



U.S. Department of Energy
Office of River Protection

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

0075094

DEC 06 2007

07-AMD-249

Ms. Jane A. Hedges, Program Manager
Nuclear Waste Program
State of Washington
Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

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EDMC

Dear Ms. Hedges:

**INITIATION OF DISPUTE RESOLUTION FOR NOTICE OF STIPULATED PENALTY
INCURRED AND DUE No. 5218**

Reference: *Notice of Stipulated Penalty Incurred and Due No. 5218*, December 4, 2007.

The U.S. Department of Energy (DOE), Office of River Protection (ORP) received a Notice of Stipulated Penalty Incurred and Due No. 5218 (hereinafter "Notice of Penalty" or "NOP") from the Washington State Department of Ecology (Ecology) dated December 4, 2007, alleging that DOE has violated certain provisions of the Hanford Federal Facility Agreement and Consent Order (HFFACO, also known as the Tri-Party Agreement or TPA). As set forth in the Reference, Ecology's allegations are as follows:

VIOLATION #1: HFFACO Primary Document: S-102 Initial Waste Retrieval Functions and Requirements (S-102 F&R), Section 4.1.0 (RPP-10901, Rev. 2)

Section 4.1.0 of the S-102 F&R requires that the Tank S-102 Waste Retrieval System shall be designed to protect workers, the public, the environment, and equipment from exposure to tank radioactive waste during retrieval in accordance with the Technical Safety Requirements (HNF-SD-WM-TSR-006).

Technical Safety Requirement Limiting Condition for Operation 3.1.2 requires a backflow prevention system to be installed on non-waste transfer systems physically connected to an active waste transfer pump not under administrative lock.

VIOLATION #2 - HFFACO Primary Document: S-102 Initial Waste Retrieval Functions and Requirements (S-102 F&R), Section 4.11.3 (RPP-10901, Rev. 2)

Section 4.11.3 of the S-102 F&R requires that the Tank S-102 Waste Retrieval System new components shall be designed to ensure proper structural strength, compatibility with the waste and protection against corrosion in accordance with requirements of 40 CFR 265.192 and WAC 173-303-640(3). WAC 173-303-640(3) requires that an assessment of new tank system components be performed by an Independent Qualified and Registered Professional Engineer (IQRPE).

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ORP disagrees with Ecology's assertions and allegations and believes that Ecology's issuance of this NOV constitutes a determination subject to dispute under the terms of Part II of the HFFACO under Article VIII, Section 30, *Resolution of Disputes*, and Article IX, Section 31, *Stipulated Penalties*. ORP asserts that it did not "[fail] to submit a Primary Document pursuant to the appropriate timetable or deadline or [fail] to comply with a term or condition of Part Two of this Agreement" and that, therefore, no "failure did in fact occur" as required by HFFACO Article IX, Section 31. ORP specifically disagrees with Ecology's apparent assertion that it has authority to enforce the Nuclear Safety requirements in Section 4.10 of the S-102 F&R. Furthermore, ORP asserts that the S-102 F&R does not explicitly require IQRPE certification, as alleged by Ecology.

ORP also disagrees with the amount of the stipulated penalty Ecology has assessed, the manner in which it was calculated, the manner in which Ecology calculated the number of days of alleged violation, and the reasonableness of the penalty under the circumstances. Accordingly, ORP hereby gives notice within seven days of receipt of the NOP of its election to exercise its dispute resolution rights under Article VIII, Section 30, and Article IX, Section 31.

ORP will make reasonable efforts to informally resolve this dispute with Ecology within 30 days at the project manager level and would like to keep the informal dispute resolution period open for as long as progress towards resolving these allegations and penalties continues to be made at the project manager level. Note, however, that by submitting this Notice of Dispute under the provisions of the HFFACO, DOE is not conceding that Ecology has authority to take this action under the HFFACO or other applicable laws or regulations. DOE expressly reserves its right to challenge Ecology's authority in any further proceedings regarding this matter.

ORP looks forward to working together to resolve these allegations in a satisfactory and amicable manner. If you have any questions, you may contact me or your staff may contact Delmar Noyes, Tank Farm Project, (509) 376-5166.

Sincerely,



for Shirley J. Olinger, Manager
Office of River Protection

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