

ATTACHMENT B From J. Crane:



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

August 15, 2013

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Michael Japp
Federal Facility Agreement Manager
Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

SUBJ: Remedial Investigation/Feasibility Study for
DOE ORR CERCLA Waste Disposal
(DOE/OR/01-2535&D2; July 2013)
DOE Oak Ridge Reservation
Oak Ridge, Tennessee

Dear Mr. Japp:

The Environmental Protection Agency (EPA) completed its review of the subject document (received by EPA on June 24, 2013) in accordance with Section XXLG of the Federal Facility Agreement (FFA). As you know, the Department of Energy Oak Ridge Reservation (DOE ORR) and the regulatory agencies did not engage in a comment resolution meeting after EPA's issuance of its comments on the D1 document on January 25, 2013, and prior to DOE ORR submission of the subject D2 document. Because of the lack of such an opportunity for a meeting, EPA requested by letter of July 2, 2013, additional time to review the D2 document and discuss resolution of the comments issued by EPA in an effort to reach a consensus on the finalization of the D2 document. At this time, however, this document has been placed into an informal dispute because of comments still left unresolved, and EPA is not able to approve the D2 document as submitted.

Accordingly, pursuant to FFA Section XXI.H, the EPA initiates informal dispute over those comments where DOE ORR's response indicated that it disagreed with the EPA comment and/or where the document revisions in response to the comments were insufficient. Additionally, EPA has found an instance in which the document was revised that does not appear to have been requested by any comments from EPA or the State. These new revisions that do not arise from regulator comments are problematic because it eliminates a step in the review process whereby the Parties to the FFA are able to collaborate and engage in an informal comment resolution regarding the change prior to issuance of a D2. EPA is not proposing to consider the entire

document a new D1, but to facilitate EPA's review of any revisions not in response to comments, EPA requests that DOE ORR describe any revisions to its formal submission of a D1 document it made for reasons other than a response to EPA or State comments.


Unfortunately, the number of issues requiring informal dispute resolution includes many comment responses and document revisions that may have been resolved if the Project Team had sufficient time to participate in a comment resolution meeting. The following lists the matters expected to be discussed and resolved during informal dispute, including EPA Comments that DOE ORR appears to have disagreed with and did not revise the document as requested in the comments:

- General Comments 1, 2, 3, 4, 5, 6, 8, 9, 11, 15, 16, 17, 18, 19
- Specific Comments 2, 10, 14, 19, 21, 28, 30, 36, 51, 52, 59, 61, 63, 64, 65
- All unsolicited D1 document revisions

Additionally, please find enclosed a summary of significant concerns raised in our review of the subject D2 document. These concerns are a subset the issues requiring resolution as listed above.

The EPA looks forward to working with DOE through the informal dispute process to resolve issues to reach a consensus on an approvable D2 document. If you have any questions regarding this matter, please call me at (404) 562-8546.

Sincerely,



Jeffrey L. Crane
FFA Project Manager
Federal Facilities Branch
Superfund Division

cc: Curt Myers, TDEC
Jason Darby, DOE ORR
SSAB

**Summary of Significant Informal Dispute Issues
On
RI/FS for CERCLA ORR Waste Disposal
(DOE/OR/01-2535&D2; June 2013)**

The following is a summary of the key issues that were not adequately addressed in the comment responses and the revised D2 document. Because a comment resolution meeting was not held, the number of issues subject to informal dispute is larger than potentially necessary. A summary of EPA's position is not included on all disputed matters referred to in the list provided in the cover letter forwarding this summary.

1. General Comment 1

If the Appendix B study included waste not relevant to this decision then it should be revised to be relevant to the scope of the waste expected to be managed under this decision. To the degree Appendix B is relevant to this decision and significant cost savings could be realized through treatment, the remedy evaluation of treatment should not be a process option. VR treatment should be evaluated in the detailed analysis of the FS for potential inclusion in the remedy, deployment as a contingency of the remedy, or not selected. With the years of experience ORR has in building demolition, uncertainty in waste forecasts should be greatly improved. EPA recognizes that project sequencing may reasonably be considered a process option. However, the ROD should emphasize the critical need to manage this process option via strategic cleanup planning and the resultant milestones included in Appendix E and J.

While it is understood that the VR technologies would not all be implemented at the proposed Environmental Management Disposal Facility (EMDF), the potential for cost savings does effect one of the nine CERCLA evaluation criteria (cost) and therefore should be considered one component of the applicable alternatives. Revise the D2 document to include the VR treatment as part of the remedial alternatives and remedial alternatives evaluation.

2. General Comment 2

DOE's letter of October 22, 2012, provides examples of how CERCLA-derived waste is documented for disposal on the ORR Y-12 Landfills. The RODs generating this CERCLA waste did not include the ORR Y-12 Landfills as part of the remedy and ARARS were not defined for this onsite component of the remedy. Additionally, post-ROD documentation has generally not included the ORR Y-12 Landfills (e.g., Five Year Review). This comment suggested exploring an opportunity under this ROD to include the ORR Y-12 Landfills that receive CERCLA-derived waste as part of the scope and role of this operable unit. Given the findings from the October 22, 2012 letter and the response to this comment, it appears CERCLA-derived waste that is sent to the ORR Y-12 Landfills constitutes an offsite activity that should be evaluated for acceptability under

40 CFR 300.440 (the "Off Site Rule"). DOE, as the lead agency, should determine which of the following three options should be pursued to appropriately document disposition of DOE ORR CERCLA-derived waste sent to the ORR Y-12 Landfills:

- Incorporate into the scope of the EMDF ROD;
- Modify all relevant RODs and Action Memoranda; or,
- Obtain an Acceptability Determination pursuant to the Off Site Rule.

3. General Comment 5

Although a discussion of "lessons learned" has been included, the discussion does not include the many challenges posed by waste water management. In fact, the D2 RI/FS removed the waste water treatment plant without any request to do so in the comments submitted. Unsolicited revisions in a D2 document raises questions as to whether a valid D2 document has been submitted and a full accounting of all such revisions must be included in the informal dispute resolution.

4. General Comment 9

The RAOs presented in the D2 RI/FS lack detail. Section 4.1.2.1 (Development and Screening of Alternatives) of the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA (EPA/540/G-89/004), dated October 1988 (RI/FS Guidance) states that RAOs should specify the contaminants and media of interest, exposure pathways, and preliminary remediation goals (PRGs) that permit a range of treatment and containment alternatives to be developed. PRGs should be based on chemical-specific ARARs where they are identified and risk-based PRGs for chemicals without ARARs or where cumulative affects warrant a more stringent risk-based determination in lieu of the ARAR.

5. General Comment 15

EPA understands that modeling to evaluate long term performance is a part of the "To Be Considered (TBC)" Requirement of DOE 435.1. All requirements (applicable, relevant and appropriate, to be considered) identified are part of the response action evaluation, remedy selection and remedy implementation process. This modeling that is performed to meet this requirement should not be deferred to other independent evaluations outside of the CERCLA process.

6. General Comment 19, Specific Comments 21, 28, 30 and 59

The comments raised questions regarding specific details of the water treatment plant portion of the preferred alternative (e.g., costs, construction timing) to manage waste

waters generated during landfill operations and closure. The response to these comments was to remove the waste water treatment plant from the RI/FS.”

ATTACHMENT A from J. Crane:



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 26 2000

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER No. 9200.1-33P

MEMORANDUM

SUBJECT: Headquarters Consultation for Radioactively Contaminated Sites

FROM: Timothy Fields, Jr. *Timothy Fields, Jr.*
Assistant Administrator

TO: Addressees

PURPOSE

The purpose of this memorandum is to request that EPA Regional Offices consult with Headquarters on Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) response decisions involving (1) onsite management (e.g., capping of material in place, building disposal cells) of radioactive materials, or (2) when there is a potential national precedent setting issue related to a radioactive substance, pollutant or contaminant. This consultation policy for CERCLA site decisions that are addressing radioactive constituents is applicable to Fund and potentially responsible party (PRP)-lead sites for which a CERCLA remedial or non-time-critical (NTC) removal action is planned. This consultation service is also available (although not included in this request by Headquarters) for decisionmakers at other Federal agency-lead and State-lead CERCLA radioactively contaminated sites, or radioactively contaminated sites where Resource Conservation and Recovery Act (RCRA) Corrective Action is being conducted.

BACKGROUND

EPA has instituted a number of management review procedures to ensure national remedy selection policies and procedures are being implemented in a reasonable and appropriately consistent manner at CERCLA sites. EPA issued a summary of the various consultation procedures currently in place in the "Consolidated Guide to Consultation Procedures for Superfund Response Decision" (OSWER 9200.1-18FS, May 1997). In addition, the current process for Headquarters review and consultation for CERCLA response decisions involves a review of proposed plans at Fund-lead and PRP-lead sites in accordance with the May 1996 OERR directive "Focus Areas for Headquarters OERR Support for Regional Decision

Making” (OSWER Directive 9200.1-17, May 22, 1996). These efforts are supplemented by various consultation requirements at the staff or management level and include: the National Remedy Review Board, removal program concurrences, lead sites workgroup and technical review workgroup review, and the Dioxin Review Workgroup. In addition, EPA has issued guidance that requests consultation for certain NTC removal actions; “Use of NTC Removal Authority in Superfund Response Actions” (February 14, 2000).

Previously at some CERCLA sites, the lack of a single comprehensive set of regulatory cleanup levels for radiation, together with the confusion as to the status of other Federal Agency regulations and guidance for establishing cleanup levels at CERCLA sites, has caused uncertainty as to the cleanup levels deemed protective under CERCLA. In response, EPA issued guidance entitled “Establishment of Cleanup Levels for CERCLA Sites with Radioactive Contamination” (OSWER No. 9200.4-18, August 22, 1997). This 1997 guidance provided clarification for establishing protective cleanup levels for radioactive contamination at CERCLA sites. The 1997 guidance reiterated that cleanups of radionuclides are governed by the risk range for all carcinogens established in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) when Applicable or Relevant and Appropriate Requirements (ARARs) are not available or are not sufficiently protective. Cleanup should generally achieve a cumulative risk within the 10^{-4} to 10^{-6} carcinogenic risk range based on the reasonable maximum exposure. The cleanup levels should consider exposures from all potential pathways, and through all relevant media (e.g., soil, ground water, surface water, sediment, air, structures, etc.). The 1997 guidance also provides a listing of radiation standards that are likely to be used as ARARs to establish cleanup levels or the conduct remedial action.

Since issuance of the 1997 guidance, EPA has provided additional guidance for addressing radioactively contaminated sites that is consistent with our guidance for addressing chemically contaminated sites, except to account for the technical difference between radionuclides and chemicals (e.g., health risks posed by radon and gamma radiation, significant additional costs for ensuring the long-term care and monitoring of onsite managed radioactively contaminated material). This effort is intended to facilitate compliance with the NCP at radioactively contaminated sites while incorporating the improvements to the Superfund program that have been implemented through Administrative reforms. We believe that these guidance documents provide a strong foundation for remedy selection at radioactively contaminated sites in a manner consistent with the NCP. Today’s memorandum is the latest guidance in this effort. All guidance documents developed as part of this effort may be accessed on the Internet at <http://www.epa.gov/superfund/resources/radiation/index.htm>.

OBJECTIVE

Today’s memorandum adds certain response actions for radioactively contaminated sites to the list of sites that we believe warrant consultation at the Headquarters level to better ensure appropriate national consistency. While we believe that the guidance documents issued to date, together with the NCP, provide a sufficient framework for appropriately consistent, reasonable

decision making under CERCLA, we believe that consultation on a subset of CERCLA sites addressing radioactive contaminants is warranted due to (1) the possibility of uncertainty over cleanup levels, (2) technical differences between radionuclides and chemicals, and (3) heightened stakeholder interest at many of these sites.

IMPLEMENTATION

Remedial and removal actions covered by consultation request

Consultation is requested at Fund-lead or PRP-lead CERCLA sites that involve onsite management (e.g., capping of material in place, building disposal cells) of radioactively contaminated material. It should be noted that although this consultation request applies specifically to onsite management of radioactively contaminated material, such response actions are generally not nationally precedent setting. Further, it is not the intent of this memo to discourage these types of response actions where appropriate. However, sites where these actions have been conducted have generally received much greater stakeholder interest, even in comparison with other radioactively contaminated sites. As a result, I am requesting this consultation to provide added sensitivity to stakeholder concerns at the national level.

This consultation request applies to both remedial and NTC removal actions. In addition to response decisions involving onsite management of radioactively contaminated material, Regions are also urged to consult with Headquarters when considering response actions that may constitute a national precedence for radiologically contaminated CERCLA sites.

Federal Facility, State Lead, and RCRA Corrective Action

This consultation service is also available for other Federal agency-lead and State-lead radioactively contaminated CERCLA sites, whether or not those sites are on the National Priorities List (NPL). In addition, because RCRA corrective actions are conducted in a manner consistent with CERCLA response actions¹, this consultation service is also available for those radioactively contaminated sites where RCRA corrective action is being conducted.

Consultation process

Consultations with Headquarters to meet this memo's request shall take place with OERR staff contact, Stuart Walker at (703) 603-8748, or if Stuart is unavailable, Robin M. Anderson at (703) 603-8747. Regions are asked to initiate consultation with Headquarters early in the

¹For further information regarding the consistency between CERCLA response actions and RCRA corrective actions, please see memorandum from Office of Enforcement and Compliance Assurance Assistant Administrator Steven A. Herman and Office of Solid Waste and Emergency Response Assistant Administrator Elliott P. Laws to the Regions entitled: "Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities" (September 24, 1996).