

United States  
Environmental Protection  
Agency

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Seattle WA 98101

Alaska  
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Washington

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March 13, 1992

Reply To  
Attn Of: SO-155

Leo P. Duffy, Assistant Secretary  
Office of Environmental Restoration  
and Waste Management, EM-1  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585



John D. Wagoner, Manager  
U.S. Department of Energy  
Richland Field Office  
P.O. Box 550, A7-50  
Richland, Washington 99352



Chuck Clarke, Director  
State of Washington  
Department of Ecology  
Mail Stop PV-11  
Olympia, Washington 98504

Re: Dispute of Milestone M-14-00 Change Request.

Dear Messrs. Duffy, Wagoner, and Clarke:

I am writing you concerning the Department of Energy (DOE) request to change milestone M-14-00 of the Hanford Federal Facility Agreement and Consent Order (TPA). This matter has been in dispute for some time now. This dispute has required more staff and senior management time than any other issue we have faced over the past four years. We must remain focused and committed to our primary goal -- ensuring the timely cleanup of the Hanford Site.

Our staffs have worked closely over the past four years, both in creating and implementing the Hanford TPA. We have experienced some success, but have also had to struggle with a number of difficult issues. On balance, we believe that a good working relationship exists between EPA Region 10 staff and the DOE Richland Field Office staff. However, DOE's failure to construct and operate the low-level mixed waste laboratory and the ensuing dispute resolution process has placed a tremendous strain on that relationship. I sincerely hope the SEC Agreement document enclosed with this letter is acceptable to all parties and will end this dispute.

In my letter to you, dated March 2, 1992, I indicated that I would issue a final position if we were unable to resolve the dispute concerning Milestone M-14-00 by March 10, 1992. That was the second extension granted at the Senior Executive Committee (SEC) level. By letter dated, March 9, 1992, DOE requested that a third extension be granted, and submitted a new proposal.

I do not believe a third extension is needed. There has been extensive discussion of this matter at the staff level, at the Dispute Resolution Committee (DRC) level and at the SEC level. There has been a great deal of give and take. The progress in the last few weeks has been encouraging, particularly the penalty offer made by DOE. We believe we have reached general agreement on all critical elements of the proposed settlement.

The agreement we believe we have reached as a result of the discussions at the DRC and SEC level, is memorialized in the enclosed SEC Agreement document. We believe it is a fair and appropriate settlement of this dispute, in that it allows DOE one year to demonstrate that it can meet the requirements for timely analysis of samples without building the new laboratory, agreed to in Milestone 14.

The new proposal submitted by DOE on March 9, 1992, was inconsistent with our prior agreement. We were confused by the new DOE proposal. It proposed changes to all of the issues we had previously negotiated, and presented proposals which we had previously made clear were unacceptable to us in our discussions at the DRC and SEC, and in our meeting in Washington, D.C. on February 19, 1992. Since we do not believe DOE would be proposing to start our negotiations anew as that would force us to reject the change package request and enforce the Milestone, we are presenting our understanding of where the parties stand.

Our understanding has been that in exchange for modifying Milestone M-14-00: (1) we would provide DOE with a one (1) year trial period to demonstrate that they could meet the annual average analytical turnaround requirements of the TPA without a new laboratory; (2) that if DOE does not meet the average annual turnaround times (to be determined by EPA or Ecology), DOE would build a laboratory dedicated to support work required by the TPA; (3) the trial period would start immediately; (4) that DOE would take steps now that are necessary to provide for the construction of such a laboratory so that construction could proceed without delay, and they would include briefing Congress and the Office of Management and Budget and obtaining budget authority from the Secretary of Energy; (5) that if such a laboratory is required, it will be built on the Hanford site, or in the Tri-Cities area (to the extent allowed by law); (6) that TPA requirements for sample analyses, including turnaround times would not be altered at this time, but could be reviewed in the future to see if a

tiered schedule could be developed that would expedite the cleanup process; and (7) that DOE would commit to additional environmental response actions as a part of the settlement. The primary unsettled issue at our last meeting was the penalty. You have proposed a \$100,000 penalty and expedited response actions (ERAs) at Hanford, and we find that acceptable.

Our staffs have discussed ways in which we might consider change requests informally before they are actually submitted, and we plan to continue to work with you and Ecology to make that process more effective. However, the process that was proposed by DOE is different than what was discussed previously. We are willing to continue to pursue these discussions outside the M-14 Milestone dispute resolution process. Finally, the DOE technical support group proposal has been discussed at some length by our respective staffs, and set aside as an unnecessary component of a settlement of this matter. EPA has reservations about the utility of technical support groups as we are concerned that they would add delay and confusion to an already challenging process. However, we are willing to discuss any change that would improve communication between the parties or make implementation of the TPA more efficient.

As stated above, I do not believe additional extensions of the SEC deliberations are needed. Any remaining details can be worked out over the next twenty-one (21) days. Therefore, in accordance with the TPA and my March 2, 1992, letter to you, I am hereby issuing my position, which is that the request submitted by DOE on October 31, 1991, to change Milestone M-14-00 is denied. However, the attached SEC Agreement, which we believe represents the results of the discussions of the parties, if signed by DOE is acceptable to EPA as the basis for an amendment to the TPA. You have twenty-one (21) days to elevate this dispute to the Administrator of EPA by issuing a written notice, in accordance with Paragraph 50(G) of the TPA. I have enclosed an SEC Agreement which I feel fairly represents the understanding we have reached in this matter these past few months. I ask that the SEC members sign the document and return it in within five (5) days, so that we can proceed directly to negotiate any remaining details. I believe we can finalize this matter in twenty-one (21) days if we give it our immediate attention.

The position set forth in this letter is not intended to impair or alter Ecology's position issued on January 31, 1992. That position was issued in accordance with Article VIII, Paragraph 29 of the TPA. I am submitting this written position in accordance with Paragraph 50(G) of the TPA.

I hope that we can bring this matter to a close quickly. Until such time as a modification of the milestone is agreed upon, DOE is bound by its terms.

Questions should be directed to me at (206) 553-0479 or George Hofer at (206) 553-2803. We are looking forward to your response.

Sincerely,



Dana A. Rasmussen  
Regional Administrator

Enclosures

SEC AGREEMENT ON RESOLUTION OF  
MILESTONE M-14-00 CHANGE REQUEST DISPUTE

Milestone M-14-00 of the Hanford Federal Facility Agreement and Consent Order (TPA) requires the U.S. Department of Energy (DOE) to complete construction and initiate operations of a low level mixed waste laboratory on or before January 31, 1992. DOE has not begun construction of the Milestone M-14-00 laboratory.

The Milestone was included in the Agreement to ensure that analysis of Hanford samples would not unduly delayed. The Agreement allows a seventy-five (75) day annual average for laboratory turnaround times for low level and mixed wastes (up to 100mr/hour), not to exceed 90 days. For the first eleven (11) months of 1991, DOE has repeatedly exceeded the 90-day limit.

On October 31, 1991, DOE submitted a request to change Milestone M-14-00. This request was denied by the Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) on November 8, 1991. DOE initiated the dispute resolution procedures of the Agreement on November 15, 1991. The parties have engaged in extensive discussions, and agreed on a proposal to resolve this issue.

DOE acknowledges that it did not follow 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 Agreement to continue working on (remain in compliance with) the milestones. It is recognized, however, that there was informal communication by DOE to the regulators on alternative approaches being considered.

DOE agrees to pay a penalty, and will be given one (1) year to demonstrate that TPA turnaround times can be met without building the laboratory required by Milestone M-14-00. In exchange EPA and Ecology in accordance with the following terms will not seek additional penalties for DOE's violations of Milestone M-14-00, as well as the current violations of the Agreement's analytical turnaround times.

DOE, EPA, and Ecology agree to the following specific terms and conditions:

(1) DOE may provide the bulk of its TPA laboratory analyses through new and existing contracts with commercial off-site laboratories for a one (1) year trial period.

(2) The one (1) year period begins on the date this dispute is resolved.

(3) DOE will have to demonstrate that its combination of onsite laboratory capability and commercial off-site laboratory contracts can consistently meet the specified analytical turnaround times of the TPA. Turnaround times begin to run on the day the sample is taken and end when the data package is received from the laboratory by DOE or its contractors.

(4) At the end of the one (1) year trial period, EPA and Ecology will evaluate whether DOE's approach for providing laboratory services to support the TPA is working satisfactorily. To demonstrate satisfactory performance during the trial period, DOE will have to meet the 75-day average annual turnaround time for low level and mixed waste.

(5) If EPA or Ecology determine that DOE's approach for providing laboratory services to support the TPA is not satisfactory, DOE shall immediately, and without dispute or other challenge, implement contingency plans to provide additional laboratory facilities dedicated to support the TPA.

(6) DOE will develop contingency plans now for the construction of an on-site laboratory owned and operated by DOE, or issuance of a request for proposal for construction of an on-site or off-site laboratory, to be operated by a private laboratory firm in the Tri-Cities area (to the extent allowed by law). DOE assessment of the laboratory will be constructional and operational by a date acceptable to EPA and Ecology.

(7) DOE remains bound by the laboratory turnaround times specified in the Agreement before, during and after the trial period, unless they are modified in accordance with the Agreement modification provisions.

(8) DOE will brief the Office of Management and Budget, and DOE, Ecology, and EPA will brief the Congress, informing them that DOE may be required to fund a new laboratory at the close of the one (1) year trial period. Additionally, DOE will go to the Secretary of Energy now and obtain budgetary authority for additional laboratory capacity.

(9) If EPA or Ecology determine that a contingency plan must be implemented after the one (1) year trial period, DOE must agree to establish milestones in the Agreement, reflecting the required course of action. The completion date for laboratory construction, in case the demonstration fails, must be agreed to by the parties. This critical issue can be negotiated during the next twenty-one (21) days. Also, as part of this dispute settlement, a new

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milestone must be added to the Agreement to establish the date by which DOE's currently designed Waste Sampling and Characterization Facility must be completed and operational.

(10) DOE acknowledges that it violated Milestone M-14-00 of the Agreement, and DOE will pay a \$100,000 penalty for this violation pursuant to Article XIX of the Agreement. DOE will request \$100,000 in accordance with Article XIX of the TPA to cover the penalty, and will deposit that amount into the Superfund to the extent such funds are authorized and appropriated.

(11) DOE will commit to new expedited response actions (ERAs) at the Hanford site and will seek sufficient funding in FY94 and in subsequent years to complete new and existing actions. Any such ERAs must be in addition to those currently funded or planned. DOE's ERA program will be established and funded in a manner such that it will not detract from Agreement compliance.

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CHUCK CLARKE  
Director  
State of Washington  
Department of Ecology

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Date

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DANA A. RASMUSSEN  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 10

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Date

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JOHN D. WAGONER  
Manager  
U.S. Department of Energy  
Richland Operations Office

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Date

# CORRESPONDENCE DISTRIBUTION COVERSHEET

Author	Addressee	Correspondence No.
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**Subject:** DISPUTE OF MILESTONE M-14-00 CHANGE REQUEST

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