI/FS and PP prior to completion of assessment activities.

Although the caveats are not yet finalized, the approvals would be based on two principles.

1. Additional information shall be obtained to confirm certain assumptions made in the RI/FS. These assumptions will be tested by parallel data gathering and analysis efforts concurrent with other CERCLA remedy selection activities, including formal and informal public comment.
2. The RI/FS and PP will be "caveated" to recognize assumptions that additional actions will either substantiate or call in to question; DOE ORR will not submit a D1 ROD until the FFA parties agree that the "caveats" have been validated and expectations have been met.

DOE ORR must resolve outstanding disputed issues on the RI/FS and the *Focused Feasibility Study for Water Management for the Disposal of CERCLA Waste on the Oak Ridge Reservation, Oak Ridge, Tennessee*. After completing the assessment activities, if the activities validate the preferred alternative

identified in the PP, DOE ORR will modify the RI/FS to include these activities prior to submission of the DI ROD. If the assessment activities do not support retaining Site 7c as the preferred alternative, the FFA Parties will return to the RI/FS process.

Actions to be completed before submittal of the DI ROD include the following:

- Development of Waste Acceptance Criteria (WAC) and the approach to assuring compliance with the WAC.
- Implementation of the DOE Order 435.1 process, as if EMDF was not being developed pursuant to CERCLA, including acquisition of a preliminary Disposal Authorization Statement prior to signing the ROD.
- DOE-funded TDEC independent modeling of Site 7c to support WAC development.
- Characterization of Site 7c to confirm the site is suitable for construction with no waste disposal cell being built over an underdrain at any time with allowance for temporary underdrains under the supporting structures only.
- Community outreach efforts will be conducted following approval of the RI/FS and preceding submission of the Proposed Plan to the public. Completion of the assessment activities will be followed by additional community outreach, including acceptance of public comment.

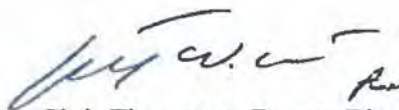
While this letter expresses support for a conceptual approach, it does not indicate approval of the D4 or D5 RI/FS without further review and resolution of all issues in dispute, or the Proposed Plan.

If you have any questions regarding this matter, please contact Chris Thompson at (865) 220-6598 or Richard Campbell at (404) 562-8825.

Sincerely,



Richard Campbell, P.E., Chief
Restoration & DOE Coordination Section
Restoration & Site Evaluation Branch
Superfund Division
Environmental Protection Agency



Chris Thompson, Deputy Director
Division of Remediation,
Oak Ridge Office
Tennessee Department of
Environment and Conservation

cc: Mr. Andy Binford, TDEC
Mr. John Michael Japp, DOE ORR
Ms. Laura Wilkerson, DOE ORR

Informal Dispute Resolution Agreement

This Informal Dispute Resolution Agreement resolves select issues associated with the informal dispute regarding the *D4 Remedial Investigation/Feasibility Study (RI/FS) for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Waste Disposal for Oak Ridge Reservation Waste Disposal Oak Ridge, Tennessee (DOE/OR/01-2535&D4)*.

Background:

The process of developing a RI/FS for CERCLA waste disposal has been underway since 2010. Many issues have been resolved to the satisfaction of all the Federal Facility Agreement (FFA) parties over the years; however, several issues remain unresolved. At the initiation of the U.S. Department of Energy (DOE), a subset of these issues were elevated for discussion amongst management representatives from the U.S. Environmental Protection Agency (EPA), Tennessee Department of Environment and Conservation (TDEC), and DOE with the objective of facilitating finalization of the RI/FS document.

Issues Discussed:

DOE, EPA, and TDEC discussions focused on the D4 RI/FS regarding the following:

- Suitability of Bear Creek Valley sites for onsite waste disposal.
- Sufficiency of characterization to provide evidence to support selecting a site.
- Modeling used to develop preliminary Waste Acceptance Criteria (WAC).

Resolution:

This Agreement is based on two (2) principles for Site 7c:

1. Additional information shall be obtained to confirm certain assumptions made in the RI/FS, based on available data. These assumptions will be tested by parallel data gathering and analysis efforts concurrent with other CERCLA remedy selection activities, including formal and informal public comment activities.
2. The RI/FS and subsequent Proposed Plan (PP) will be "caveated" to recognize assumptions that additional factual information will either substantiate or call in to question; the parties will not move forward with signature of a Record of Decision (ROD) before they all agree that the assumptions have been validated.

Actions to be completed before final approval of the ROD are:

- Development of waste acceptance criteria and waste acceptance implementation protocols.
- Implementation of the DOE Order 435.1 process as if the Environmental Management Disposal Facility was not being developed pursuant to CERCLA, including acquisition of a preliminary Disposal Authorization Statement prior to signing the ROD.
- TDEC independent modeling of the Central Bear Creek Valley site (i.e., Site 7c) to support review of WAC. DOE shall fund this activity upon reaching agreement with TDEC on a scope of work, cost, and schedule for it.

Informal Dispute Resolution Agreement

- Characterization of Site 7c to confirm that the landfill can be constructed and operated without the need for a permanent underdrain under the waste¹. The assumption to be carried through the ROD is that Site 7c can be constructed without a permanent underdrain unless new information is gathered to dispute this assumption.
- If site assessment activities confirm the suitability of Site 7c upon completion of the site characterization and independent modelling activities, DOE, EPA, and TDEC shall collaborate on documentation of these activities compliant with regulatory requirements and the Oak Ridge Reservation FFA, including requirements associated with maintenance of an Administrative Record.
- Community outreach efforts will include a status presentation to the public following approval of the RI/FS and preceding submission of the PP to the public. Completion of the assessment activities will be followed by additional community outreach, including the acceptance of public comment.

Documents:

The parties agree that, in order to gain approval for the below documents, the following will be accounted for:

D5 RI/FS

- Throughout the document, modeling information and all references to modeling will be removed. A range of potential waste acceptance criteria values, independent of site location, will be included instead to demonstrate the feasibility of operating an onsite disposal cell.
- The D5 RI/FS will contain statements recognizing that: If site characterization indicates that there is an upward hydraulic head gradient underneath the proposed waste placement footprint, no construction (including placement of the geologic buffer) will take place at or beneath the anticipated post-closure groundwater level, considering both the existing groundwater conditions and post-closure elimination of local recharge within the waste placement footprint. This will ensure that the proposed site will not rely on a permanent underdrain, consistent with TDEC's and EPA's preference that no permanent underdrain underlay the facility footprint. If the resulting landfill design has insufficient volume to meet projected needs, then other disposal alternatives will be considered.
- The D5 RI/FS will contain language specifying that final waste acceptance criteria and an approach for implementation will be developed prior to signature of the ROD. RI/FS document conclusions regarding protectiveness will specify that protectiveness determinations are premised upon the development of protective WAC. If final WAC do not allow for a sufficient quantity of projected waste volume to be disposed onsite, then other disposal alternatives will be considered.
- Resolution of all other comments on the D4 RI/FS will occur.

¹ A permanent underdrain is defined, for purposes of this remedial activity, as a drainage feature beneath the waste that continues to discharge water after final capping and closure of the facility.

Informal Dispute Resolution Agreement

Proposed Plan

- The PP will identify Site 7c as the proposed site and carry forward, all caveat language captured in the RI/FS.

Record of Decision

- Waste minimization/onsite capacity preservation will be addressed in the final ROD.



John A. Mullis II
Acting Manager
Oak Ridge Office of Environmental Management

12/21/2016

Date

Randall Chaffins
Deputy Director
U.S. Environmental Protection Agency, Region 4

Date

Shari Meghreblian
Deputy Commissioner
Tennessee Department of Environment and Conservation

Date