Appendix B

Consultation Letters and Responses

Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831—

May 1, 2003

Dr. Lee Barclay
Fish and Wildlife Service
United States Department of Interior
446 Neal Street
Cookeville, Tennessee 38501

Dear Dr. Barclay;

INFORMAL CONSULTATION UNDER SECTION 7 OF THE ENDANGERED SPECIES ACT FOR THE PROPOSED DISPOSITION OF ADDITIONAL WASTES AT THE PADUCAH SITE, PADUCAH, KENTUCKY

The United States Department of Energy (DOE) proposes to disposition several thousand cubic meters of additional waste at the Paducah Site. The additional waste proposed for disposition is non-hazardous waste currently stored on-site, primarily in DOE material storage areas.

DOE originally planned to continue storage of the additional waste until future decontamination and decommissioning activities in the analysis of the Environmental Assessment for Waste Disposition Activities at the Paducah Site, Paducah, Kentucky, DOE/EA-1339 approved in November, 2002. However, DOE would like to expedite disposition of this additional non-hazardous waste. DOE is currently characterizing the additional waste. Based on the results of characterization, DOE proposes to dispose of any waste on-site in the C-746-U Landfill that meets the waste acceptance criteria for the landfill. DOE anticipates waste that is not disposed onsite would be transported as low-level waste to commercial and DOE disposal facilities in a similar manner as analyzed in DOE/EA-1339.

DOE does not anticipate onsite treatment of the additional waste or any construction activities as a result of the proposed disposition activities. Removal of low-level waste currently stored outdoors would reduce the potential for spread of radionuclide contamination. On-site activities anticipated are packaging and loading of waste onto transport vehicles. Therefore, we feel that the biological assessment completed for the previous waste disposition activities is still appropriate and does not require revision for the proposed action.

This letter is intended to serve as informal consultation under the Endangered Species Act. In this regard, DOE requests an updated list of protected species or habitat on or near the project site and solicits your recommendations and comments about the potential

Dr. Lee Barclay 2

effects of this proposed action. Your input will be used in the preparation of an environmental assessment addendum for the action pursuant to the National Environmental Policy Act of 1969.

If you need further information on this request please do not hesitate to call me at (865) 576-0938

Sincerely,

James L. Elmore

James L. Elmore, Ph.D.
Alternate NEPA Compliance Officer

cc:
Gary Bodenstein, EM-98/PAD
David Tidwell, EM-98/PAD
Stan Knaus, LAN-CON, PAD

United States Department of the Interior

FISH AND WILDLIFE SERVICE
446 Neal Street
Cookeville, TN 38501

June 17, 2003

JUN 19 AM10:34

Mr. James L. Elmore, Ph.D.
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

Dear Dr. Elmore:

Thank you for your letter of May 1, 2003, regarding the disposition of additional waste in the C-746-U landfill at the Paducah Gaseous Diffusion Plant (PGDP) in McCracken County, Kentucky. We previously submitted comments on the Environmental Assessment (EA) for the Proposed Disposition of Wastes at the Paducah Site (DOE/EA-1339). Under that proposed action, several thousand cubic meters of low-level, mixed low-level, and hazardous (PCB) waste, as well as 12 m^3 of transuranic waste, would be transported from the PGDP to eight Department of Energy (DOE) and commercial treatment and disposal facilities. Resource Conservation and Recovery Act waste would be shipped to the Toxic Substances Control Act incinerator at Oak Ridge, Tennessee. Annually, DOE would discharge 52 m^3 of low-level wastewater after on-site treatment at the PGDP to meet Kentucky Pollutant Discharge Elimination System permit requirements. Approximately 1800 m^3 of soil and debris containing some residual radioactivity, but meeting the waste acceptance criteria (WAC) for the on-site C-746-U landfill, would be disposed at the PGDP without treatment.

A conference call regarding that proposal was held between representatives of the Department of Energy (DOE) and U.S. Fish and Wildlife Service on August 16, 2002. In our September 20, 2002, conditional concurrence for the original EA and supplemental Biological Assessment, we requested that the following recommendations be implemented at the PGDP: (1) best available control technologies for inorganic and organic priority pollutants should be utilized for the on-site treatment and discharge(s) of project wastewater to Bayou Creek and Little Bayou Creek; (2) the proposed discharge(s) should be in compliance with existing warmwater aquatic habitat water quality criteria in Bayou Creek and Little Bayou Creek; and (3) the proposed discharge(s) should be included in the modeling procedures utilized by the Kentucky Division of Water for the development of the Total Maximum Daily Load for Little Bayou Creek.

Since we have not received any communication from DOE regarding our previous comments, we are not aware that our recommendations were evaluated or considered for implementation. Additionally, we have not been afforded the opportunity to review the recently completed EA Addendum (DOE/EA-1339A) for this modification to the original project. U.S. Fish and Wildlife Service (Service) personnel have, however, reviewed the information submitted and offer the following comments for consideration.

According to our records, the following federally listed endangered species are known to occur near the PGDP:

Indiana bat	*Myotis sodalis*
orangefoot pimpleback	*Plethobasus cooperianus*
pink mucket	*Lampsilis abrupta*
ring pink	*Obovaria retusa*
fat pocketbook	*Potamilus capax*

Qualified biologists should assess potential impacts and determine if the proposed project modification may affect the species. We recommend that you submit a copy of your assessment and finding to this office for review and concurrence. A finding of "may affect" could require the initiation of formal consultation procedures.

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at *steven_alexander@fws.gov*.

Sincerely,

Lee A. Barclay, Ph.D.
Field Supervisor

xc: Don Seaborg, DOE, Paducah
Wayne Davis, KDFWR, Frankfort
Tuss Taylor, KDEP, Frankfort
Jeff Pratt, KDOW, Frankfort

Department of Energy
Oak Ridge Operations
Paducah Site Office
P.O. Box 1410
Paducah, KY 42001

August 7, 2003

Dr. Lee A. Barclay
Field Supervisor
Fish and Wildlife Service
United States Department of Interior
446 Neal Street
Cookeville, Tennessee 38501

Dear Mr. Barclay:

RESPONSE TO INFORMAL CONSULTATION COMMENTS ON THE PROPOSED DISPOSITION OF ADDITIONAL WASTE AT THE PADUCAH SITE, MCCRACKEN COUNTY, KENTUCKY

This letter responds to points made in your correspondence dated June 17, 2003. Please be advised that the comments you referred to from your conditional concurrence of September 20, 2002, were addressed as appropriate in the *Environmental Assessment for Waste Disposition Activities at the Paducah Site, Paducah, Kentucky* (DOE/EA-1339). Specifically, please note that, as required by our Kentucky Pollutant Discharge Elimination System wastewater discharge permit, best available control technologies are used for treatment and discharges will continue to meet existing warm water aquatic habitat criteria. Your third point was that "the proposed discharges should be included in the modeling procedures utilized by the Kentucky Division of Water for the development of the Total Maximum Daily Load for Little Bayou Creek". The U.S. Department of Energy (DOE) has no control over modeling procedures used by the Division of Water.

Thank you for the information regarding federally listed endangered species known to occur near the Paducah Site. The enclosed Biological Assessment was prepared by qualified biologists to supplement the biological assessment prepared for DOE/EA-1339. The Biological Assessment encompasses the scope of activities proposed in the *Draft Environmental Assessment Addendum Disposition of Additional Waste at the Paducah Site* (DOE/EA-1339-A). The Biological Assessment concludes that there will be no adverse effect on these species or critical habitat of these species. Please review the Biological Assessment and provide to DOE as soon as possible a letter of concurrence regarding our no adverse affect determination.

Mr. Barclay 2 August 7, 2003

If you have any questions or require additional information, please call me at (865) 576-0938.

Sincerely,

James L. Elmore, Ph.D.
Alternate NEPA Compliance Officer

Enclosure

cc w/o enclosure:
G. W. Bodenstein, EM-98
B. A. Bowers, LAN-CON/Kevil
S. E. Knauss, LAN-CON/Kevil
W. D. Tidwell, EM-98

United States Department of the Interior
FISH AND WILDLIFE SERVICE
3761 GEORGETOWN ROAD
FRANKFORT, KY 40601

September 8, 2003

Mr. James L. Elmore, Ph.D.
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

Subject: FWS 03-1625; Biological Assessment for the Proposed Disposition of Additional Waste at the Paducah Site, McCracken County, Kentucky

Dear Dr. Elmore:

Thank you for your letter and enclosure of August 7, 2003, transmitting the Biological Assessment (BA) for the Proposed Disposition of Additional Waste at the Paducah Site. We have also reviewed the Environmental Assessment (EA) Addendum, Disposition of Additional Waste at the Paducah Site (DOE/EA-1339-A). Under the revised action, DOE proposes disposition of approximately 17,600 m^3 of low-level waste in addition to the 11,000 m^3 of various waste types analyzed in the original Waste Disposition EA (DOE/EA-1339). Under the original EA, several thousand cubic meters of low-level, mixed low-level, and hazardous (PCB) waste, as well as 10 m^3 of transuranic waste, would be transported from the Paducah Gaseous Diffusion Plant (PGDP) in McCracken County, Kentucky, to eight Department of Energy (DOE) and commercial treatment and disposal facilities. Annually, DOE would discharge approximately 52 m^3 of low-level wastewater after on-site treatment at the PGDP to meet Kentucky Pollutant Discharge Elimination System (KPDES) permit requirements.

The additional waste covered under this EA addendum would be transported in the same time frame, same manner, same representative locations, and same representative transportation routes described in the original EA. However, DOE anticipates that approximately 45% of the additional waste, approximately 7,600 m^3, would meet the Waste Acceptance Criteria (WAC) and could be disposed of in the on-site C-746-U landfill. In your March 8, 2002, transmittal of the pre-decisional draft EA, it is stated that "no waste streams proposed for disposition in this document are anticipated to be eligible for disposal at the C-746-U landfill."

Until characterization of the waste is complete, the amount that could be disposed on-site is not known. Therefore, the EA addendum analyzed the off-site transport of all of the additional 17,600 m^3 of low-level waste to approved disposal facilities. However, the EA addendum leaves open the possibility of ultimate disposal of a portion of the waste at the Paducah site. There remains considerable uncertainty as to exactly what is proposed under all of the

documentation for this project submitted to the Service since January 23, 2002, as well as additional waste disposal activities that could occur at the C-746-U landfill in the future. We believe that the public and agency stakeholders have no clear idea on what exactly constitutes the Federal action proposed by DOE and analyzed pursuant to the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852) (NEPA) and Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.) (ESA). If 45% of the additional waste proposed for disposition under the EA addendum (~ 7,600 m^3) is ultimately disposed of on-site in the C-746-U landfill, this constitutes a substantial modification to the original proposal and associated BA with which we conditionally concurred with your finding of not likely to adversely affect.

Provided that the 17,600 m^3 of additional low-level waste covered under the EA addendum is transported off of the Paducah site for disposal in approved facilities, this BA and supporting information are adequate and support the conclusion of not likely to adversely affect, with which we concur. In view of this, we believe that the requirements of Section 7 of the Endangered Species Act (Act) have been fulfilled and that no further consultation is needed at this time. However, obligations under Section 7 of the Act must be reconsidered if: (1) new information reveals that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities which were not considered in this biological assessment, or (3) new species are listed or critical habitat designated that might be affected by the proposed action. If this low-level waste is to be disposed of at the Paducah site, consultation pursuant to the Act must be reinitiated.

As characterization activities for the referenced wastes are completed, we would appreciate additional project information regarding the results of the waste analyses, methods utilized, and the location of the ultimate disposition of the wastes. If on-site disposal of the referenced wastes in the C-746-U landfill is proposed at some point in the future, then we believe that DOE will need to complete additional assessments pursuant to NEPA and ESA. That information should include a detailed description of the potential expansion or structural modifications to the C-746-U landfill, including the specific WAC, proposed leachate collection and treatment systems, and all proposed wastewater and stormwater discharges. We recommend that DOE provide a concise description of all waste disposal activities covered under the original C-746-U landfill EA, Authorized Limits EA, Waste Disposition EA, and this Waste Disposition EA Addendum, and that a logical, sequential linkage between the NEPA documents be established.

Since our concurrence with the findings in the original BA that was prepared in support of for the EA for the Proposed Disposition of Wastes at the Paducah Site (DOE/EA-1339) was also conditional, we must emphasize that your response outlined in this BA transmittal for the EA addendum did not contain specific detailed technical information regarding the best available control technologies (BACT) that would be utilized in the proposed on-site treatment of low-level wastewater. We are concerned that if additional wastes are permanently disposed in the C-746-U landfill, then there may be a need to treat additional on-site wastewater and that additional point source and stormwater discharges would likely be expected.

In our August 16, 2002, conference call regarding this project, DOE personnel stated that the 13,000 gallons of wastewater generated on a yearly basis was not low-level waste because the

wastewater did not include a radiological component. The EA addendum clearly states in Section 1.5, Waste Disposal, that "only the LLW water waste stream consisting of 52 m^3 (1836 ft^3) of waste would be treated and disposed on-site. The wastewater, which has some uranium contamination, would be treated until the KPDES limits had been met; this waste would then be discharged at a permitted on-site outfall." We also believe that this wastewater has the potential to contain PCB and other heavy metal components.

In your August 21, 2002, correspondence detailing routine activities carried out for KPDES permit compliance and DOE Order 5400.1, no discussion of BACT for additional discharges anticipated under the proposed waste disposition activities was included. Since there is a long history of documented exceedances of KPDES permit limits for routine discharges at the Paducah site and since toxicity to aquatic organisms has been demonstrated on numerous occasions, your statement that "discharges will continue to meet existing warm water aquatic habitat criteria" appears factually incorrect and not supported by a technical analysis of current and proposed additional wastewater discharges at the Paducah site.

As was the case with the original BA, an accidental spill of the waste during handling and transport activities was the only exposure scenario evaluated. We would appreciate technical information regarding any modifications to the existing KPDES permit for the Paducah site and the Total Maximum Daily Load (TMDL) for Little Bayou Creek. We are not aware that the KDOW has placed specific numeric criteria for metals, included uranium, in DOE's KPDES permit for the Paducah site.

These constitute the comments of the U.S. Department of the Interior in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander at 931/528-6481, ext. 210.

Sincerely,

Virgil Lee Andrews, Jr.

Virgil Lee Andrews, Jr.
Field Supervisor

xc: Carl Froede, EPA, Atlanta
Jeff Crane, EPA, Atlanta
Bill Starkel, FWS, Atlanta
Jeff Pratt, KDOW, Frankfort
Tuss Taylor, KDWM, Frankfort
Mike Guffy, KDWM, Frankfort
Tim Kreher, KDFWR, WKWMA
Wayne Davis, KDFWR, Frankfort

Department of Energy

Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831—

October 23, 2003

Mr. Virgil Lee Andrews, Jr., Field Supervisor
United States Department of Interior
Fish and Wildlife Service
3761 Georgetown Road
Frankfort, Kentucky 40601

Dear Mr. Andrews:

RESPONSE TO INFORMAL CONSULTATION COMMENTS (FWS 03-1625) ON THE PROPOSED DISPOSITION OF ADDITIONAL WASTE AT THE PADUCAH SITE, MCCRACKEN COUNTY, KENTUCKY

This correspondence is in response to your September 8, 2003, letter concerning the Biological Assessment for the Proposed Disposition of Additional Waste at the Paducah Gaseous Diffusion Plant (PGDP), in Paducah Kentucky. This letter expressed considerable uncertainty as to exactly what has been proposed under the various documents submitted to the Fish and Wildlife Service since January 23, 2002. In order to address this uncertainty the Department of Energy (DOE) prepared the enclosed crosswalk (Enclosure 1). In addition, enclosed please find a copy of each document prepared under the National Environmental Policy Act (NEPA) concerning waste disposition activities at the C-746-U Landfill, as well as off-site shipments of waste, from the PGDP.

Another expressed concern was the proposed disposition of 7,900 m^3 of waste into the C-746-U Landfill as described in the Environmental Assessment (EA) Addendum for Disposition of Additional Waste at the Paducah Site (DOE/EA-1339-A). In order for this 7,900 m^3 of waste to be disposed in the C-746-U Landfill it must meet the Waste Acceptance Criteria for on-site disposal in this landfill. As stated in the March 1995 Environmental Assessment for the Construction, Operation, and Closure of the C-746-U Landfill (DOE/EA-1046), this landfill was constructed to accept nonhazardous, nonradioactive solid waste. "Residential type" waste containing cardboard, paper, canteen (cafeteria) waste, plastic, and glass is accepted, as well as "construction/demolition debris" which consists of small quantities of wood, metal materials, and construction debris (building materials, asbestos-containing material, concrete, bituminous concrete (asphalt), masonry, wood scrape, and fly ash). Neither off-site waste, free liquids nor hazardous waste is or will be accepted for disposal. This EA did not specifically discuss the acceptance of materials containing residual radioactivity, although it did correctly specify that radioactive waste would not be accepted at the C-746-U Landfill.

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Mr. Virgil Lee Andrews, Jr 2

In August of 2002, DOE developed the Final Environmental Assessment on the Implementation of the Authorized Limits Process for Waste Acceptance at the C-746-U Landfill (DOE/EA-1414). At this time, DOE proposed to implement the authorized limits process for determining the acceptability of waste containing low levels of residual radioactive material for disposal in this landfill. In essence, the authorized limits are selected and approved by DOE on the basis of an assessment under the ALARA (As Low As Reasonably Achievable) process to optimize the balance between risks and benefits including costs and collective doses and to ensure that the dose equivalent to individual members of the public is less than 25 millirem in a year. The authorized limits are evaluated to ensure that groundwater will be protected in a manner consistent with applicable State regulations and guidelines, and to ensure that the release of the disposal facility property would not be expected to require remediation under applicable requirements, including Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In addition, waste containing residual radioactive materials below approved authorized limits would not require radiological control under the Atomic Energy Act of 1954, as amended (AEA) and would not be considered low-level radioactive waste.

In November of 2002, DOE issued a Finding of No Significant Impact for Waste Disposition Activities at the PGDP (EA DOE/EA-1339). The wastes considered in this EA were limited to DOE's on-going and legacy non-CERCLA waste management operations at the PGDP. These wastes included Low Level Waste, Mixed Low Level Waste, and Transuranic Waste, as well as materials stored in DOE Material Storage Areas (DMSAs). Also included is storage of United States Enrichment Corporation (USEC) program wastes, which are characterized as one or more of the waste types. Wastes not covered are those associated with the CERCLA activities, including decontamination and decommissioning, activities and disposition of wastes associated with the USEC operational activities. This action included waste disposition activities such as storage, on-site treatment, waste transport to off-site treatment and disposal facilities, waste management supporting activities, and DMSA waste characterization.

In July of 2003, DOE Public Noticed an EA Addendum for Disposition of Additional Waste at the PGDP (DOE/EA-1339-A). This EA proposed to dispose of approximately 17,600 m^3 of material in addition to the 11,000 m^3 of waste analyzed in the November 2002 Waste Disposition EA (DOE/EA-1339). Disposition activities for this additional waste include characterization, storage, packaging, loading, and shipping waste to disposal locations. The majority of this material is currently stored in the 160 DMSAs. It is anticipated that approximately 7,900 m^3 of this material could be disposed of in the C-746-U landfill if it meets the waste acceptance criteria as establish in the Authorized Limits EA (DOE/EA-1414) and the Construction, Operations and Closure EA (DOE/EA-1046). The waste which does not meet the waste acceptance criteria will be transported off-site for final disposition. Again, no restricted waste (i.e. low-level radioactive or hazardous waste) will be placed in the C-746-U Landfill.

Mr. Virgil Lee Andrews, Jr 3

Your correspondence expressed concern whether appropriate NEPA review had been conducted for acceptance of the waste from DMSAs and any modification and expansion of the C-746-U Landfill. The construction, operations and closure of the C-746-U Landfill is covered in the March 1995 EA (Environmental Assessment for the Construction, Operation, and Closure of the Solid Waste Landfill at the Paducah Gaseous Diffusion Plant, DOE/EA-1046). This landfill will have a final capacity of 1.5 million yd^3 that will cover approximately 25 acres of the 60-acre site. In addition, sedimentation basins and other supporting areas were developed on another 25 acres. At this time, no modifications or expansion are anticipated beyond those described in the construction EA. Even if the entire 17,600 m^3 of waste met the waste acceptance criteria, inclusion of this amount in the landfill would not exceed the final capacity. Therefore the analysis in that EA (DOE/EA-1046) is still valid and additional NEPA review is not required.

You asked for specific detailed technical information regarding best available control technologies (BACT) for wastewater discharge because additional waste disposed in the on-site landfill will generate additional wastewater and additional point source and storm water discharges may occur. DOE previously responded that the BACT for the Paducah Site discharges were analyzed by the Kentucky Division of Water (KDOW) during the issuance of the current Kentucky Pollutant Discharge Elimination System (KPDES) wastewater discharge permit. Discharge of wastewater from operation of the landfill was analyzed in the EA for construction, operation and closure of the C-746-U Landfill (DOE/EA-1046). DOE does not anticipate any additional wastewater discharges other than those described in the EA. DOE suggests you contact KDOW for further information on BACT utilized in preparation of the existing wastewater discharge permit.

You expressed concern that wastewater treated may contain polychlorinated biphenyl (PCB), uranium, and heavy metals. In accordance to the KPDES Permit (KY0004049), the PGDP is required to monitor and report PCBs (monthly), uranium (quarterly) and total recoverable metals (quarterly). Monitoring results obtained each month must be reported on a preprinted Discharge Monitoring Report to the KDOW. In addition this Permit contains provisions for chronic/acute biomonitoring. For chronic biomonitoring, PGDP performs once per quarter a short term fathead minnow (*Pimephales promelas*) growth test and one short-term daphnid (*Ceriodaphnia sp.*) life-cycle test for Outfall 001. For acute biomonitoring PGDP performs once a quarter a 48 hour static toxicity test with *Ceriodaphnia sp.* and a 48-hour static toxicity test with fathead minnow (*Pimephales promelas*) for Outfalls 015, 017 and 019. The current KPDES permit expired in April of 2003, however, the operating conditions set forth in this permit are valid until the KDOW issues a new Permit. DOE forwarded a permit application to the KDOW on September 19, 2002, and amended this application on May 23, 2003. The monitoring requirements did not change in the application.

United States Department of the Interior
FISH AND WILDLIFE SERVICE
3761 GEORGETOWN ROAD
FRANKFORT, KY 40601

November 24, 2003

Mr. James L. Elmore, Ph.D.
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

Subject: FWS 04-0245; Clarification of Informal Consultation Comments for the Proposed Disposition of Additional Waste at the Paducah Site, McCracken County, Kentucky

Dear Dr. Elmore:

This correspondence is in response to your October 23, 2003, letter questioning the need for further consultation for the Proposed Disposition of Additional Waste at the Paducah Site, McCracken County, Kentucky. Your letter was in response to our letter of September 8, 2003, which expressed our concerns for the proposed use of, and potential impacts of, (a) the onsite C-746-U landfill; (b) onsite wastewater generation and proposed on-site treatment of low-level wastewater, and additional point source and stormwater discharges likely generated from the landfill; and (c) issues related to the KPDES permit, including adequacy of toxicity monitoring and analytical criteria. Thank you for the additional information provided in your letter. We will consider this information in our future involvement on this site.

Based on the additional information submitted and our subsequent discussions with you, we reiterate our concurrence as stated in our September 8, 2003, letter:

> Provided that the 17,600 m^3 of additional low-level waste (LLW) (as is currently characterized) is transported off-site for disposal at approved facilities, we concur with the not likely to adversely affect determination.

Otherwise, if the 17,600 m^3 of additional LLW is characterized and separated, only non-LLW/non-hazardous waste may be disposed of in the C-746-U landfill and LLW/hazardous waste transported off-site for disposal at approved facilities without further consultation with the Fish and Wildlife Service (Service). Onsite treatment and/or onsite disposal of additional LLW and/or any hazardous waste (i.e., any non-LLW hazardous waste) will require additional consultation to fulfill the requirements of Section 7 of the Endangered Species Act (Act). Additionally, obligations under Section 7 of the Act must be reconsidered if: (1) new information indicates that the proposed action may affect listed species in a manner or to an extent not previously considered, (2) the proposed action is subsequently modified to include activities

which were not considered in the Biological Assessment, or (3) new species are listed or critical habitat designated that might be affected by the proposed action.

These constitute the comments of the U.S. Department of the Interior in accordance with the provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 *et seq.*), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Anthony Velasco at 502/695-0468 x.225.

Sincerely,

Virgil Lee Andrews, Jr.
Field Supervisor

xc: Carl Froede, EPA, Atlanta
Jeff Crane, EPA, Atlanta
Bill Starkel, EPA, Atlanta
Jeff Pratt, KDOW, Frankfort
Tuss Taylor, KDWM, Frankfort
Mike Guffy, KDWM, Frankfort
Tim Kreher, KDWM, Frankfort
Wayne Davis, KDFWR, Frankfort