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August 19, 2019

19-NWP-092

William F. Hamel, Assistant Manager
Richland Operations Office
United States Department of Energy
PO Box 450, MSIN: H5-20
Richland, Washington 99352

Re: United States Department of Energy Missed Completion of Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Milestone M-035-09K and is Non-compliant with Action Plan Sections 9.6.2 and 9.6.5

Reference: Letter 19-AMRP-0059, dated March 29, 2019, "Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Milestone M-035-09K, Data Access Needs Completion"

Dear William F. Hamel:

By this letter, the Department of Ecology (Ecology) notifies the United States Department of Energy (USDOE) that it has missed completion of Milestone M-035-09K. Specifically, USDOE has not met the M-035-09K requirement to propose Hanford Federal Facility Agreement and Consent Order (HFFACO) milestones for data access enhancements identified during the biennial assessment of information and data access needs. Further, USDOE has not complied with data access requirements contained in the HFFACO Action Plan Sections 9.6.2 and 9.6.5.

The Tri-Party Agreement agencies conducted an assessment of information and data access needs, as required by Milestone M-035-09K. Throughout the course of multiple meetings, Ecology officials identified significant electronic data access deficiencies relating to the requirements of HFFACO Action Plan Sections 9.6.2 and 9.6.5. Despite these extensive discussions, USDOE failed to comply with its obligation to propose any implementation schedules (TPA milestones) for data access enhancements, and rather, unilaterally (and without notice to Ecology), closed out M-035-09K through USDOE Letter 19-AMRP-0059 (reference).

To remedy this situation, Ecology expects USDOE, by close of business on August 22, 2019, to:

1. Return Milestone M-035-09K to Appendix D of the HFFACO Action Plan.
2. Meet Milestone M-035-09K by agreeing to and signing Ecology's proposed revisions as noted in Federal Facility Agreement and Consent Order Change Control form M-35-19-01; regarding implementation schedules (TPA milestones) for enhancements that will bring USDOE into compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5, as discussed during the biennial assessment.

If you disagree with this path forward, please proceed in accordance with the dispute resolution process set forth in HFFACO Article VIII, paragraph 30.

Requirements not met:

1. HFFACO Action Plan Section 9.6 Electronic Data Access Requirements Have Not Been Met.

Specifically:

- HFFACO Action Plan Section 9.6.2 Agreement Data states: *“Ecology and EPA shall be granted access to all data that is relevant to work performed, or to be performed, under the Agreement.”*
- HFFACO Action Plan Section 9.6.5 Electronic Data Access Requirements states: *“EPA and Ecology shall have direct read, retrieve, and transfer access to all relevant electronic data and databases.”*

As discussed in each of the meetings that comprised the biennial assessment conducted under the requirements of M-035-09K, Ecology emphasized that it does not have access to electronic data as required by HFFACO Action Plan Sections 9.6.2 and 9.6.5. During these meetings, Ecology made clear its position that these deficiencies must be addressed through an implementation schedule established pursuant to M-035-09K.

2. Milestone M-035-09K Has Not Been Met.

Number	Milestone	Due Date
M-035-09K	Conduct biennial assessments of information and data access needs with EPA and Ecology. DOE will propose implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments.	03/31/2018*

*Extended iteratively through 03/21/2019

Milestone M-035-09K has two parts. First, it requires USDOE to “Conduct biennial assessments of information and data access needs with EPA and Ecology.” Second, it requires USDOE to “propose implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments.” Ecology granted four extensions to the due date to ensure USDOE would have adequate time to meet both requirements of the milestone.

Ecology and the United States Environmental Protection Agency (EPA), as the lead regulatory agencies, require USDOE to obtain written concurrence from both Ecology and EPA verifying that the biennial assessment was completed and agreeing that no new milestones are needed. Only then may USDOE close out the M-035-09 milestone.

This has been the procedure for the past ten years, as documented in the following letters signed by USDOE, Ecology, and EPA:

- Letter 16-AMRP-0115, regarding M-035-09J – dated February 23, 2016
- Letter 14-AMRP-0119, regarding M-35-09I – dated February 27, 2014
- Letter 12-ISI-0024, regarding M-35-09H – dated March 20, 2012
- Letter 10-ISI-0087, regarding M-35-09G – dated March 30, 2010
- Letter 08-ISI-0012, regarding M-35-09F – dated March 18, 2008

That USDOE has not complied with the two M-035-09K milestone requirements is evidenced in the following correspondence:

- a. USDOE's letter 19-AMRP-0059 stating, without concurrence from Ecology and EPA, that USDOE "has completed an assessment of the information and data access needs with the Washington State Department of Ecology and the U.S. Environmental Protection Agency as required by Tri-Party Agreement milestone M-035-09K that is due March 31, 2019[.]" This does not provide a sufficient basis to delete milestone M-035-09K from HFFACO Action Plan Appendix D.

Accordingly, the M-035-09K milestone must be restored to HFFACO Appendix D by close of business on August 22, 2019.

- b. USDOE's letter 19-AMRP-0059 stating that "no new milestones are required at this time." Again, there is no agreement from either Ecology or EPA that no new milestones are required under M-035-09K. Rather, during numerous meetings, Ecology and EPA identified specific deficiencies in electronic data access that must be addressed through an implementation schedule for enhancements.

These specific deficiencies include a lack of "access to all data that is relevant to work performed, or to be performed" as required by HFFACO Action Plan Section 9.6.2 and a lack of "direct read, retrieve, and transfer access to all relevant electronic data and databases" as required by HFFACO Action Plan Section 9.6.5. The milestone states "DOE *will propose* implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments." (Emphasis added.)

Accordingly, USDOE must propose acceptable HFFACO milestones designed to bring USDOE into compliance with Sections 9.6.2 and 9.6.5 of the HFFACO Action Plan or sign Ecology's proposed milestones by close of business on August 22, 2019.

William F. Hamel
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To recap, USDOE does not have written concurrence from Ecology and EPA that M-035-09K is complete. Ecology has determined that USDOE missed the milestone completion date for M-035-09K. Ecology has further determined that USDOE is not in compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5. Accordingly, USDOE must:

1. Restore the M-035-09K milestone to HFFACO Action Plan Appendix D.
2. Propose HFFACO milestones designed to bring USDOE into compliance with Sections 9.6.2 and 9.6.5 of the HFFACO Action Plan pursuant to M-035-09K.

Ecology will begin enforcement action(s) for the missed HFFACO milestone and USDOE's failure to comply with HFFACO Action Plan Sections 9.6.2 and 9.6.5, including, but not limited to, assessing stipulated penalties.

Sincerely,



Alexandra K. Smith
Program Manager
Nuclear Waste Program

cc electronic:

Dave Bartus, EPA
Dave Einan, EPA
Ben Ellison, USDOE
Kathy Higgins, USDOE
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Adam Palomarez, Ecology
John Price, Ecology
Environmental Portal
Hanford Facility Operating Record
USDOE-RL Correspondence Control

cc: Matt Johnson, CTUIR
Jack Bell, NPT
Laurene Contreras, YN
Susan Leckband, HAB
TPA Administrative Record
NWP Central File