

Dispute Resolution Agreement
for
Formal Dispute Concerning
Oak Ridge Reservation Federal Facility Agreement
Excess Materials Removal
Decontamination and Decommissioning Project K-25 and K-27

THIS AGREEMENT resolves the formal dispute between the Department of Energy's (DOE) Oak Ridge Office, the United States Environmental Protection Agency Region 4 (EPA), and the Tennessee Department of Environment and Conservation (TDEC), collectively the Parties. The dispute, initiated by DOE on April 22, 2010, concerned whether DOE had failed to perform a requirement of the Federal Facility Agreement (FFA) regarding the Excess Materials Removal (EMR), making it subject to stipulated penalties.

Summary of EMR Dispute

On January 26, 2010, EPA and TDEC notified DOE of their determination that DOE had failed to perform a requirement of the FFA concerning the East Tennessee Technology Park, K-25 and K-27 Excess Materials Removal (EMR) project, that made it subject to stipulated penalties. On February 3, 2010, DOE initiated informal dispute in this matter. A meeting was held in Oak Ridge on March 11, 2010, to attempt to informally resolve the question of whether the failure occurred, where DOE provided materials and made a presentation of its views. EPA and TDEC reviewed the materials, held internal conference calls among the program staff and first line supervisors, and concluded that DOE had not demonstrated that it had not failed to perform a requirement under the FFA. However, DOE's presentation did propose that the failure was not as serious as initially indicated.

On March 25, 2010, TDEC notified DOE that the informal dispute resolution process was terminated. On April 22, 2010, EPA and TDEC received DOE's formal statement of dispute. Meetings of the Dispute Resolution Committee (DRC) were held on several occasions in May, June and July 2010, in an effort to resolve the dispute. On July 30, 2010, EPA and TDEC sent a draft dispute resolution agreement to DOE and proposed that all parties sign the agreement to document unanimous resolution of the dispute by the DRC. On August 5, 2010, the formal dispute was elevated to the Senior Executive Committee (SEC) when the DRC did not come to unanimous agreement.

Agency Positions

- It is TDEC's and EPA's position that the definition of the scope of removal and disposal of "all" excess materials included all excess materials except for those groups of materials excepted prior to the submittal of or specifically excepted in the Completion Letter dated November 30, 2005, as submitted by DOE and approved by EPA and TDEC. The excepted materials were described by two additional milestones established for Y-12/Centrifuge Materials and Nickel/Classified Chemicals. Additionally, there was an exception noted for "Miscellaneous Items" (heavy items that presented floor loading issues and items that contained transferrable radioactive properties), or "Mixed Items"

(small items that were to be consolidated, such as fluorescent lights and oils). So, TDEC and EPA's view is that removal and disposal of all excess materials located inside or outside of K-25 and K-27, other than the stated exceptions above, would have successfully completed the milestone work.

- It is DOE's position that the definition of the scope of removal and disposal of "all" excess materials was not clearly defined and was based on the volumetric quantities in the Waste Handling Plan and Waste Characterization Plan, and that removal of that specific volume (approximately 19,557 cubic yards of material) would have successfully completed the milestone work.

Agreement

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

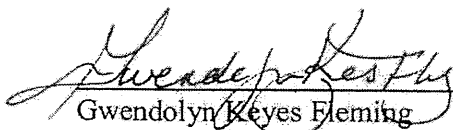
- While not agreeing to DOE's position on the definition of "all," EPA and TDEC acknowledge that, during the lengthy conduct of the EMR project, DOE came to understand that removal of a certain volumetric amount of EMR waste would satisfy the FFA milestone.
- Notwithstanding the difference in positions, all Parties to the dispute agree that a failure did occur in terms of completion of the set of milestones related to the EMR project. The differences among the Parties relate to the extent of the failure for completing work required in the EMR project.
- DOE did not, in fact, complete the removal and disposal of all excess materials, but submitted deliverables that asserted the completion of such work, and, therefore, failed to comply with a term or condition of the FFA relating to the Zone 2 Operable Unit. The milestones that DOE missed are:
 - Milestone 1 – EMR Completion Letter, November 30, 2005
 - Milestone 2 – Centrifuge and Y-12 Completion Letter, March 27, 2008
- DOE removed 9,728 cubic yards of material associated with Milestone 1. Approximately 1,088 cubic yards remained to be removed after Milestone 1.
- DOE removed 9,260 cubic yards of material associated with Milestone 2. Approximately 658 cubic yards remained to be removed after Milestone 2.
- DOE has completed the work associated with the Nickel and Classified Chemicals.
- For all future milestones in the FFA that document plans for phased or final completions of response actions (e.g., Waste Handling Plans, Remedial Action Work Plans), DOE will perform response action scoping. This scoping will include a field walk-through by DOE to assist in providing a clear definition of the response action requirements to be documented in the work plan. EPA and TDEC may accompany DOE on its walk-

through. DOE will provide 15-day notice to EPA and TDEC prior to conducting the walk-through and a six-month planning schedule of walk-throughs to be updated monthly for the FFA PM meetings.

- Prior to the submittal of reports for all future milestones in the FFA that document phased or final completion of response actions (e.g., PCCR, Remedial Action Report (RAR) or a Removal Action Report (RmAR), DOE will conduct a walk-through site inspection. EPA and TDEC may accompany DOE on its inspection. DOE will provide 15-day notice to EPA and TDEC prior to conducting the inspection and a six-month planning schedule of inspections to be updated monthly for the FFA PM meetings. The inspection does not demonstrate compliance.
- For the next two years all PCCRs, RARs and RmARs will be signed by the DOE FFA Manager and the DOE Assistant Site Manager for Environmental Management to confirm the reports are complete and accurate and that milestone work was completed as stated in the PCCR, RAR, or RmAR. After two years, the Parties will determine whether only the DOE FFA Manager will be required to sign the PCCR, RAR or RmAR.

The Parties understand and agree that this agreement resolves only these particular matters under the dispute initiated by DOE on April 22, 2010.

AGREED, this 19th day of October, 2010.



Gwendolyn Keyes Fleming
Regional Administrator
U.S. Environmental Protection Agency, Region 4

10/19/10

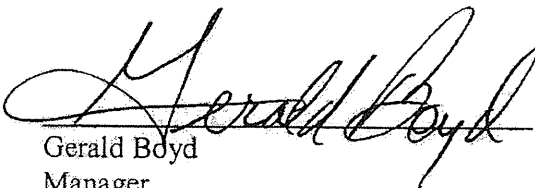
Date



Paul Sloan
Deputy Commissioner
TN Department of Environment & Conservation

10/19/10

Date



Gerald Boyd
Manager
Oak Ridge Office
U.S. Department of Energy

10/19/10

Date