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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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August 24, 2006

Mr. Keith A. Klein, Manager
United States Department of Energy
P. O. Box 550, MSIN: A7-50
Richland, Washington 99352

Re: Compliance Inspection of Hanford Federal Facility Agreement and Consent Order (HFFACO) Milestone M-91-42 conducted April 17, 2006

Dear Mr. Klein:

Thank you for your assistance during the Department of Ecology's recent inspection of HFFACO Milestone M-91-42 requirements. This milestone required the treatment to Land Disposal Restrictions (LDR) standards of 1800 cubic meters (m^3) of transuranic waste (TRU) or transuranic mixed waste (TRUM) by December 31, 2005. The milestone also allows the United States Department of Energy (USDOE) to certify waste for disposal at the Waste Isolation Pilot Plant (WIPP) in lieu of LDR treatment.

Ecology will not issue any violations at this time; however, three concerns are noted below. Ecology issues concerns to notify owners and operators of conditions that, if not improved, may evolve into violations, or may be considered violations in their own right.

CONCERNS

1. USDOE failed to meet the M-91-42 requirement to treat to meet LDR requirements or certify a cumulative total of 1800 m^3 of TRU(M) for disposal at WIPP by December 31, 2005. Only 1546 m^3 of TRU(M) was certified.

   USDOE and Fluor Hanford (FH) emphasized the following as the main contributing factors resulting in failure to meet M 91-42 requirements:

   - *The need for repackaging more of the containers retrieved from the Low Level Burial Grounds (LLBG) than expected.*
   - *The generation of less newly generated TRU(M) waste. However, prior to December 31, 2005, FH had available 386 m^3 of TRU(M) containers from WIPP approved waste streams that were determined to not need repackaging. Thus the milestone could have been met if this easily certifiable waste had been processed by the due date of December 31, 2005.*

Prior to January 9, 2006, this milestone was contingent on a legal decision in Bodman vs. state of Washington, United States District Court for the Eastern District of Washington. Because the volume requirements for certification are cumulative and due yearly according to M-91-42, USDOE and FH should have completed the work necessary to meet the December 31, 2005, volume in the event that a legal decision ruled in favor of the state of Washington prior to that date.

These facts, along with USDOE's past assertions that the M-91 work is fully funded, reflect poor planning, poor waste management practices, and a lack of diligence by USDOE and FH to meet the M-91-42 volume by the milestone date, December 31, 2005.

2. USDOE has indicated, and current data suggests, that USDOE and FH will not meet the cumulative 3000 m^3 LDR treatment or certification requirement due December, 31, 2006, according to M-91-42. By May 18, 2006, only 1872 m^3 of TRU(M) had been treated or certified. If the current rate of certification is not increased substantially, the December 31, 2006, milestone will not be met.

   USDOE and FH have engaged in numerous discussions with us attempting to justify reducing the requirements of this milestone. To date, we have not been convinced of a need to modify M-91-42 requirements. Ecology is concerned that USDOE and FH are attempting to reduce the milestone requirements instead of increasing efforts to meet them. We expect USDOE to fully comply with the M-91-42 milestone as currently written. Failure to do so may result in enforcement actions by Ecology.

3. Contract work scope deliverables and the performance incentive associated with TRU(M) treatment are not consistent with meeting the volume requirements for the December 31, 2006, milestone due date.

   Tri Party Agreement (TPA) Section 11.4 requires that baselines and work plans be consistent with milestone requirements. For M-91-42, USDOE reduced the planned work to less than the rate needed to meet the annual milestones. This change was not reported to Ecology at the monthly project manager status meetings or at the quarterly milestone review reports as required by the TPA.

   The work scope deliverables for the Waste Receiving and Processing (WRAP) facility under the Project Hanford Management Contract (DE-AC06-96RL13200) are reduced in scope from previous revisions of the contract. In addition, the scope of the Performance Incentive associated with TRU(M) certification (FY 2003-FY 2006, PBS: RL-0013-1) has been reduced numerous times. Please see the following table for the changes that were made. These changes are identified in bold print.

Date	Contract Deliverable (TRU[M]) shipment or certification due September 30, 2006)	Performance Incentive Deliverable (TRU[M]) shipment or certification due September 30, 2006)	Incentive Amount
June 14, 2004	*2,132 m^3*	*8 increments of 256 m^3* *2,900 m^3 cumulative*	*$11.2 M* *$1.5 M*
*July 20, 2005**	*2,132 m^3*	*6 increments of 256 m^3* *2,900 m^3 cumulative*	*$11.2 M* *$1.5 M*
September 12, 2005	*2,132 m^3*	*6 increments of 256 m^3* *2132 m^3 cumulative*	*$11.2 M* *$1.2 M*
November 15, 2005	*2,132 m^3*	*6 increments of 256 m^3* *2132 m^3 cumulative*	*$11.2 M* *$1.2 M*
March 16, 2006	*2,132 m^3*	*6 increments of 256 m^3* *1864 m^3 cumulative*	*$11.2 M* *$1.2 M*
March 24, 2006	*1,732 m^3*	*6 increments of 256 m^3* *1864 m^3 cumulative*	*$11.2 M* *$1.2 M*

* FH was paid performance incentive fee, through an equitable adjustment, for two increments never shipped.

These figures show the current contract deliverables and performance incentive requirements are inconsistent with meeting the December 31, 2006, milestone given the current rate of certification. It is unlikely that USDOE will be able to meet this milestone if FH completes only the minimum amount of work required to complete the contract deliverable and obtain the performance incentive fees.

Ecology expects the December 31, 2006, deliverable under M-91-42 will be met. Considering the concerns listed above, we will not modify the requirements of M-91-42 or adjust its due date. Failure to meet M-91-42 requirements may result in enforcement actions by Ecology, including issuance of penalties or orders.

If you have any questions, please call Eric Van Mason at 509-372-7929.

Sincerely,

Ron Skinnarland
Waste Management Section Manager
Nuclear Waste Program

EJV:pll
cc: See next page

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Administrative Record: M-91
Environmental Portal