

**Dispute Resolution Agreement**  
**for**  
**Formal Dispute Concerning**  
**Oak Ridge Reservation Federal Facility Agreement**  
**Sitewide ROD**  
**Phase II Treatability Study Work Plan and Construction Start Milestones**

THIS AGREEMENT resolves the formal dispute among the Department of Energy's Oak Ridge Office (DOE), the United States Environmental Protection Agency Region 4 (EPA), and the Tennessee Department of Environment and Conservation (TDEC), collectively the Parties. The dispute, elevated to formal dispute by DOE on February 22, 2011, after the Parties were not able to resolve the dispute through informal dispute resolution, concerned whether DOE had failed to perform two requirements of the Federal Facility Agreement (FFA) regarding the performance of two milestones, making DOE potentially subject to stipulated penalties.

**Summary of the Phase II Treatability Study Disputes**

On November 18, 2010, EPA and TDEC notified DOE of their determination that DOE had failed to perform two requirements of the FFA concerning the Sitewide ROD Treatability Study Phase II project, which made DOE potentially subject to stipulated penalties. The two requirements were, specifically, the submittal of a Phase II (Ph II) Treatability Study (TS) Work Plan (WP), and (2) the initiation of a Construction Start (CS) of the same project. Because the process of the two matters is different, they will be discussed separately.

**Work Plan**

On November 10, 2009, DOE requested an extension of the WP milestone. On November 24, 2009, EPA responded to the WP extension request, stating that EPA was not prepared to grant the request, and informed DOE of the information that it would require to approve the request. On December 1, 2009, TDEC denied the same WP extension request. The milestone of December 7, 2009, was not met. On December 8, 2009, EPA and TDEC notified DOE that it had failed to meet a term or condition of the FFA which relates to an operable unit and was subject to stipulated penalties. On the same day, DOE provided additional information in draft form relevant to the justification for the extension, and attempted to invoke informal dispute by sharing a draft letter, on the denial of the extension request. On December 11, 2009, DOE provided the same information as was provided on December 8, 2009, in executed form and untimely attempted to initiate informal dispute. The draft submittal on December 8, 2009, was within the FFA 14-day response window. On November 18, 2010, EPA and TDEC assessed a penalty in the amount of \$3,750 for this failure, which took into account DOE's formal provision of information on December 11, 2009, upon which EPA and TDEC could have approved the milestone.

## Construction Start

As part of the Work Plan extension request on November 10, 2009, DOE noted that milestone modifications for the CS milestone would be requested once the Core Team had finished review of the Ph II TS WP. On December 11, 2009, DOE indicated that the CS milestone would be delayed, and requested that the parties engage in informal dispute to identify a milestone revision acceptable to all parties for the predecessor Ph II TS WP in the engineering schedule. During the six months preceding the due date for the CS milestone, the Parties agreed to the need for additional data to further refine the project schedule. In a July 22, 2010 letter, DOE requested that the CS milestone be removed and reset once the predecessor Ph II TS WP in the engineering schedule had been completed and submitted. DOE committed to TDEC and EPA that it would set a new CS milestone no later than the date of its new proposed WP milestone of March 14, 2011. DOE contends that this submittal met the requirements of an extension request under Section XXX of the FFA. TDEC and EPA disagree and contend this submittal was a modification under Section XLI of the FFA. On July 29, 2010, TDEC rejected the milestone modifications submitted by DOE on July 22, 2010, and DOE invoked informal dispute for the rejected requests on the same day. EPA responded on July 30, 2010, noting that the new milestone proposals would be addressed as part of the dispute resolution process. As of August 6, 2010, conversations had occurred among the FFA project managers regarding the Construction Start milestone. On the same date, DOE missed the CS milestone. The FFA Project Managers recognized that ETTP Groundwater project Core Team meetings were being held to identify data quality objectives (DQO) for remaining characterization work, upon which project schedules could be developed for additional timetable or deadline updates. The parties engaged in a good faith effort to develop the necessary information for the project to create an agreement for establishment of milestone updates. On November 18, 2010, EPA and TDEC notified DOE that it had failed to meet a term or condition of the FFA which relates to an operable unit and assessed a penalty in the amount of \$145,000 for the failure to meet this milestone. On November 19, 2010, DOE initiated informal dispute on the question of whether the failure, in fact, occurred.

## Agreement

In order to resolve the dispute, the Parties acknowledge and agree:

- While neither of the milestones for the Ph II TS WP and CS was met, DOE attempted to modify/extend both milestones. TDEC and EPA assert that FFA Section XXX, Extension Request procedures were not properly adhered to by DOE in its attempts at modification/extension of the milestones at issue. Specifically, the dispute of the WP extension request denial was late and DOE did not submit an extension request for the CS, but instead submitted a modification proposal. DOE asserts that a good faith effort at milestone modification/extension was made. The parties agree stipulated penalties assessed by EPA and TDEC are final after the dispute resolution process regarding whether in fact a failure did or did not occur has been resolved.
- New milestones for both projects were proposed by DOE on January 28, 2011, and agreed upon by TDEC and EPA on January 31 and February 3, 2011, respectively.

- Should DOE submit an extension request consistent with the requirements of the FFA, and which at the conclusion of any subsequent dispute resolution process it is ultimately agreed that DOE had provided a timely and complete extension request for which good cause existed, the parties agree that no “failure” pursuant to the FFA shall be deemed to have occurred.
- The parties agree that electronic notification is sufficient for the invocation of informal dispute.

### Work Plan

- The Parties agree they must share a common understanding of characteristics and requirements for an extension request under FFA Section XXX (Extensions). These characteristics and requirements are:
  - The FFA contains specifically-defined information that must be submitted to obtain such an extension.
  - As with other submissions under the FFA of reports and primary documents, this information must be formally provided to EPA and TDEC before the reports should be considered as having been submitted. Provision of a courtesy draft to any Party does not count as or obviate the need for formal submission.
  - If submitted as provided in the FFA, an extension request provides significant protection against stipulated penalties. If not submitted as provided in the FFA, those protections do not apply.
  - In order to be afforded the tolling of penalties, the extension request information provided for in Section XXX of the FFA must be timely and based on good faith.
  - An invocation of dispute over a denied extension request ensures protection from stipulated penalties only to the extent provided in FFA Section XXX (Extensions) and XLIV (Stipulated Penalties) (i.e., DOE prevails in the dispute, that is, the timely extension request was found to demonstrate good cause).
  - The basis for denial of a request will be in accordance with FFA Section XXX.
- DOE did not timely dispute the denial of an extension request for the WP.
- DOE did not meet the December 7, 2009, milestone, and, as a result, failed to meet a term or condition of the FFA, per FFA Section XLIV.
- DOE shall pay the jointly assessed \$3,750 stipulated penalty consistent with FFA Section XLIV.D (\$1,875 to EPA) and XLIV.E (\$1,875 to TDEC).

### Construction Start

- DOE did not propose a new timetable or deadline for the CS milestone, but did propose to remove the CS milestone and to provide a new milestone on or before the date of the approval of the Work Plan (which it proposed at that time to be March 14, 2011). As such, DOE believed at the time that it provided a schedule consistent with the requirements of FFA Section XXX (Extensions).

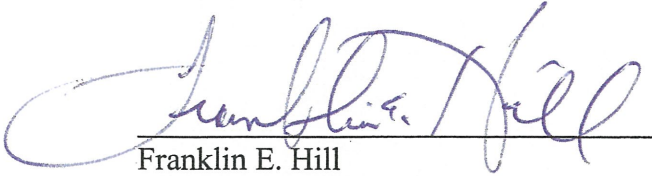
- DOE did not meet the August 6, 2010, milestone, and, as a result, failed to meet a term or condition of the FFA, per FFA Section XLIV. DOE had invoked informal dispute related to the August 6, 2010 milestone on July 29, 2010, which was acknowledged by EPA in their letter of July 30, 2010.
- DOE shall pay the jointly assessed \$145,000 stipulated penalty consistent with FFA Section XLIV.D (\$72,500 to EPA) and XLIV.E (\$72,500 to TDEC), which resolves all penalties in this matter.

### Workshop

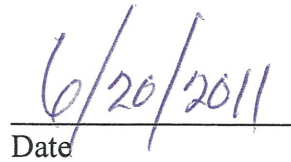
- The EPA and TDEC will conduct a workshop for the FFA Project Managers, all Core Teams, and Counsel of all three agencies on the following regulatory interpretations:
  - the requirements for a Section XXX Extension Request, including timeliness, good cause (and how Core Team project management should inform the extension of milestones);
  - where protections against stipulated penalties apply and/or do not apply;
  - where invocation of a dispute might be associated with protections against stipulated penalties, and where it would not;
  - the distinction between a Section XXX Extension Request and a Section XLI Modification; and
  - the existing FFA Appendix I Operating Instructions to ensure these instructions are consistent with the FFA.
- The Parties must share a common understanding of the difference between an extension request under FFA Section XXX (Extensions) and a modification (to a milestone, timetable, deadline or schedule) under FFA Section XLI (Modification of Agreement). Prior to the Workshop, the FFA Managers with assistance of Counsel shall produce a revised OI-1 for extension requests with recognition that modifications do not include procedural review times or toll penalty assessment.

The Parties understand and agree that this agreement resolves only these particular matters under the dispute formally initiated by DOE on February 22, 2011, and further agree that to the extent that any part of this Agreement is not fulfilled, that will constitute a failure of a term or condition of the FFA under FFA Section XXVI.K, subjecting DOE to additional stipulated penalties.

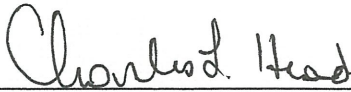
AGREED, this 20th day of June, 2011.



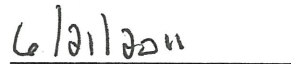
Franklin E. Hill  
Director, Superfund Division  
U.S. Environmental Protection Agency, Region 4



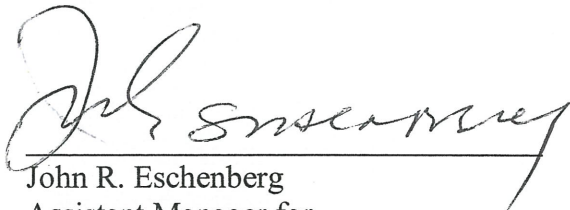
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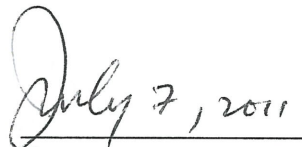
Charles L. Head  
Senior Director  
Land Programs  
Bureau of Environment  
TN Department of Environment & Conservation



Date



John R. Eschenberg  
Assistant Manager for  
Environmental Management  
Oak Ridge Office  
U.S. Department of Energy



Date