

APPENDIX H

LETTER FROM DEPARTMENT OF JUSTICE TO TDHE

December 18, 1990

Commissioner, J. W. Luna
Tennessee Dept. of
Health & Environment
344 Cordell Building
Nashville, Tennessee 37247-0101

Dear Mr. Luna:

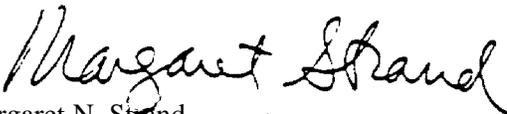
This letter is in response to the inquiry by the State of Tennessee concerning the Justice Department's views on the enforceability of the Federal Facility Agreement for the Oak Ridge Reservation ("draft"), which is being negotiated by the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of Energy ("DOE") and the Tennessee Department of Health and Environment ("TDHE"). By letter of August 16, 1990, the Justice Department reiterated its views that such agreements are subject to enforcement pursuant to federal statutes, and provided a copy of a 1989 letter to the same end (both are attached). We were subsequently asked to respond to the same question in regard to the draft Oak Ridge agreement, which was provided to us by the DOE on December 4, 1990. A copy of this document, which we have reviewed, is attached for your convenience.

It is our view that DOE and EPA have the authority to enter into the draft agreement and that the agreement, if executed, would be binding and enforceable, subject to and in accordance with its terms and conditions, particularly the provisions of Sections I, IV, XXVI, XLII, and XLV, by the TDHE and any other affected citizen pursuant to section 310 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U. S. C. § 9620. Section 310 provides for suit against persons who violate "any provision of an agreement under [CERCLA] section 120, relating to Federal facilities."

We commend and support the efforts of all concerned parties to resolve environmental concerns at Oak Ridge through the agreement process. In letters and testimony to congressional committees, this Department has repeatedly stated that Federal Facility Agreements provide an excellent mechanism by which EPA, other Federal agencies and the States can develop comprehensive, workable and fully enforceable mechanisms for addressing cleanup of Federal facilities.

Sincerely,

Assistant Attorney General
Environment and Natural Resources Division

By: 

Margaret N. Strand
Chief, Environmental Defense Section

Enclosure

cc: William Dennison
Tyler Przybylek
Michael D. Pearigen

August 16, 1990

Mr. Charles S. Przybylek
Deputy Chief Counsel
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, TN 37831-8510

Re: Oak Ridge Three Party FFA

Dear Mr. Przybylek:

I received your letter requesting an opinion from the Justice Department on the enforceability of the proposed three party Federal Facility Agreement under CERCLA section 120 ("FFA"), at the Oak Ridge Reservation. It is my understanding that the proposed FFA utilizes enforceability provisions similar in substance to the enforceability provisions in the EPA/DOE "Model" FFA.

As is the case with other kinds of interagency agreements, the Justice Department does not routinely participate in those negotiations, nor do we review the importance of FFA's in the CERCLA process. Acting Assistant Attorney General Carr set forth the Department's view of the enforceability of CERCLA section 120 FFA's in his letter to EPA of August 7, 1989, a copy of which is attached. This position remains unchanged and should be sufficient to satisfy any legitimate questions concerning the Department's view on enforceability of FFA's.

If I may be of any further assistance, please feel free to call.

Sincerely yours,

Assistant Attorney General
Environment & Natural Resources Division

By:

J. STEVEN ROGERS
DIVISION COUNSEL for
Federal Environmental Compliance

August 7, 1989

Jonathan Z. Canon
Acting Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Dear Jon:

This letter is in response to your request for the Justice Department's views on the enforceability of agreements developed under Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 § et sec.

It is the considered view of the Department that such agreements are enforceable against the United States. This conclusion is based on Section 310 of CERCLA, 42 U.S.C. § 9659, which expressly provides for suit against persons who violate "...any provision of an agreement under section 120, relating to Federal facilities."

We have also reviewed the model language for "Federal Facility Agreements Under CERCLA Section 120," and have determined that agreements utilizing the model enforceability language and the other model provisions are likewise enforceable against the United States pursuant to Section 310.

In letters and testimony to various congressional committees, representatives of this Department have repeatedly stated that Federal Facility Agreements provide an excellent mechanism by which EPA, other Federal agencies and the States can develop comprehensive, workable, and fully enforceable settlements for addressing cleanup of Federal facilities.

We fully support EPA's efforts to address Federal facility cleanups through the Federal Facility Agreement process.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Carr', with a stylized, wavy line extending from the end.

Donald A. Carr
Acting Assistant Attorney General