



U.S. Department of Energy Hanford Site

December 15, 2020

20-TF-0115

Mr. Jeffrey J. Lyon, Tank Systems Operations
and Closure Project Manager
Nuclear Waste Program
Washington State
Department of Ecology
3100 Port of Benton Blvd.
Richland, Washington 99354

Dear Mr. Lyon:

U.S. DEPARTMENT OF ENERGY, OFFICE OF RIVER PROTECTION RESPONSE TO
LETTERS 20-NWP-180 AND 20-NWP-192

- References:
1. Ecology letter from J. J. Lyon to B. A. Harkins, ORP, "Department of Ecology's Review of Single-Shell Tank Liquids Retrieval Study, RPP-RPT-62098, Rev. 0, and Fulfillment of Tri-Party Agreement (TPA) Milestone M-045-093," 20-NWP-192, dated December 8, 2020.
 2. Ecology letter from J. J. Lyon to B. A. Harkins, ORP, "Extension of the Department of Ecology's (Ecology) Comment Response Review Period for the Single-Shell Tank Liquids Retrieval Study, RPP-RPT-62098, Revision 0," 20-NWP-180, dated November 5, 2020.
 3. ORP letter from B. A. Harkins to J. J. Lyon, Ecology, "Response to 20-NWP-125 from the Washington State Department of Ecology Completion of Tri-Party Agreement Milestone M-045-93," 20-TF-0094, dated September 24, 2020.
 4. ORP letter from B. A. Harkins to J. J. Lyon, Ecology, "Reissue - Response to 20-NWP-125 from the Washington State Department of Ecology," 20-TF-0075 REISSUE, dated August 19, 2020.
 5. Ecology letter from J. J. Lyon to B. A. Harkins, ORP, "Completion of Tri-Party Agreement Milestone M-045-93," 20-NWP-125, dated July 27, 2020.
 6. ORP letter from B. A. Harkins to A. K. Smith, Ecology, "Completion of Tri-Party Agreement Milestone M-045-93," 20-TF-0032, dated June 12, 2020.

The U.S. Department of Energy, Office of River Protection (ORP) acknowledges receipt of your letters 20-NWP-192 (Reference 1) and 20-NWP-180 (Reference 2). ORP is willing to meet with you to discuss RPP-RPT-62098, Revision 0; however, ORP remains committed to compliance with the processes set forth in the Hanford Federal Facility Agreement and Consent Order or Tri Party Agreement or (TPA). ORP completed TPA Milestone M-045-93 (Submit Report for Description, Analysis and Technology for Removing Drainable Liquids from Single-Shell Tanks) when it submitted RPP-RPT-62098 on June 12, 2020, responded to Washington State Department of Ecology's (Ecology) comments via letter 20-TF-0094 on September 24, 2020, and when the document RPP-RPT-62098 became final 30 days later, on October 24, 2020. Ecology failed either to respond with comments or to request an extension to respond with comments within the required timeframe.¹

There is no question that RPP-RPT-62098 is a TPA "Primary Document"² as set forth, among other places, in the description of Milestone M-045-93 "Submit Report for Description, Analysis and Technology for Removing Drainable Liquids from SSTs." TPA Section 9.2 (Document Review and Comment Process) clearly sets forth the process with which Ecology is required to comply when reviewing and commenting on primary documents (Section 9.2.1 Primary Documents). TPA Figure 9-1 provides a visual representation of the process flow for reviewing and commenting on primary documents and the required time periods for specific actions, including but not limited to Ecology's obligation to respond within 30 days upon receiving ORP's response.³

The TPA's Document Review and Comment Process provides "upon receiving responses to the comments on a primary document, the lead regulatory agency will evaluate the responses," and provides that the lead regulatory agency, within 30 days, may either respond to ORP's responses or initiate the dispute resolution process. The lead regulatory agency may extend its response period by written notice to ORP prior to the end of the existing comment period. Such written notice is the only method available to a lead regulatory agency to extend its deadline by which to respond with regard to primary documents. On several previous occasions, Ecology has followed the process set forth in Section 9.2 by providing timely written notice for extension. Ecology failed to extend its comment period, declined to provide timely responses to ORP's responses, and failed to initiate dispute resolution. As such, RPP-RPT-62098 is final and ORP completed M-045-93.

¹ Pursuant to TPA [Section 9.2.1 and Figure 9-1] Ecology has 30 days to reply to DOE's responses to comments or request an extension. DOE provided responses on September 24, 2020. Ecology requested an extension on November 5, 2020.

² Definition of TPA primary document with TPA citation

³ Section 9.2.1 "If the lead regulatory agency does not respond and has not notified DOE of the need for an extension, the document becomes final at the end of the 30-day period."

By way of summary:

- On June 12, 2020, the ORP submitted primary document RPP-RPT-62098 to Ecology via letter 20-TF-0032 (Reference 6).
- On July 27, 2020, Ecology provided its timely comments to RPP-RPT-62098 to ORP via letter 20-NWP-125 (Reference 5).
- On August 19, 2020, ORP requested an extension to its deadline to address Ecology comments within 30 days via letter 20-TF-0075 (Reference 4).
- On September 24, 2020, ORP submitted responses to Ecology's via letter 20-TF-0094 (Reference 3).
- On October 25, 2020, RPP-RPT-62098 became final pursuant to Section 9.2 of the TPA because Ecology neither responded to 20-TF-0094 nor initiated TPA dispute.
- On November 5, 2020, after its deadline had passed and after RPP-RPT-62098 became final, Ecology transmitted letter 20-NWP-180 (Reference 2) in which an untimely and inappropriate attempt to extend its deadline was made.
- On December 8, 2020, Ecology transmitted untimely alleged deficiencies to final TPA Primary Document RPP-RPT-62098 and requested a meeting with DOE to discuss the same via letter 20-NWP-192 (Reference 1).

Notwithstanding Ecology's procedural deficiencies as set forth above, ORP will consider whether to revise final TPA Primary Document RPP-RPT-62098 so long as Ecology provides a satisfactory basis for each of its suggested changes. Although ORP is under no obligation to veer from the process set forth in the TPA Section 9.2.1, ORP wishes to continue to work collaboratively with Ecology on this matter.

ORP is available to meet to discuss Ecology's suggested changes. If you have any questions, please contact me on (509) 376-3567.

Sincerely,

**Brian A.
Harkins**

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Brian A. Harkins
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Brian A. Harkins, Deputy Assistant Manager
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Office of River Protection

TF:RAL

cc: See page 4

Mr. Jeffrey J. Lyon
20-TF-0115

-4-

December 15, 2020

cc: J. Alzheimer, Ecology
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