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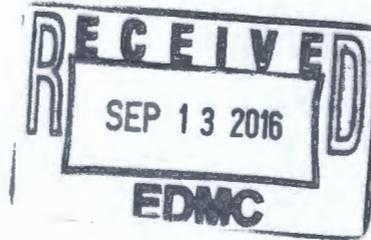
OFFICE OF RIVER PROTECTION

P.O. Box 450, MSIN H6-60
Richland, Washington 99352

16-TF-0100

SEP 12 2016

Ms. Alexandra K. Smith, Program Manager
Nuclear Waste Program
Washington State
Department of Ecology
3100 Port of Benton Blvd.
Richland, Washington 99354



Ms. Smith:

STATEMENT OF DISPUTE REGARDING WASHINGTON STATE DEPARTMENT OF ECOLOGY NOTICE OF STIPULATED PENALTY INCURRED AND DUE - No. 12901 PERSUANT TO THE HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER, ARTICLE IX

- References:
1. Ecology letter from J.B. Price to T.W. Fletcher, ORP, "Docket No. 12901, Stipulated Penalty for *Hanford Federal Facility Agreement and Consent Order* (Tri-Party Agreement) Milestone M-45-92," 16-NWP-138, dated August 10, 2016. 1239774
 2. ORP letter from K.W. Smith to A.K. Smith, Ecology, "Initiation of Dispute Resolution Regarding Washington State Department of Ecology Notice of Stipulated Penalty Incurred and Due – No. 12901 Pursuant to the Hanford Federal Facility Agreement and Consent Order, Article IX," 16-TF-0092, dated August 16, 2016. 1239782

On August 10, 2016, the Washington State Department of Ecology (Ecology) issued NOTICE OF STIPULATED PENALTY INCURRED AND DUE – No. 12901 to the U.S. Department of Energy, Office of River Protection (ORP) (Reference 1). ORP is providing notice that it objects to Ecology's Notice of Stipulated Penalty on August 16, 2016 (Reference 2), and is initiating dispute resolution at the Interagency Management Team-level under Hanford Federal Facility Agreement and Consent Order, Article VIII, "Resolution of Dispute."

This letter transmits the Statement of Dispute for Notice of Stipulated Penalty – No. 12901 (Attachment) to the Interagency Management Integration Team (IAMIT). The Statement of Dispute explains why the ORP believes there is no justification for the Notice of Stipulated Penalty – No. 12901, preparatory to dispute resolution with the IAMIT.

Alexandra K. Smith
16-TF-0100

-2-

SEP 12 2016

If you have any questions, please contact Thomas Fletcher, Assistant Manager for Tank Farm Project, at (509) 376-3434.



Kevin W. Smith
Manager

TF:CJK

Attachment

cc w/attach:

R.S. Skeen, CTUIR
J.J. Lyon, Ecology
D. McDonald, Ecology
J.B. Price, Ecology
D.A. Faulk, EPA
S. Hudson, HAB
C.P. Noonan, MSA
R.E. Piippo, MSA
M.J. Turner, MSA
G. Bohnee, NPT
K. Niles, ODOE
R. Buck, Wanapum
J.T. Hamilton, WRPS
J.A. Joyner, WRPS
D.L. Parker, WRPS
R. Jim, YN
D. Rowland, YN
TPA Administrative Record M/S M-045-92
Environmental Portal

Attachment

16-TF-0100

Statement of Dispute

1 Ecology is stating that DOE-ORP failed to accurately report the status of M-045-92 from
2 October 23, 2014 to March 31, 2015.

3 4 **II. ORP's Position on the Dispute** 5

6 Both Ecology and DOE-ORP hold regular Project Manager Meetings (TPA PMM) to report on
7 project and task status and maintain associated briefing packages and signed meeting minutes. In
8 these meetings, cost and schedule information is routinely shared – including, DOE-ORP's
9 reporting on M-045-92 status during the time period in question (October 2014 through March
10 2015). During this time, DOE-ORP stated that its spending levels were capped at the prior year's
11 level, due to a continuing resolution. DOE-ORP believed it could recover project schedule
12 through Tank Operations Contract efficiencies prior to March 2015 and reported the same to
13 Ecology on several occasions.

14
15 TPA Section 4.1 imposes a duty on Ecology to provide a written recommendation based on the
16 DOE-ORP provided funding information. TPA Section 4.1 reads:

17
18 In the event that the lead regulatory agency project manager forms an opinion that
19 DOE actions or failure to act jeopardizes completion of an Agreement milestone,
20 the project manager shall notify DOE of that fact in a timely manner. Such
21 notification shall be in writing and shall provide the project manager's detailed
22 rationale for the opinion. On receipt, DOE's project manager will reply in writing
23 within 15 working days. Such reply will either assure that compliance is intact and
24 that DOE's ability to meet Agreement milestones has not been unduly jeopardized,
25 or will describe in detail, expected impact(s), causative factors, and action(s) DOE
26 has/is taking in response. (TPA Section 4.1)
27

28 Ecology failed to comply with the TPA action noted above as it did not notify DOE-ORP's
29 project manager in writing of any issue with the M-045-92 barrier interim milestone when it was
30 stuated at the meetings identified above.

31
32 Likewise, Ecology failed to provide recommendations pursuant to Paragraph 149.F (under 149.F,
33 Ecology is to "make recommendations for reallocation of available funds") at any of the formal
34 meetings or informal, bi-weekly meeting, which DOE-ORP and Ecology utilize to discuss key
35 topics related to the tank retrieval and closure work scope. Additionally, Ecology failed to
36 provide such recommendations throughout the course of the monthly M-045-92 status meetings
37 or the retrieval and closure status meetings, which occur biweekly. These meetings serve as a
38 platform for DOE-ORP to receive Ecology input and recommendations for reallocation of funds.
39 Ecology may provide such recommendations pursuant to Paragraph 149.F; however, Ecology
40 failed to make such recommendations, or raise issue or objection to the proposed revised M-045-
41 92 schedule until April 17, 2015, when Ecology denied the milestone change control form for M-
42 045-92 (M-45-15-01), submitted March 31, 2015.

1 **Background Regarding DOE-ORP's FY15 Funding**
2

3 On October 1, 2014 DOE-ORP received a 72-day funding allotment of \$102,581,755, an amount
4 based on the prior year's (FY 2014) Omnibus funding level of \$520,216,000. At this time, DOE
5 still anticipated that it would receive the President's full budget in the amount of \$724,000,000.
6 Between October 2014 and March 2015, DOE-ORP's Manager, and Assistant Manager of Tank
7 Farms informally met on several occasions with Ecology's Manager of the Nuclear Waste
8 Program to communicate the \$179,000,000 Fiscal Year 2015 budgetary shortfall. In these
9 meetings, ORP's Manager and Assistant Manager of Tank Farms indicated that if: (1) the
10 budgetary shortfall were to occur; and (2) contractor efficiencies could not be realized, the
11 construction of M-045-92 barriers would not likely be funded. The FY 2015 Omnibus became
12 law on December 16, 2014, resulted in DOE-ORP's fiscal year 2015 funding of \$545,000,000.
13 DOE-ORP did not formally report its budget status to Ecology until March 3, 2015 as DOE-
14 Field Offices (DOE-ORP) were required to await DOE – HQ approval (provided on February 6,
15 2015) to proceed with regulator budget briefings. The budget briefing was delayed until March
16 3, 2015 to accommodate DOE-ORP and Ecology Senior management attendance.
17

18 On March 3, 2015, DOE-ORP provided Ecology a TPA 149.F required regulator briefing on the
19 fiscal year 2014 year end and fiscal year 2015 funding appropriation (Attachment A). The chart
20 on page 2 of the briefing identifies that the omnibus appropriation was \$545,000,000 and the
21 fiscal year 2016 President's budget was \$724,000,000; noting that the gap of \$179,000,000 in the
22 President's budget to that allocated was insufficient to cover all of DOE-ORP Tank Farms
23 workscope, including the M-045-92 barrier milestone(s).
24

25 Following the March 3, 2015 briefing, Ecology failed to provide DOE-ORP with written
26 feedback, questions, concerns or request for additional information regarding the \$179,000,000
27 shortfall that was presented in the March 3, 2015 briefing. Shortly after the March 3, 2015
28 briefing, DOE-ORP understood that funding remained unavailable to build barriers and took
29 action under TPA Paragraph 149.G by submitting a TPA change control form to modify barrier
30 milestone due dates. DOE-ORP was concurrently seeking Tank Operations Contractor
31 efficiencies to allow for the construction of barriers in both SX Farm and the design of Barrier III
32 (M-045-92 milestones), notwithstanding the budgetary shortfall of \$179,000,000.
33

34 ***ORP Held the Belief That It Could Realize Workslope Efficiencies that Would Allow it to***
35 ***Meet the Fiscal Year 2015 M-045-92 Milestone Obligations until Higher Priority Scopes of***
36 ***Work Intervened***
37

38 In Fiscal Year 2015, Ecology and DOE-ORP agreed to apply resources to complete higher
39 priority work scope that effectively prevented any Tank Operating Contractor Efficiencies that
40 could have been tasked to M-045-92 milestone work, including, but not limited to:

- 41 • DOE-ORP responded to chemical vapors hazards by completing a Hanford Tank Vapor
42 Assessment (TVAT) Report and the corresponding Implementation Plan for Hanford
43 Tank Vapor Assessment Report Recommendations. The TVAT outlined 10 Overreaching
44 Recommendations encompassing 47 more specific recommendations to help reduce the

1 potential for chemical vapor exposures at the Hanford Site. The Phase I estimate for FY
2 2015-2016 was between \$60 and \$70 million for expanded sampling and characterization
3 of tank head space gases, evaluation and procurement of new field and personnel
4 protection equipment, and increased hiring of industrial hygiene staff. The \$60-\$70
5 million cost estimate was only for the cost to complete the actions in the implementation
6 plan. The estimate did not include any efficiency impacts (cost or schedule) as a result of
7 implementing actions. DOE-ORP needed to determine if the new Vapor risk
8 minimization scope once implemented would provide efficiencies that released funding
9 that could be applied to barrier construction. Ecology was certainly aware that DOE-ORP
10 was aggressively pursuing Vapor analysis and mitigation actions as a priority and
11 provided briefings on the project. This emerging work scope was not in the \$724 Million
12 President's budget, nor in the allocated \$545 million budget.

- 13 • Completing actions to address the leak associated with Tank 241-AY-102 (AY-102) in
14 accordance with the 241-AY-102 Settlement Agreement (*Pollution Control Hearings*
15 *Board, State of Washington, 241-AY-102 Settlement Agreement, PCHB No. 14-041c*
16 *signed and submitted September 29, 2014, effective October 2, 2014*). Ecology was
17 certainly aware that AY-102 had become a higher priority, as the Settlement Agreement
18 and corresponding actions were the very outcome of a mutually-agreed upon resolution to
19 the appeal of an Administrative Order No. 10618 issued by Ecology on March 21, 2014,
20 which at this time was thought to be around \$82 million total workscope. This emerging
21 work scope was not in the \$724 Million President's budget briefing provided to Ecology
22 on March 3, 2015.

23
24 Between October 1, 2014 and March 31, 2015, DOE-ORP was evaluating impacts from
25 emerging work to address AY-102 and Vapors and DOE-ORP required a better understanding of
26 its financial obligations and other associated impacts resulting from the Vapors issues and AY-
27 102 prior to construction on the barrier. When DOE-ORP understood on March 31, 2015 that it
28 could not fiscally support the Vapors, AY-102 and barrier construction missions, DOE-ORP
29 submitted change control form M-45-15-01 to Ecology.

30
31 DOE-ORP contends it did not fail to report a potentially delayed/missed M-045-92 milestone, as
32 it believed, until March 31, 2015, that through TOC efficiencies, funds could become available
33 to fulfill its obligations to construct the barriers. DOE-ORP was prepared to commence
34 construction with the barrier in SX tank farm meet the October 31, 2015 deadline, as soon as the
35 anticipated funds were made available. A seven-month construction window was considered
36 reasonable, based on experience at TY Tank Farm.

37
38 ***DOE-ORP's Communication with Ecology Regarding ORP's Potential for Missing Milestone***
39 ***M-045-92***

40
41 The DOE-ORP Tank Farms Manager verbally communicated to the Ecology Nuclear Waste
42 Program Manager in September and October 2014 that DOE-ORP received a 72-day funding
43 allotment of \$102,581,755, based on the prior year (FY 2014) Omnibus funding level of
44 \$520,216,000. The FY 2015 Omnibus increased DOE-ORP's funding level to \$545,000,000. In

1 addition, the DOE-ORP Manager discussed the potential impacts of the \$545,000,000 budget
2 with the Ecology Nuclear Waste Program Manager around, and in including, January 2015.
3 DOE-ORP communicated this information as soon as possible, and in good faith, and sought to
4 shift its funding to other critical work in the spirit of cooperation and good faith in the spirit of
5 TPA Paragraph 148.E.

6
7 ***DOE-ORP's Response to Ecology's Statements in Stipulated Penalty, #12901.***
8

9 (1) Ecology statement:

10 USDOE-ORP transmitted the signed M-45-15-01 HFFACO Change Control Form to
11 Ecology on March 31, 2015 (letter 15-TF-0027) that requested a 3-year extension to the
12 milestone M-045-92 due date. Ecology disapproved the change request in letter 15-NWP-
13 075, dated April 17, 2015, on the basis that "the proposed schedule delay would be less
14 protective of human health and the environment than construction on the existing
15 milestone schedule." USDOE-ORP objected to Ecology's disapproval and initiated
16 dispute resolution at the Tri-Party Agreement Project Manager level in letter 15-TF-0042,
17 dated April 20, 2015. During dispute resolution, Ecology informed USDOE-ORP that the
18 milestone should have been reported earlier as "to be missed" in the HFFACO monthly
19 reports.
20

21 (2) Ecology statement:

22 In its Statement of Dispute, dated 16 February 2016 (16-TF-0016 Attachment 1), ORP
23 stated:

24
25 "ORP's ability to complete Milestone M-045-92 as described in the TPA Action Plan
26 Appendix D was dependent on ORP's receipt of sufficient appropriated funds."
27

28 USDOE-ORP then cited HFFACO (TPA) paragraph 148.G*, which states:

29
30 "If the congressional budget appropriation differs from the funding levels required
31 to comply with any milestones or other requirements of the Agreement, [ORP]
32 shall take whatever action is appropriate under the Agreement. Such action may
33 include submitting a change request in accordance with the Action Plan, Section
34 12.0 entitled Changes to the Agreement."
35

36 USDOE-ORP failed to comply with the immediately preceding Paragraph 148.H* (Note:
37 Language stated here is actually from 149.G and the "preceding Paragraph" is actually
38 from Paragraph 149.F) which states:

39
40 "If there is a delay in congressional appropriation after the start of the fiscal year,
41 DOE-RL shall inform Ecology and EPA of any congressional continuing
42 resolution action, and the potential impacts, if any, on progress to achieve
43 milestones and other requirements of the agreement. Ecology and EPA will be
44 given timely opportunity to review and comment on these budget appropriations

1 and funding allocation actions, and to make recommendations for reallocation of
2 available funds."
3

4 DOE-ORP's position:

5 Upon receipt of the fiscal year 2015 budget, DOE-ORP did, in fact, inform Ecology,
6 through telephone correspondence between DOE-ORP Tank Farms Operations Manager,
7 Tom Fletcher and Ecology Nuclear Waste Program Manager, Jane Hedges, that a budget
8 short fall could impact TPA workscope. Specifically, Mr. Fletcher conveyed that DOE-
9 ORP would not be able to fund the barrier construction required under M-045-92 due to
10 the President's authorized budget and the additional emerging priority scopes of work,
11 absent the anticipated contractor efficiencies. In addition, DOE-ORP Manager Kevin
12 Smith met with Jane Hedges and conveyed similar information.
13

14 DOE-ORP provided Ecology a TPA Paragraph 149.F required regulator briefing on fiscal
15 year 2014 year end and fiscal year 2015 funding appropriation March 3, 2015. The chart
16 on page 2 of the briefing identifies that the omnibus appropriation was \$545,000,000 and
17 the President's fiscal year 2015 budget request was \$724,000,000. Ecology was presented
18 the budget and was aware from the chart that an increase of \$179,000,000 was needed to
19 cover all of DOE-ORP Tank Farms scope, including construction of the barriers.
20

21 Ecology did not provide DOE-ORP any feedback, questions, concerns or request any
22 additional information in writing from DOE-ORP on the \$179,000,000 shortfall that was
23 presented on March 3, 2015. Ecology was provided timely opportunity to review and
24 comment on these budget and appropriation and funding allocation actions. Due to the
25 result of emerging work scope outlined on pages 3 and 4, the DOE recognized that
26 funding was not available to build M-045-92 barriers and took action under the
27 Agreement, Paragraph 149.G by submitting a TPA change control form to modify barrier
28 milestone due dates.
29

30 (3) Ecology statement:

31 USDOE-ORP failed to comply with 148.H* from October 23, 2014, through March 31,
32 2015. Paragraph 148.I,* Item #4 requires the assessment of delays to be documented in
33 meeting minutes signed by USDOE and the lead regulatory agency. USDOE-ORP
34 indicated that the M-45-92 Milestone was "on schedule" in all of the meeting minutes
35 from the October 14, 2014, meeting through the meeting of March 18, 2015.
36

37 DOE-ORP's position:

38 DOE-ORP believed, that through Tank Operations Contractor efficiencies, funding
39 would become available for the interim barriers and they would be completed on time to
40 meet the milestone. DOE-ORP held this belief up to the TPA-required 90-day advance
41 notice for missing a milestone, when it became apparent that the milestone would be
42 missed. At that time, DOE complied with the TPA-required 90-day notification and
43 promptly notified Ecology via TPA change form (M-45-15-01) that milestone M-045-92
44 would be missed.
45

1 DOE-ORP fulfilled the TPA requirements by presenting Ecology with budgetary
2 information in the course of the monthly meetings. Between October 16, 2014 and
3 March 31, 2015, Ecology never stated that DOE-ORP's budgetary information and/or the
4 related impacts to the construction of the barriers was inadequate.
5

6 (4) Ecology statement:

7 HFFACO Article IX, Stipulated Dangerous Waste Penalties, states that Ecology may
8 assess a stipulated penalty in the amount of \$5,000 for the first week (or part thereof), and
9 up to \$10,000 for each additional week (or part thereof)." Ecology is assessing a
10 stipulated penalty in the amount of \$5,000 for the first week of the 23-week period,
11 October 21, 2014, through March 31, 2015.
12

13 DOE-ORP position:

14 DOE-ORP has demonstrated that this fine is unwarranted, lacks merit and the penalty
15 should be rescinded.
16

17 *The Paragraph "148" references above should be Paragraph "149". Ecology did not provide the
18 correct references in the Stipulated Notice of Penalty, #12901.
19

20 **III. Supporting Information**

21
22 DOE-ORP transmitted the signed M-45-15-01 HFFACO Change Control Form to Ecology on
23 March 31, 2015 (letter 15-TF-0027) that requested a 3-year extension to the milestone M-045-92
24 due date. Ecology disapproved the change request in letter 15-NWP-075, dated April 17, 2015,
25 on the basis that "the proposed schedule delay would be less protective of human health and the
26 environment than construction on the existing milestone schedule." DOE-ORP objected to
27 Ecology's disapproval and initiated dispute resolution at the Tri-Party Agreement Project
28 Manager level in letter 15-TF-0042, dated April 20, 2015. During dispute resolution, Ecology
29 informed DOE-ORP that the milestone should have been reported earlier as "to be missed" in the
30 HFFACO monthly reports.
31

32 In its Statement of Dispute, dated 16 February 2016 (16-TF-0016 Attachment 1), DOE-ORP
33 stated:

34
35 "ORP's ability to complete Milestone M-045-92 as described in the TPA Action Plan
36 Appendix D was dependent on ORP's receipt of sufficient appropriated funds."
37

38 DOE-ORP then cited HFFACO (TPA) paragraph 149.G, which states:

39
40 "If the congressional budget appropriation differs from the funding levels required to
41 comply with any milestones or other requirements of the Agreement, [ORP] shall take
42 whatever action is appropriate under the Agreement. Such action may include submitting
43 a change request in accordance with the Action Plan, Section 12.0 entitled Changes to the
44 Agreement."
45

1 DOE-ORP provided Ecology a March 3, 2015 *Environmental Management Regulator Briefing -*
2 *Fiscal Year 2104 Year End, Fiscal Year 2015 Appropriations*, Jonathan A. (JD) Dowell, Deputy
3 Manager, U.S. Department of Energy Office of River Protection.

4
5 TPA Monthly/Quarterly meeting minutes (included as Appendix B).

6 7 **IV. History of Attempted Resolution**

8
9 The Parties have made no attempt at resolution to date.

10 11 **V. References**

12
13 Ecology, EPA, and DOE, 1989, *Hanford Federal Facility Agreement and Consent Order*,
14 Washington State Department of Ecology, U.S. Environmental Protections Agency, and
15 U.S. Department of Energy, Olympia, Washington, as amended.

16
17 Pollution Control Hearings Board, State of Washington, 2014, 241-AY-102 Settlement
18 Agreement, PCHB No. 14-041c signed and submitted September 29, 2014, effective
19 October 2, 2014

20
21 15-NWP-075, 2015, "Hanford Federal Facility Agreement and Consent Order (Tri-Party
22 Agreement) Change Control Form, Change Number M-045-15-01, dated 03/26/15," letter
23 to Thomas W. Fletcher, U.S. Department of Energy, Office of River Protection, from
24 John B. Price, State of Washington, Department of Ecology, April 17, 2015.

25
26
27 15-TF-0027, 2015, "Transmittal for Approval of the Hanford Federal Facility Agreement and
28 Consent Order Change Control Form M-45-15-01 to Modify Milestone M-045-92 Due
29 Dates," letter to Jane A. Hedges, Washington State Department of Ecology, from
30 Kevin W. Smith, U.S. Department of Energy, Office of River Protection, March 31,
31 2015.

32
33 15-TF-0042, 2015, "Initiation of Dispute Resolution Regarding Disapproval of Hanford Federal
34 Facility Agreement and Consent Order Change Control Form M-45-15-01," letter to
35 Jane A. Hedges, Washington State Department of Ecology, from Kevin W. Smith,
36 U.S. Department of Energy, Office of River Protection, April 20, 2015.

37
38 Hanford Tank Vapor Assessment (TVAT) ReportSRNL-RP-2014-00791 issued October 30,
39 2014 [http://toc.wrps.rl.gov/rapidweb/EXT/docs.cfm/Hanford_TVAT_Report_2014-10-](http://toc.wrps.rl.gov/rapidweb/EXT/docs.cfm/Hanford_TVAT_Report_2014-10-30-FINAL.pdf)
40 [30-FINAL.pdf](http://toc.wrps.rl.gov/rapidweb/EXT/docs.cfm/Hanford_TVAT_Report_2014-10-30-FINAL.pdf)