



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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July 10, 2019

19-NWP-109

Bill Hamel  
Assistant Manager, River and Plateau  
United States Department of Energy  
PO Box 450, MSIN: H6-60  
Richland, Washington 99352

RE: Agreement in Principle, Milestones impacted by Federal Fiscal Year (FFY) 2018 and 2019

References: See page 5

Dear Bill Hamel:

In this letter, Ecology reiterates our discussion with you and the United States Environmental Protection Agency (USEPA) on June 12, 2019, regarding a proposed Agreement in Principle (AIP) to negotiate extensions to Hanford Federal Facility Agreement and Consent Order (HFFACO), Appendix D, Work Schedule Milestones and Target Dates Including Designation of Lead Regulatory Agency.

In our discussion Ecology:

- Requested additional information to validate whether the United States Department of Energy (USDOE) Richland Operation Office (RL) has “Good Cause” for extensions pursuant to HFFACO Article XL, Good Cause for Extension; and
- Described that the regulatory agencies (Ecology and the USEPA) may expand negotiations beyond the specific extensions requested by USDOE.

This letter provides a summary of the budgeting process set forth in HFFACO Article XLVIII and additional detail related to the two topics of discussion identified above.

**HFFACO Article XLVIII Budgeting Process**

HFFACO Article XLVIII establishes a process that USDOE must follow in formulating its annual budget requests. HFFACO ¶148 requires USDOE to “take all necessary steps to integrate Hanford programs and to obtain timely funding in order to fully meet its obligations under [the HFFACO].” A key requirement of Article XLVIII Budgeting Process is that USDOE must include in its annual budget request the “estimated funding levels required to achieve full compliance with [the HFFACO].”



HFFACO ¶ 148.B recognizes that USDOE “may be subject to target funding guidance” from the Office of Management and Budget (OMB). In the event that USDOE’s “target budget case differs from its full compliance funding case,” HFFACO ¶¶ 148–149 establishes a process by which USDOE must consult with Ecology and USEPA as to “workslope, priorities, schedules/milestones, and Activity Data Sheet (ADS) funding levels required to accomplish the purpose of [the HFFACO].” As part of this consultation process, HFFACO ¶ 148.B requires USDOE to demonstrate that “satisfactory progress has been made in controlling costs in accordance with the cost efficiency initiatives.”

In the event that Ecology or USEPA has outstanding concerns about the difference between USDOE’s target budget case and its full compliance funding case, USDOE’s Headquarters (HQ) is required to “identify these issues and the funding required for compliance” in its budget request submitted to OMB. HFFACO ¶ 148.C.

Once there is a congressional budget appropriation, HFFACO ¶ 149.F requires USDOE to brief Ecology and USEPA on the “funding allocations for the new fiscal year at ADS level detail.” Ecology and USEPA must then be given an opportunity to “make recommendations for reallocation of available funds” as necessary.

In the event that the congressional budget allocation for a given fiscal year “differs from the funding levels required to comply with any milestones or other requirements of [the HFFACO],” then each of the Tri-Parties may take appropriate action as authorized by the HFFACO. This includes attempting to negotiate “adjustments in workslope or milestones” pursuant to HFFACO Action Plan, Section 12.0 (“Changes to the Agreement”).

#### **Request for Additional Information**

Beginning in June 2018 with notification of a milestone at risk (Reference 5), Tri-Party discussions continued through USDOE’s verbal proposal of December 12, 2018. In the latter, USDOE proposed changes to 12 milestones pursuant to HFFACO ¶ 149.G:

- G. “If the congressional budget appropriation differs from the funding levels required to comply with any milestones or other requirements of the Agreement, DOE-RL shall take whatever action is appropriate under the Agreement. Such action may include submitting a change request in accordance with the Action Plan, Section 12.0 entitled Changes to the Agreement.”

The milestones for which USDOE requested extensions concerned remedial investigations/feasibility studies for operable units of soil waste sites, and operable units of Section 8 key facilities and adjacent soil waste sites. As justification for the requested milestone extensions, USDOE claimed that congressional budget appropriations were insufficient to meet all Tri-Party Agreement obligations considering competing priorities of the site.

Ecology's position is that USDOE is entitled to approval of change requests submitted pursuant to ¶ 149.G only if USDOE has complied with all other requirements of ¶¶ 148-149. HFFACO Article XLVIII establishes a clear process that requires USDOE to request sufficient funding to meet its legal obligations under the HFFACO in each fiscal year. It then provides relief in the event that Congress does not fully fund USDOE's request.

The process does not contemplate a scenario in which USDOE fails to request sufficient funding and then requests milestone extensions on the basis that Congress did not provide funding above and beyond their request. Accordingly, USDOE must demonstrate that it complied with the process set forth in HFFACO ¶¶ 148-149 in order to establish that good cause exists for extension of milestones on the basis of insufficient congressional appropriations.

Ecology requests additional documentation from USDOE so that Ecology can confirm or refute whether USDOE complied with all such requirements.

**Compliance with HFFACO paragraphs 148.A through 148.C:**

¶ 148.A states that "In its annual budget request, DOE shall include estimated funding levels required to achieve full compliance with this Agreement." Ecology asserts that such funding levels would include at least 4 elements:

1. Work for milestones due in the FFY for which the funding request is made.
2. Work that must be completed in the FFY for which the funding request is made, to support progress towards milestones due in later FFYs.
3. Work described in Work Plans submitted pursuant to the HFFACO Action Plan Sections 11.5 and 11.6.
4. Work described in the Hanford Dangerous Waste Regulations permit.

¶ 148.C requires USDOE RL to include "compliance funding levels" in the budget request submitted to USDOE-HQ. In turn, HFFACO ¶ 148.C requires USDOE-HQ to identify "the funding required for compliance" in the budget request submitted to OMB.

Ecology requests documentation that the FFY18, FFY19, and FFY20 budget requests from USDOE-RL to USDOE-HQ, and from USDOE-HQ to OMB, identified funding for full compliance with all four of these elements.

¶ 148.B and C refer to detailed ADS funding levels. Ecology requests documentation that:

- USDOE-RL shared detailed ADS information with Ecology for FFYs 2018-2020.
- USDOE-RL transmitted the detailed ADS information to DOE-HQ for FFYs 2018-2020<sup>1</sup>.
- USDOE-RL requested FFY19 and FFY20 funding for compliance with HFFACO milestone M-83-00A for the Plutonium Finishing Plant, and for compliance with DOE/RL-2011-03, *Removal Action Work Plan for the Deactivation, Decontamination, Decommissioning, and Demolition of the Plutonium Finishing Plant Complex* (Reference 1).<sup>2</sup>

<sup>1</sup> Ecology received copies of the DOE-RL request memos for FFY18-20 (References 2-4). None of the copies include detailed ADSs.

<sup>2</sup> Neither the FFY19 nor the FFY20 request memos mention funding for the Plutonium Finishing Plant.

**Compliance with HFFACO paragraphs 149.D and I:**

¶ 149.D states that, in regards to differences between the target funding case, the full compliance funding case, and the President's budget request, USDOE "shall also provide Ecology and USEPA its assessment of the impacts such differences may have on DOE's ability to meet milestones or satisfy other requirements of [the HFFACO]."

Ecology requests that USDOE provide its assessment of such impacts for the FFY18-20 Budget Submittals.

¶ 149.I requires USDOE to "provide the following, or their equivalent, to USEPA and Ecology:

1. "Annual Multi-Year Program Plans, including ADS level funding projections, as soon as possible after their development."

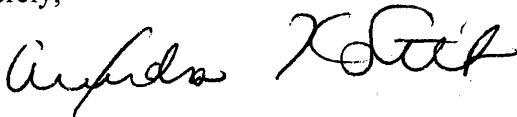
Ecology requests that USDOE provide the Multi-Year Program Plans in effect as of the dates of the FFY18-20 Compliance Budget Submittals.

**Expansion beyond USDOE-requested extensions**

HFFACO ¶¶ 148-149 refer to communication and consultation between the Tri-Parties regarding priorities. Ecology stipulates that Ecology and USEPA may assign priorities to other work beyond the specific milestones listed in an AIP. Ecology may propose new milestones (or milestone changes) for such other work.

Thank you for your attention. We look forward to receiving the information identified above by July 17, 2019. We also look forward to further consultation on workscope priorities, milestones, and funding, as outlined above. If you have questions or need further information, please contact John Price, Tri-Party Agreement Section Manager, at [john.price@ecy.wa.gov](mailto:john.price@ecy.wa.gov) or (509) 372-7921.

Sincerely,



Alexandra K. Smith  
Program Manager  
Nuclear Waste Program

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cc: See page 5

References:

1. DOE/RL-2011-03, "Removal Action Work Plan for the Deactivation, Decontamination, Decommissioning, and Demolition of the Plutonium Finishing Plant Complex."
2. 16-BUD-0016, dated May 12, 2016, "Fiscal Year (FY) 2018 Environmental Management (EM) Compliance Budget Submittal for the Richland Operations Office (RL)."
3. 17-BUD-0030, dated July 18, 2017, "Fiscal Year (FY) 2019 Environmental Management (EM) Compliance Budget Submittal for the U.S. Department of Energy (DOE) Richland Operations Office (RL)."
4. 18-BUD-0022, dated June 25, 2018 "Fiscal Year (FY) 2020 Environmental Management (EM) Compliance Budget Submittal for the Richland Operations Office (RL)."
5. 18-AMRP-0120, dated June 19, 2018, "Notification that Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Interim Milestone M-015-93C is at risk of not being met and request for extension of Tri-Party Agreement Interim Milestone M-15-18-03."

cc electronic:

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Hanford Administrative Record  
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