



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Remediation - Oak Ridge  
761 Emory Valley Road  
Oak Ridge, Tennessee 37830

August 12, 2019

Mr. John Michael Japp  
DOE FFA Project Manager  
Oak Ridge Office of Environmental Management  
U.S. Department of Energy  
Post Office Box 2001  
Oak Ridge, Tennessee 37831-2001

**Re: DOE Federal Facility Agreement (FFA) Milestone Extension Request for the Environmental Management Disposal Facility (EMDF) Record of Decision (ROD)**

Dear Mr. Japp

The Tennessee Department of Environment and Conservation (TDEC) and the U.S. Environmental Protection Agency (EPA) received the referenced milestone extension request for the proposed Environmental Management Disposal Facility (EMDF) Record of Decision (ROD) on July 31, 2019. The U.S. Department of Energy (DOE) letter requests the milestone extension from August 2, 2019 to August 30, 2019 to develop language to be inserted into the ROD.

In accordance with the Federal Facility Agreement (FFA) for the Oak Ridge Reservation, TDEC approves DOE's milestone extension request. As agreed during a meeting on July 26, 2019, TDEC is working in good faith with DOE develop a path forward that protects human health and the environment, as required by CERCLA. In that light, TDEC approves the extension to allow attorneys for the FFA parties to attempt to draft legal language for inclusion in DOE's draft (D1) ROD. The need to develop language for the D1 ROD is explained as follows.

- The EMDF Proposed Plan<sup>1</sup> says, "A TSCA specific waiver for 40 CFR 761.75(b)(3) and (b)(5) would be invoked as provided in 40 CFR 761.75(c)(4)." The TSCA [Toxic Substances Control Act] rule requires that 1) the bottom of a toxic waste landfill liner system shall be at least fifty feet from the historical high water table;

---

<sup>1</sup> *Proposed Plan for the Disposal of Oak Ridge Reservation Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Waste, Oak Ridge, Tennessee (DOE/OR/01-2695&D2/R1).*

2) groundwater recharge areas shall be avoided; and 3) there shall be no hydraulic connection between the site and surface water.

- Based on experience with the existing landfill<sup>2</sup>, review of groundwater levels measured at the proposed landfill site<sup>3</sup>, and DOE presentations about models projecting future groundwater levels<sup>4</sup>, uncertainties exist regarding the depth at which groundwater would lie below the bottom of the proposed future landfill, particularly during intense rain events and prolonged rainy periods.

Therefore, in order to protect human health and the environment and justify waiving the TSCA legal requirement in accordance with CERCLA, the ROD must document how DOE will demonstrate that it can maintain a protective, unsaturated geologic buffer between the bottom of the liner system and groundwater. Such documentation would partially address two of the State of Tennessee's seven key concerns, documented in the Proposed Plan. Specifically, such documentation would relate to "site characterization," including groundwater conditions and ARAR<sup>5</sup> identification, including decisions on waivers. The ROD must also resolve the State's other key concerns, as documented in the Proposed Plan:

- Waste acceptance criteria (WAC): Given the challenges posed by groundwater and streams at the CBCV site, WAC are vital for ensuring any future landfill protects public health and the environment at the facility and downstream locations now and in the future. On May 2, 2019, TDEC agreed to extend the ROD milestone to allow DOE to ensure WAC are consistent with the requirements of CERLCA and the NCP.<sup>6</sup> TDEC is evaluating the draft WAC information DOE submitted on July 30, 2019.
- DOE assessments: DOE committed to issuing a preliminary Disposal Authorization Statement (PDAS) in accordance with DOE Orders *before* TDEC signs a CERCLA ROD

---

<sup>2</sup> The existing mixed-waste landfill in Oak Ridge approved under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is called the Environmental Management Waste Management Facility (EMWMF).

<sup>3</sup> DOE proposes to build the EMDF landfill at the Central Bear Creek Valley (CBCV) site (Site 7c). DOE provided groundwater-level data to TDEC on May 7, 2019 and summarizes that information in *Technical Memorandum #2, Environmental Management Disposal Facility Phase 1 Monitoring, Oak Ridge, Tennessee* (DOE/OR/01-2819&D1).

<sup>4</sup> DOE presented information regarding modeled groundwater levels during meetings with TDEC and EPA on April 11, 2019 (Oak Ridge, TN), June 7, 2019 (Nashville, TN), and July 10 (Oak Ridge, TN).

<sup>5</sup> ARAR means Applicable or Relevant and Appropriate Requirements. DOE, the State, and EPA need to agree on legal requirements and whether it is proper to waive any requirements.

<sup>6</sup> The NCP is the National Contingency Plan (National Oil and Hazardous Substances Pollution Contingency Plan).

for the proposed EMDF. Per that agreement<sup>7</sup>, the FFA parties agreed not to sign a ROD before DOE approves a PDAS through its internal LFRG<sup>8</sup> review process.

- Mercury disposal: DOE plans to demolish buildings at Y-12 National Security Complex (Y-12), including those in the West End Mercury Area (WEMA) and dispose of the resulting debris in the proposed landfill. Bear Creek is already listed as impaired for mercury in fish tissue, so DOE, the State, and EPA must agree on how much mercury the landfill can accept without increasing risks for people who fish downstream.
- Use of underdrains: DOE has stated that the proposed EMDF would not use underdrains, like the one installed in an effort to reduce high groundwater levels at the EMWMF.
- Discharge limits: During August or September 2019, the EPA Administrator is scheduled to provide a final decision regarding discharge of landfill wastewater to Bear Creek in a manner that would be protective, as required by CERCLA. EPA and TDEC have requested that DOE issue the draft (D1) ROD only after the Administrator issues a decision.

The State of Tennessee continues to seek innovative solutions to CERCLA waste disposal challenges on the Oak Ridge Reservation. TDEC remains committed to helping DOE expedite cleanup of environmental contamination in the ORR. Therefore, the State requests that DOE provide an updated schedule for resolving each of the key concerns documented in the Proposed Plan and summarized herein. The schedule needs to align with the review periods for the D1 and D2 ROD under the FFA. If it does not, then then extensions would be requested and should be allowed based on prior statements of willingness by DOE to allow time necessary for review and approval of all necessary aspects for the decision on the ROD.

Finally, TDEC has received copies of several letters in which public representatives ask DOE to host a public meeting and comment opportunity to update community members on the project status.<sup>9</sup> During the public comment period in 2018, local citizens expressed

---

<sup>7</sup> Dispute Resolution Agreement (December 7, 2017) for the *Remedial Investigation/Feasibility Study for Comprehensive Environmental Response, Compensation, and Liability Act Oak Ridge Reservation Waste Disposal, Oak Ridge, Tennessee* (DOE/OR/01-2535&D5) and DOE-OREM Letter (July 7, 2016) regarding Response to Action from Environmental Program Council Meeting on May 24, 2016, Regarding Compliance with U.S. Department of Energy Order 435.1 for a New Onsite Disposal Facility.

<sup>8</sup> LFRG is DOE's Low-Level Waste Disposal Facility Federal Review Group.

<sup>9</sup> Letters include City of Oak Ridge (April 2, 2019), Oak Ridge Reservation Communities Alliance (July 1, 2019), Southern Environmental Law Center (August 1, 2019), and EPA (July 25, 2019).

disappointment that DOE issued the Proposed Plan before resolving various concerns, many of which align with the State's key concerns. Others asked DOE to provide a meaningful comment opportunity after characterizing the site, selecting ARARs, and justifying any requested waivers. TDEC supports the requests made by the local community and EPA. Therefore, the State asks DOE to include an additional public meeting and comment opportunity in the schedule requested in the previous paragraph.

Please direct any questions or comments regarding the contents of this letter to Brad Stephenson at 865-220-6587.

Sincerely

A handwritten signature in black ink, appearing to read "Randy C. Young". The signature is written in a cursive style with a large initial "R" and "Y".

Randy C. Young  
TDEC FFA Manager

cc: Connie Jones, EPA  
Pat Halsey, DOE  
Amanda Daugherty, ORRCA  
Amy Fitzgerald, ORRCA  
Ron Woody, ORRCA  
Shelley Kimel, SSAB





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

July 31, 2019

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. John M. Japp, Project Manager  
Federal Facility Agreement  
Oak Ridge Office of Environmental Management  
U.S. Department of Energy  
Post Office Box 2001  
Oak Ridge, Tennessee 37831

Dear Mr. Japp:

This purpose of this letter is to respond to the Department of Energy's (DOE) July 30, 2019, request for an extension, under Section XXX of the Oak Ridge Reservation Federal Facility Agreement (FFA), of the D1 Record of Decision (ROD) for the Environmental Management Disposal Facility. While the EPA does not concur with DOE's extension request as described by DOE in its letter, the EPA agrees with the extension request for the reasons provided below. This letter also reiterates the U.S. Environmental Protection Agency's July 25, 2019, letter to DOE.

DOE provided as its basis for an extension

... under FFA Subsection XXX.B.5, *A delay caused by additional work agreed to by the Parties*, to allow sufficient time for DOE and the Tennessee Department of Environment and Conservation to draw up language to be inserted into the ROD, incorporating agreed-to fieldwork to be performed to address contingencies for approval of the ROD.

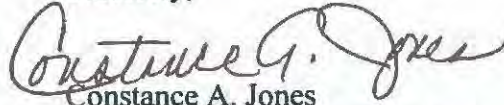
EPA has not agreed to additional work as described in the DOE letter, and there is, therefore, no additional work "agreed to" by all three FFA Parties. As a result, good cause under this FFA paragraph has not been established. In contrast, good cause for an extension is also defined in the Section XXX of the FFA as "a delay caused by the good faith invocation of dispute resolution . . ." Since a dispute regarding the Focused Feasibility Study (FFS) for the discharge of waste water is underway and approaching resolution by the EPA Administrator, the EPA believes that good cause exists under FFA Section XXX.B.3. EPA, therefore, approves an extension to August 30, 2019, for submittal of the D1 ROD.

Please note that any extension under "good faith invocation of dispute resolution" should also provide sufficient time for DOE and the Tennessee Department of Environment and Conservation to meet and confer with the Administrator (as discussed in Susan Bodine's July 22, 2019, letter to DOE Under Secretary Cabbage) and for DOE to incorporate, within 35 days of resolution of a dispute, the decision of Administrator in its D1 ROD submission (as well as a revision of the FFS) under FFA Section XXVI.J. As a factual matter, it is unknown whether an extension to August 30, 2019, will allow for DOE to submit a D1 consistent with this FFA requirement. If DOE is unable to incorporate a decision of

the Administrator by August 30, 2019, it should timely submit an additional extension request that provides for sufficient time to fulfill this FFA requirement, given the facts at the time of the additional extension request submittal.

If you have questions regarding this matter, please contact me at (404)-562-8551 or Carl Froede, Jr. at (404)-562-8550.

Sincerely,



Constance A. Jones

Federal Facility Agreement Project Manager  
Restoration & DOE Coordination Section  
Superfund & Emergency Management  
Division

cc: Randy Young, TDEC  
Patricia Halsey, DOE  
Joy Sager, DOE  
Brian Henry, DOE  
David Adler, DOE  
Brad Stephenson, TDEC  
Cathleen Burnette, TDEC  
Melyssa Noe, DOE  
ORSSAB





Department of Energy	PROGRAM	SITE	PROJECT #	FILE SEQUENCE
Oak Ridge Office of Environmental Management P.O. Box 2001 Oak Ridge, Tennessee 37831				
			<b>ROUTE TO: PCY</b>	

July 30, 2019

JUL 31 2019

**CERTIFIED MAIL**

Ms. Constance A. Jones  
 Superfund Division  
 U.S. Environmental Protection Agency  
 Region 4  
 Atlanta Federal Center  
 61 Forsyth Street  
 Atlanta, Georgia 30303-8960

cc/  
 JBS

Mr. Randy C. Young  
 State of Tennessee  
 Department of Environment and Conservation  
 Division of Remediation – Oak Ridge  
 761 Emory Valley Road  
 Oak Ridge, Tennessee 37830-7072

Dear Ms. Jones and Mr. Young:

**FEDERAL FACILITY AGREEMENT MILESTONE EXTENSION REQUEST FOR ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY RECORD OF DECISION**

Reference: Electronic letter from Franklin E. Hill to John A. Mullis, dated July 25, 2019

In accordance with the Federal Facility Agreement (FFA) for the Oak Ridge Reservation, the U.S. Department of Energy (DOE) requests your approval to modify the Appendix E milestone date for submission of the Record of Decision (ROD) for the Environmental Management Disposal Facility. This extension requests moving the milestone out to August 30, 2019, with the understanding that the FFA Parties will work to submit the ROD sooner.

**Schedule and date sought to be extended:** The current milestone for the ROD is August 2, 2019.

**Length of extension sought:** About 20 working days.

**New milestone date:** The requested new milestone date for the ROD is August 30, 2019.

**Good cause for extension:** The reason for this extension is under FFA Subsection XXX.B.5, *A delay caused by additional work agreed to by the Parties*, to allow sufficient time for DOE and the Tennessee Department of Environment and Conservation to draw up language to be inserted into the ROD, incorporating agreed-to fieldwork to be performed to address contingencies for approval of the ROD.

**CERTIFIED – RETURN RECEIPT REQUESTED**  
 (JONES 7009 2820 0001 9922 5895)  
 (YOUNG 7009 2820 0001 9922 5888)

July 30, 2019

**FEDERAL FACILITY AGREEMENT MILESTONE EXTENSION REQUEST FOR ENVIRONMENTAL MANAGEMENT DISPOSAL FACILITY RECORD OF DECISION**

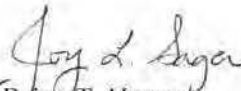
Additionally, DOE received the referenced U.S. Environmental Protection Agency letter by email on July 25, 2019, requesting that DOE delay issuing the ROD until a decision on the Focused Feasibility Study is issued. DOE does not, however, see a need to delay issuing the ROD for this reason since the decision on the Feasibility Study can be incorporated into the final ROD document.

**Related schedules impacted if extension granted:** The delay in this milestone should not impact any other schedules or milestones.

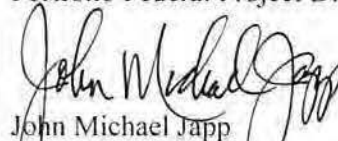
**Description of project implementation strategy:** The implementation strategy is for DOE and the Tennessee Department of Environment and Conservation personnel to work together in drafting the language to be inserted into the ROD, which will address the proposed field work and associated contingencies.

If you have any questions, or if we can be of further assistance, please contact John Michael Japp at (865) 241-6344 or Brian Henry at (865) 241-8340.

Sincerely,

  
for Brian T. Henry

Portfolio Federal Project Director

  
John Michael Japp

Federal Facility Agreement Project Manager

cc:

Carl Froede, EPA, Region 4

Susan DePaoli, Pro2Serve

Sidney Garland, RSI

SSAB

Brad Stephenson, TDEC, Oak Ridge

Julie Pfeffer, UCOR

Tanya Salamacha, UCOR

[ETTPDMC@ettp.doe.gov](mailto:ETTPDMC@ettp.doe.gov)

Dave Adler, EM-94

Pat Halsey, EM-942

Joy Sager, EM-921

**CERTIFIED – RETURN RECEIPT REQUESTED**

(JONES 7009 2820 0001 9922 5895)

(YOUNG 7009 2820 0001 9922 5888)