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Department of Energy

Richland Operations Office
P.O. Box 550
Richland, Washington 99352

MAR 9 1992

92-TDB-051

Ms. Dana Rasmussen
Regional Administrator
Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Ms. Rasmussen:

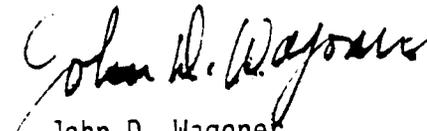
HANFORD TRI-PARTY AGREEMENT DISPUTE OF MILESTONE M-14-00 PER ARTICLE XV

After receiving the Environmental Protection Agency's (EPA) February 25, 1992 letter, the DOE Richland Field Office (RL) believes that progress is being made in resolution of the subject dispute. DOE's position of Milestone M-14-00 attached.

DOE feels equally appreciative of the efforts made by all parties to resolve this dispute. Due to the progress made, DOE proposes extending the dispute process within the Senior Executive Committee.

If you have any questions, please call me or your staff may contact Ron Izatt of my staff on (509) 376-5441.

Sincerely,


John D. Wagoner
Manager

WMD:DMW

Attachment

cc w/attach:
Paul Day, EPA
Randy Smith, EPA
Bill Jansen, Ecology
Narda Pierce, Ecology
Chuck Clarke, Ecology
Tim Veneziano, WHC



DOE'S SETTLEMENT OFFER
TO RESOLVE HANFORD TRI-PARTY AGREEMENT DISPUTE
ON LABORATORY SUPPORT SERVICES (MILESTONE M-14-00)

o PENALTY ASSESSMENT

DOE agrees to accept a penalty assessment for failure to follow the formal protocol for seeking modification of a major milestone under the Hanford Federal Facility Agreement and Consent Order/Tri-Party Agreement (TPA). Pursuant to Article XIX of the TPA, DOE will request \$100,000 in DOE's Fiscal Year 1994 budget to cover the penalty, and would deposit that amount into the Superfund to the extent such funds are authorized and appropriated for that specific purpose.

DOE acknowledges that it did not follow the TPA procedures for seeking modification to the TPA or otherwise obtain approval from the regulators before placing the construction hold and taking steps to obtain commercially available laboratory services. DOE also acknowledges that without formal approval by the regulators, DOE is obligated under the TPA to continue working on the milestones. It is recognized, however, that there was informal communication by DOE to the regulators on alternative approaches being considered.

o EXPEDITED RESPONSE ACTIONS

DOE will establish a program to facilitate expedited response actions (ERAs) for environmentally beneficial projects at the Hanford Site. DOE will solicit inputs from the regulators and private sectors in defining eligible candidates for the ERAs.

o USE OF OFF-SITE COMMERCIAL LABORATORIES

DOE will proceed with plans to provide the bulk of its laboratory analyses related to the TPA through current and additional contracts with commercial off-site laboratories. Any new contract for analytical laboratory services will recognize the terms of this settlement. The new contracts will contain penalty provisions to be exercised by DOE in the event of poor contractor performance related to failure to meet acceptable analytical sample turnaround times. The new contracts will also provide that failure to meet performance requirements established under this settlement will be considered a default of the contract and will be grounds for termination. DOE will use its best efforts to incorporate the penalty provisions into existing contracts for analytical laboratory services. If mutual agreement cannot be reached for existing contracts, DOE will explore its alternatives for terminating such contracts and recompeting for needed services.



o PROVISIONS FOR PROVIDING ADDITIONAL LABORATORY FACILITIES

DOE will be allowed a trial period of one year from the date of award of the currently planned major analytical laboratory contract to demonstrate, through the combination of on-site laboratory capability and commercial off-site laboratory contracts, DOE's capability to meet specified analytical turnaround times for low-level mixed wastes analyses specified in the TPA. The period of one year from date of the award of the keystone contract is necessary and appropriate to allow for a valid demonstration of laboratory performance. Given that the criteria for assessment of performance under the TPA is an annual average, an evaluation of performance over that period of time is necessary for a valid assessment.

DOE would agree as a part of the settlement, that the general criterion for evaluation of the laboratory performance will be the 75-day annual average turnaround time for low-level mixed wastes analyses specified in the TPA. However, this agreement is contingent upon an agreement by the regulators that the period of evaluation will be based upon a full year from the date of contract award. In addition, the three parties will work together to establish specific exceptions, if appropriate, prior to the beginning of the trial period, in cases which would not affect DOE's performance under the TPA. For the purposes of determining turnaround time, the time would begin when the sample is received by the commercial laboratory and end when the data package is received by Westinghouse Hanford Company's Office of Sample Management.

If DOE is unable to satisfactorily demonstrate performance pursuant to the terms of this settlement, DOE agrees to commit to the development of laboratory services dedicated to sample analysis in support of TPA activities. This may be done either through on-site or off-site construction. To facilitate this commitment, in parallel with the one-year trial period, DOE will undertake preparatory actions necessary to allow execution of this contingency plan as quickly as possible following a negative determination on the one-year trial of commercial facility utilization. However, the regulators must recognize that work cannot begin until funds are appropriated by the Congress.

o ESTABLISHMENT OF TECHNICAL SUPPORT GROUP

DOE will establish, on a case-by-case basis, a technical support group to be composed of independent experts, selected with the mutual consent of Ecology, EPA, and DOE, (funded by DOE) to provide review and guidance as well as assistance in the cooperative and informal resolution of technical issues that arise in the future implementation of the TPA. The establishment of an independent and neutral group to review those issues could thus assist in avoiding future disputes. It is not intended in any way to affect the authority of the regulators.

o CLARIFICATION OF TPA INFORMAL DISPUTE RESOLUTION PROVISIONS

The parties will develop a written protocol for informal dispute resolution provisions that will supplement the TPA and include the following:

- (1) DOE submits a written request to the regulators to review potential modifications to milestones;
- (2) Following formal approval of DOE's request by the regulators, all parties participate in joint review of the potential modifications to TPA milestones, with an allowance provided by the regulators for any delays in performance in support of a milestone while such reviews are being conducted;
- (3) If agreement is reached by the parties, DOE submits a formal change package to reflect the results of such a review; and
- (4) If no agreement is reached, or if DOE's request to review potential milestone modifications is denied, DOE may proceed to submit a formal change package, which if denied, will be subject to the applicable dispute resolution mechanism of the TPA.

