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MAR 27 2008

08-AMCP-0143

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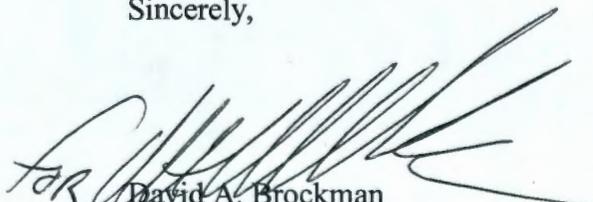
Addressees:

**STATEMENT OF DISPUTE (SOD) FOR THE 221-U FACILITY REMEDIAL DESIGN/
REMEDIAL ACTION (RD/RA) WORK PLAN**

The purpose of this letter is to transmit the SOD for the 221-U Facility RD/RA Work Plan to the U.S. Environmental Protection Agency (EPA) and State of Washington Department of Ecology (Ecology). In accordance with Article XVI, Paragraph 59 of the Tri-Party Agreement, this SOD will elevate the dispute to the Interagency Management Integration Team (IAMIT) level for resolution. This SOD concerns primary changes that the regulators added to the RD/RA Work Plan to make the document acceptable to the EPA and Ecology. The U.S. Department of Energy, Richland Operations Office looks forward to meeting at the IAMIT level to resolve this dispute.

If you have any questions, please contact me, or your staff may contact Matt McCormick, Assistant Manager for the Central Plateau, on (509) 373-9971.

Sincerely,


David A. Brockman
Manager

AMCP:MJV

Attachment

cc: See Page 2

Addressees
08-AMCP-0143

-2-

cc w/attach:

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Administrative Record (221-U Facility RD/RA Work Plan)

Environmental Portal

**STATEMENT OF DISPUTE
REGULATORY AGENCY COMMENTS TO THE 221-U FACILITY
REMEDIAL DESIGN/REMEDIAL ACTION WORK PLAN (RD/RA)**

I. NATURE OF DISPUTE

This dispute is raised pursuant to Article XVI, paragraph 59, of the Hanford Federal Facility Agreement and Compliance Order (HFFACO). It concerns the comments that the U.S. Environmental Protection Agency (EPA) and the Washington State Department of Ecology (Ecology) provided to U.S. Department of Energy (DOE) on the 221-U Facility Remedial Design/Remedial Action Work Plan (RD/RA). The 221-U Facility Record of Decision (ROD) was approved on October 3, 2005. The 221-U Facility RD/RA was submitted to the regulators on December 20, 2006, along with a draft Hanford Federal Facility Compliance (HFFACO) Agreement change package. The RD/RA entered into the Hanford Federal Facility Agreement Consent Order (HFFACO) section 9.2, Document Review and Comment Process for primary documents (see Section III.B, RD/RA Work Plan History). After several primary document review and comment iterations, on February 26, 2008, EPA and Ecology provided DOE a letter and a regulator revised version of the RD/RA with comments. DOE objects to the specific revisions and comments provided by EPA and Ecology. DOE's objections are summarized below and delineated more fully in Section III. Supporting Information.

Topic 1: Changes to Scheduled Activities, Completion Dates (Milestone Development) and Reference to HFFACO 7.3.9 Text

The 221-U ROD required that the RD/RA “detailed cleanup schedule shall be consistent with the current TPA milestone to complete all 200 Area remedial actions by September 30, 2024 (TPA Milestone M-16-00).” The RD/RA schedule date as submitted stated that the O&M Plan would be finalized by September 30, 2024, as required in the ROD (see Table 3-1 of the RD/RA). In their revisions to Table 3-1, Milestones for the 221-U Facility, EPA and Ecology provided new due dates that are five years earlier for the nine activities that were originally proposed by DOE and added five additional activities with due dates that are not likely to be met. DOE disputes the proposed changes to scheduled activities and due dates. Modifying and/or creating schedule activities in this manner is contrary to the HFFACO change processes that support establishing Hanford site priorities, the federal budget process, and DOE Order 413.3A.

The regulators proposed schedule changes are inconsistent with overall Hanford Site clean-up priorities; and based on current known funding and future projections, the schedule dates proposed by the regulators are improbable. DOE’s proposed schedule met ROD and TPA requirements to complete the work by 2024.

On March 12, 2008, DOE provided the regulators with the FISCAL YEAR (YR) 2010 HEADQUARTERS (HQ) OFFICE OF ENVIRONMENTAL MANAGEMENT (EM) BUDGET GUIDANCE. As part of the 2010 budget formulation process, DOE is sharing its certified baseline with the regulators that will include the 221-U Facility. The certified baseline represents the lifecycle for the 221-U Facility and reflects both the near term and out-year work scope, and is the basis for discussions with the regulators to

develop a shared set of priorities for the Hanford site including remediation of the 221-U Facility.

DOE previously committed to brief EPA and Ecology on the 221-U Facility schedule and budget, and negotiate activities, dates, and impacts per the negotiation process involving a draft Agreement in Principle (AIP) for, among other things, the decommissioning of Key Facilities.

Topic 2: Cleanup Levels

Regulator comments regarding response to a release of materials appear to be aimed at setting a precedent for adoption of Hanford site background levels as a cleanup standard with only secondary consideration of the environmental conditions and contaminants involved in the spill.

DOE is not inclined to accept or reject these comments at this time. DOE requests that the regulator provide a basis for the comments so that proper consideration and response may be given per the established document review process, HFFACO 9.2.1.

Topic 3: Removal of DOE from Process to Extend Document Review Period

Regulator comments effectively deny DOE the ability to participate in determining and affecting the length of time for an extension of the document review period.

DOE is not inclined to accept or reject these comments at this time. DOE requests that the regulator provide a basis for the comments so that proper consideration and response may be given per the established document review process, HFFACO 9.2.1.

Topic 4: Content of Added Surveillance and Maintenance Section

Regulator comments added a new section to the RD/RA incorporating surveillance and maintenance activities. (See Section III)

DOE is not inclined to accept or reject these comments at this time. DOE requests that the regulator provide a basis for the comments so that proper consideration and response may be given per the established document review process, HFFACO 9.2.1.

Topic 5: Performance Criteria for Fill Material

Regulator comments added performance criteria with an unclear basis for material that may be used as fill beneath the engineered barrier described in the selected remedy. (See Section III)

DOE is not inclined to accept or reject these comments at this time. DOE requests that the regulator provide a basis for the comments so that proper consideration and response may be given per the established document review process, HFFACO 9.2.1.

II. DOE'S POSITION ON THE DISPUTE

It is DOE's position that the regulators' comments that are presented in the Nature of Dispute regarding Topic 1 (schedule) are inappropriate, do not have a clearly defined regulatory basis, and circumvent the HFFACO process. Regarding Topics 2 through 5, DOE requests that the regulator provide a basis for the comments so that proper consideration and responses may be given. DOE has a certified project baseline summary (PBS RL-0040) that includes schedule and budget required to accomplish the scope of work identified in the RD/RA. DOE has made timely requests for funding to support the RD/RA scope of work per HFFACO Article XLVII. COST, SCHEDULE, SCOPE, INTEGRATION, PLANNING AND REPORTING FOR FUNDING TO

ACCOMPLISH THE WORK PER THE SCHEDULE. DOE requested \$9.8M in FY'08 that resulted in an appropriated share for the U Plant scope of \$181K (based on Site priorities). For FY'09 \$8.7M has been requested, however, minimal funding is anticipated to support the regulator comments to bring work closer to the near term. It is DOE's position that the baseline schedule, drawn from the certified baseline, should be discussed as part of the larger negotiations as is anticipated in the aforementioned AIP. Due dates consistent with the certified baseline then should be provided in the RD/RA to accomplish the planned scope. Pertinent sources of authority and/or references upon which the proposed due dates were based were not provided. The rationale for the due dates and the five new activities identified, in Table 3-1 of the RD/RA, were not provided.

The remedial design for the 221-U Facility will be submitted to the regulatory agencies for review and approval using a phased approach, as defined in the EPA guidance document, Remedial Design/Remedial Action Handbook, EPA 540/R-95/059. Due to the lengthy duration and complexity of the project, a phased design approach is necessary. As portions of the design reach 90% completion, they will be submitted to the regulatory agencies for review and approval per the RD/RA schedule.

DOE recognizes that a project of the complexity and duration of the 221-U Facility requires an extensive planning effort and has been making preparations to present the baseline and schedule in formal technical discussions with the regulators.

At the time regulator comments were received, DOE, EPA, and Ecology were in the process of finalizing an AIP that committed the Tri-Parties to enter into negotiations by April 30, 2008 on the 221 U-Facilities HFFACO milestones. The Tri-Parties had come to an agreement on draft AIP paragraph D. 1 which states: "To include in the

negotiations, discussions on: Milestones for implementation of the Record of Decision, 221-U Facility (Canyon Disposition Initiative), Hanford Site, Washington”.

Additionally, DOE was in the process of aligning headquarters, RL, and contractor staff to support the April 30, 2008 technical discussions, including the 221-U Facility RD/RA scope.

III. SUPPORTING INFORMATION

A. Details of the Topics of Dispute

Topic 1: Changes to Scheduled Activities, Completion Dates (Milestone Development) and Reference to HFFACO 7.3.9 Text

- The schedule due dates proposed by the regulators in Table 3-1 of RD/RA are not acceptable to DOE. The DOE proposed schedule fulfills the ROD and TPA requirements. The regulator proposed due dates are contrary to the HFFACO process for prioritization of work and inconsistent with the overall Hanford Site clean-up priorities. Based on current known funding and future projections, the schedule dates proposed by the regulators are improbable. Modifying and/or creating schedule activities in this manner is contrary to the HFFACO change processes that support establishing Hanford site priorities and the federal budget process. Thus, the regulatory agencies are committing DOE to perform work that has a low probability of being funded but would be enforceable. Tri-Party Negotiation of scheduled project activities (milestones) and due dates for remediation of the 221-U Facility was and is included in the Facility Decommissioning AIP which was in development at the time of the receipt of comments to the RD/RA.
- From RD/RA Sections 1.3, Phased Design Approach and 3.3 Project Schedule and Cost, DOE disagrees with the comment that “Milestones will be developed during

negotiations for 200 Area facility decontamination and demolition (D & D) as agreed to by the Tri-Parties in the Agreement-in-Principle to negotiate D & D milestones and other changes to the Tri-Party Agreement.” DOE also disagrees that the Gant charts need to be revised to reflect proposed due dates. Although the Tri-Parties have been engaged in developing an AIP addressing 200 Area Key facilities, that AIP has not yet been finalized and, therefore, no agreement to negotiate D&D milestones or other changes to the HFFACO exists.

- From RD/RA Table 3-1, Key Schedule Items for the 221-U Facility, DOE disagrees with the added scope and modified due dates proposed by the regulator(s).
- The following text was added to Section 6.2, Design Development: “Consistent with Tri-Party Agreement Action Plan Section 7.3.9, DOE will submit to EPA and Ecology a Remedial Design Report once a 90% design has been reached for the remedy. Each 90% design package will be added to the Remedial Design Report as an addendum once approved. Also in accordance with Section 7.3.9, an interim milestone will be developed for reaching the 90% design (unless the regulatory agencies agree that a milestone for the design is unnecessary). Milestones will be developed during negotiations for 200 Area facility decontamination and demolition (D & D) as agreed to by the Tri-Parties in the Agreement-in-Principle to negotiate D & D milestones and other changes to the Tri-Party Agreement.”

DOE disagrees with “Milestones will be developed during negotiations for 200 Area facility decontamination and demolition (D & D) as agreed to by the Tri-Parties in the Agreement-in-Principle to negotiate D & D milestones and other changes to the Tri-Party Agreement.” Again, although the Tri-Parties have been engaged in

developing an AIP addressing 200 Area key facilities, that AIP has not yet been finalized.

DOE disagrees with the comment text as it is not consistent with the actual text of HFFACO 7.3.9 Remedial Design Phase quoted below:

“Following issuance of the ROD, the remedial design (RD) phase will be initiated in accordance with a schedule agreed to by the project managers. Milestone change requests shall be processed in accordance with Section 12.0. Since any necessary treatability investigations have been performed during the RI Phase II, no additional investigations will be necessary, unless required by the lead regulatory agency. A number of items will be completed during the RD phase, including but not limited to the following:

- Completion of design drawings
- Specification of materials of construction
- Specification of construction procedures
- Specification of all constraints and requirements (e.g., legal)
- Development of construction budget estimate
- Preparation of all necessary and supporting documents.

An RD report will be prepared that includes the designs and schedules for construction of any remediation facility and development of support facilities (lab services, etc.). The RD report shall contain at least a 90% design. If less than 90% design submission is required by the lead regulatory agency, it will be documented in the RD/RA work plan. The RD report is a primary document as described in Section 9.0. The schedule for conducting the RD phase will be specified for each operable unit in the work schedule Appendix D).”

Topic 2: Cleanup Levels

Regulator comments regarding response to spills appear to aim at setting a precedent for adoption of Hanford site background levels as a standard with only secondary consideration of the environmental conditions and contaminants involved in the spill. DOE disagrees with the perceived movement toward carte blanche application of Hanford Site background levels as cleanup levels without case-by-case evaluation of the environment and contaminants involved in the release.

- DOE disagrees with text added to Section 2.2.2, Cleanup Levels for the 221-U Facility, “If a release of materials occurs to the environment the affected area will be cleaned up to Hanford Site background levels.”
- DOE disagrees with the text added to Table 2-2, ARARs for the Selected Remedy, (Note: Italicized text is included for context and is not disputed) *In the event that any hazardous substances generated or managed during remediation are released to the environment, the WAC 173-340 requirements identified herein will be applied to the release to determine what level of cleanup, if any, is warranted based on the circumstances surrounding the release.* “However, the affected area will be returned to Hanford Site background levels if at all possible before any steps to develop Remedial Action Goals (cleanup levels) for a particular release.”
- DOE disagrees with the text added to Section 2.2.3 Remedial Action Goals, (Note: Italicized text is included for context and is not disputed) *The standards of WAC 173-340 will be applied to these materials for evaluation and possible cleanup only if the materials are released to the environment* “and only when it is not possible to clean up the affected area to Hanford Site background levels.”

- DOE disagrees with the text added to Section 3.11.2, Non-routine Release Response, (Note: Italicized text is included for context and is not disputed) *In the event of a spill or release of a hazardous substance, appropriate spill or release response actions will be performed commensurate with the type and magnitude of the spill or release.* “The affected area will be returned to Hanford Site background contaminant levels if possible. If the spill occurred on an existing waste site or cannot be returned to Hanford Site background levels, then cleanup levels and points of compliance will be developed and approved based on the specific details of the release. The PRGs developed for the feasibility study will be the starting point for determination of the RAGs (cleanup levels) applied to the release.”

Topic 3: Removal of DOE from Process to Extend Document Review Period

Text was stricken from Section 6.2, Design Development as follows: “The lead regulatory agencies review period is 30 days. If the review period requires a longer schedule because of the complexity of the project, the DOE and the lead regulatory agencies will agree to the extended the review period, as necessary. To minimize impacts to the schedule, the need for additional review time should be communicated early in the process”.

DOE is responsible for maintaining schedule on enforceable milestones and needs to agree on the extension of additional review time that may impact enforceable work activities. Thus, DOE along with the lead regulatory agency must be involved in determining the length of time for any review extension.

Topic 4: Content of Added Surveillance and Maintenance Section

While DOE does not dispute the addition of the Surveillance and Maintenance topic, DOE does dispute much of the text. Though this text appears to have been copied from an existing document, the level of detail and lack of flexibility are not appropriate for the RD/RA primary document. DOE wishes to find mutually acceptable text through continuing the document review process.

Topic 5: Performance Criteria for Fill Material

- The following text was added to Section 3.9, Attainment of Remedial Action Objectives: “Low-risk rubble may be used to offset the need for clean fill materials necessary to form the foundation of the engineered surface barrier outside the grouted structure. This material would come from the demolished canyon roof and upper-wall sections and potentially from ancillary facilities in the U Plant Area. The performance criterion for this material is based on preventing an unacceptable risk to human health and the environment. Specifically, exposure through inadvertent intrusion prior to 150 years (100 years after the end of active waste management in the 200 Area) must not result in a dose rate above 100 mrem/year chronic or 500 mrem/year acute, and after 150 years not to exceed 15 mrem/year. The time periods for the acceptable dose rates are not based on the design life of the engineered barrier, but rather the increasing likelihood that ICs may not be maintained effectively. As the design level increases, the field screening techniques and levels will be developed and approved to allow proper screening of rubble. Rubble that does not pass due to dose rate or dangerous waste content will be disposed of at ERDF or at another approved disposal facility. [This addition needs to be reflected in later discussions of waste streams, waste management and waste disposal. Other sections that will have

to describe low-risk rubble and refer to the design criterion include the design and remedial action sections. We're going to need DOE's and Fluor's help on making the sections consistent.]”

- Similar text was added to Section 6.6.6, Disposition Demolition Waste.

DOE is not inclined to accept or reject these comments at this time. DOE desires the regulator to provide a basis for the comments so that they may be properly evaluated and responded to.

B. RD/RA Work Plan History

December 20, 2006, the U.S. Department of Energy Richland Operations Office transmitted to EPA and Ecology the Remedial Design/Remedial Action Work Plan primary document for the 221-U Facility fulfilling a commitment established in the Record of Decision (ROD) for the 221-U Facility. A HFFACO draft change package, M-85-06-01 was also submitted per section 11.6 that included the establishment of a new milestone series for the disposition of the 221-U Facility. The 221-U Facility is designated as a “Key” Facility subject to the HFFACO Section 8 Facility Decommissioning Process and is proceeding through the disposition phase.

The RD/RA entered into the HFFACO 9.2 Document Review and Comment Process where upon the RL, EPA and Ecology reviewed and commented on the document per the HFFACO Figure 9-1 flow chart.

February 7, 2007, the EPA sent a letter to RL extending the duration of the review of the RD/RA an additional 30 days to March 5, 2007. EPA defined a need to discuss the draft

milestone change package and how they relate to 200 Area Facilities and the completion of all actions for decommissioned buildings by 2024.

March 7, 2007, EPA sent RL a letter with comments on the RD/RA being that the document had several deficiencies and issues that need to be addressed.

March 20, 2007, EPA sent RL a letter with additional comments adding one major comment after reading comments from Ecology.

March 27, 2007, Ecology sent RL a letter with comments on the RD/RA.

April 13, 2007, RL sent a letter to EPA requesting a 60 day extension to respond to EPA's new comments moving the due date from April 19, 2007, to June 18, 2007.

April 23, 2007, EPA sent a letter to RL granting the 60-day extension and referenced a discussion from the February 21, 2007, EPA, RL and Ecology project managers meeting to "postpone development of specific milestones for the 221-U Facility in exchange for an AIP to negotiate inclusion of facilities and the facility binning approach into the Tri-Party Agreement". EPA provided formal comments on the 221 U Facility M85-06-01 change package.

May 3, 2007, Ecology sent a letter to RL granting a 60 day extension on the responses to comments.

June 18, 2007, RL sent a letter to EPA and Ecology transmitting a RD/RA comment response package and a draft Tri-Party Agreement, AIP for Central Plateau Facility disposition, which replaces the 221-U Facility –specific draft Tri-Party Agreement change package. The AIP includes a proposal to develop milestone language for implementation of the 221-U Facility Record of Decision.

June 29, 2007, DOE received an email from Ecology expressing satisfaction with comment responses.

July 19, 2007, EPA sent RL a letter responding to RL's comments that EPA made on the RD/RA. EPA notified RL that EPA was taking a 30 day extension for the comment period for the AIP to fully consider the draft.

August 17, 2007, EPA and Ecology sent RL a letter notifying RL that they were taking an additional 90 day extension period for commenting on the draft AIP from August 21, 2007, postponing the AIP so that the Parties can focus on the Site Wide negotiations.

October 10, 2007, RL sent EPA and Ecology a letter transmitting draft B of the RD/RA.

January 2008, RL provided EPA a modified electronic version of the draft B redline RD/RA.

January 9, 2008, DOE sent a meeting notice to EPA and Ecology that included two versions of the AIP attached.

January 17, 2008, RL, EPA and Ecology project managers met to review comments on the draft AIP and RL provided a revised AIP to EPA and Ecology. EPA responded via email that the updated version of the AIP incorporated all the changes discussed and that RL should draft a letter to transmit the AIP for signature of the Parties.

January 18, 2008, Ecology sent an email to RL and EPA stating that the RL changes to the AIP "look good" and to proceed with approval by a formal RL letter.

February 22, 2008, EPA and Ecology sent a letter to RL providing a comment version of the RD/RA work plan and stated that if DOE had issues with any of the changes, then DOE should initiate dispute.

March 3, 2008, RL sent a letter to EPA and Ecology invoking dispute under the HFFACO Article XVI.

C. Chronology

The EPA, Ecology and RL have been reviewing and commenting on the 221-U Facility RD/RA work plan for almost two years as it is a complex and lengthy project taking well over a decade to plan and complete. The Agencies recognized the importance of developing milestones per HFFACO sections 7.3.10 and 11.6 and agreed to begin negotiations on April 30, 2008, per the draft AIP that was in the final stages of review and internal DOE approval prior to entering into this dispute.

IV. HISTORY OF ATTEMPTED RESOLUTION

The DOE project manager has contacted the regulatory agency project managers and they have been unable to resolve the dispute at the project manager level.

V. RECOMMENDED RESOLUTION

To resolve the dispute DOE recommends that the Agencies: 1) continue the processing and approval of the AIP with a new date of August 11, 2008 to initiate negotiations, and 2) coordinate the review and comment of the 221-U Facility RD/RA work plan by the Tri-Parties to coincide with the negotiations on milestones for implementing the ROD for the 221-U Facility (Canyon Disposition Initiative), Hanford Site, Washington. These discussions will include presentations to the EPA and Ecology project managers on the certified baseline and schedule that support accomplishing the scope in the RD/RA.