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0052187

00-ORL-004

OCT 18 1999

Mr. Michael A. Wilson, Program Manager
 Nuclear Waste Program
 State of Washington
 Department of Ecology
 P. O. Box 47600
 Olympia, Washington 98504



Dear Mr. Wilson:

TRANSMITAL OF STATEMENT OF DISPUTE (SOD) FOR PRIMARY DOCUMENT PROCESS FOR THE 1999 LAND DISPOSAL RESTRICTIONS (LDR) REPORT (HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER [TRI-PARTY AGREEMENT] MILESTONE M-26-01I)

This is in reference to my letter to you, dated September 24, 1999, wherein the U.S. Department of Energy, Richland Operations Office (RL) agreed with the State of Washington Department of Ecology (Ecology) that relative to the technical content requirements of the "1999 Report on Hanford Site LDR for Mixed Waste (DOE/RL-99-01), April 1999," the parties have entered the dispute resolution process under the Tri-Party Agreement. Over the past months, RL and Ecology have been actively engaged in attempting to resolve comments provided by Ecology on the 1999 LDR Annual Update Report. These discussions have been unsuccessful in resolving the issues raised by Ecology. Consequently, by this letter, RL is submitting a SOD and gives notice of its election to elevate this matter to the Inter Agency Management Integration Team (IAMIT) for further consideration.

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Previously, RL initiated the Tri-Party Agreement dispute regarding resolution of LDR deficiencies under the auspices of the Tri-Party Agreement processes. That dispute is currently at the IAMIT level pending resolution.

RL looks forward to working collaboratively and amicably with Ecology in this matter. If you have any questions, please contact me on (509) 376-6888.

Sincerely,

George H. Sanders, Program Manager
 Office of Regulatory Liaison

ORL:MFJ

Attachment

cc: See page 2

Mr. Michael A. Wilson
00-ORL-004

-2-

OCT 18 1999

cc w/attach:

K. R. Fecht, BHI
G. S. Robinson, BHI
J. R. Wilkinson, CTUIR
J. Wallace, Ecology
L. E. Ruud, Ecology
R. F. Stanley, Ecology
D. Bartus, EPA
D. R. Sherwood, EPA
J. S. Hertzell, FDH
A. M. Miskho, FDH
S. A. Szendre, FDH
J. D. Williams, FDH
M. B. Reeves, HAB
P. Sobotta, NPT
M. L. Blazek, OOE
H. T. Tilden, PNNL
C. K. Girres, WMH
R. H. Gurske, WMH
TPA Administrative Record, FDH

STATEMENT OF DISPUTE

I. Nature of Dispute

On June 4, 1999, the US Department of Energy, Richland Operations Office (RL) received a Notice of Correction (NOC) from the Washington State Department of Ecology (Ecology) dated June 3, 1999 (Ref.1). The NOC resulted from a review of the Hanford Land Disposal Restrictions (LDR) report and a Dangerous Waste Compliance Inspection performed by Ecology from September 29, 1998, to June 3, 1999. The NOC alleges violations of the Hanford Federal Facility Agreement and Consent Order (also referred to herein as the Tri-Party Agreement or TPA) Milestone M-26-01H and 40 CFR 268.7.

On August 13, 1999 RL invoked the dispute resolution process (Ref.2) requesting the IAMIT to evaluate the validity of departure from the TPA on Ecology's part through the issuance of the LDR NOC.

On September 17, 1999, RL received a series of three letters from Ecology (Ref. 3, 4 and 5) that addressed: 1) three of the four alleged violations in the NOC referenced above; 2) the Statement of Dispute initiated by RL on August 13, 1999; and 3) the initiated dispute under the provisions of the TPA to resolve technical content comments on the "1999 Report on Hanford Site Land Disposal Restrictions for Mixed Waste," DOE/RL-99-01, (1999 LDR Report) dated April 1999. Subsequently, by letter dated on September 24, 1999, RL formally acknowledged the initiation of the TPA dispute and gave notice to Ecology "of its election to exercise its dispute resolution rights set forth in Tri-Party Agreement Article VIII regarding the technical content requirements for the LDR Report (Ref. 6.)."

RL and Ecology have been actively engaged in attempting to resolve the comments provided by Ecology on the 1999 LDR Report as specified in the TPA Chapter 9 (Ref. 7). Six meetings were held (7/14/99 through 9/23/99) with appropriate technical and management staff to gain a common understanding of the issues, provide technical clarifications, and discuss the directed changes in the Ecology LDR NOC to the current method of complying with the 1990 Hanford LDR Plan Requirements (LDR Plan). In the September 17, 1999 letter (Ref. 5), Ecology states "Since Ecology and USDOE have major issues outstanding, the parties shall now enter the dispute resolution process per TPA, Chapter 9."

The "major issues" center on: 1) the presentation and grouping of data; 2) definition of "assessment of compliance status..."; 3) when and how milestones need to be proposed under the TPA in order to treat and dispose mixed waste. Each of these issues are the result of different interpretations of the intent of the 1990 "Requirements for Hanford LDR Plan" (Ref. 8). In the September 17, 1999 (Ref. 5) letter Ecology repeatedly refuses to consider RL's position further and provides specific direction pertaining to

modifications, addendums, or the establishment of new requirements that are to be implemented. RL acknowledges that these are major issues and that the implementation of the actions directed by Ecology must be examined at the Project Manager level to ensure consistency with the Hanford Site priorities and in order to prepare the 2000 LDR report by the required TPA submittal date.

Ecology and RL have been engaged for several years in the preparation and updating of the annual publication of the LDR Report. RL has been responsive to making changes to the LDR Report after receiving feedback from Ecology during technical assistance visits in 1997, informal comments discussed on October 13, 1998, and compliance inspection activities (September 14, 1998 to February 25, 1999). Ecology's issuance of a Notice of Correction as a first choice of resolving differing interpretations and subsequent denial of RL's request of the TPA dispute resolution process resulted in the formal elevation of Statement of Dispute on August 13, 1999 (SOD-TPA). The SOD-TPA centered on Ecology's refusal to recognize the validity of RL's exercise of its dispute resolution rights under the TPA. On September 23, 1999, Ecology stated that it agreed that the alleged violations 1,2,3 presented in the June 3, 1999 NOC would best be resolved using the TPA dispute resolution process. At the same meeting, Ecology also confirmed that the September 17, 1999 letter (Ref. 5) initiated dispute under the TPA dispute resolution process based on the inability to suitably resolve the Ecology primary document comments per 9.2 Document Review and Comment Process, section 9.2.1. Primary Documents (Ref. 7). Thus, the parties have failed to resolve the technical comments under the primary document provisions of the TPA.

II. History of Resolution

In its NOC, Ecology alleges that RL is responsible for several violations of LDR requirements. The alleged violations are related to work performed in support of TPA milestone M-26-01 for submittal of an annual LDR report. On September 23, 1999 Ecology and RL agreed that the alleged violations 1,2,3 would be stricken from the LDR NOC and resolved under the TPA dispute process. Alleged violation #4 (Ref. 1) remains under the NOC process per the September 17, 1999 (Ref. 5) Ecology letter.

On August 5, 1999 during a technical workgroup meeting, Ecology and RL reached agreement on clarifications to be issued on the June 3, 1999 NOC, regarding alleged violation 4. The expectation to receive the formal clarification was again discussed on September 23, 1999 and October 12, 1999. Ecology again agreed to provide the previously discussed clarifications. While the Ecology letter providing clarification has not yet been received by RL, preparation of the corrective measure report continues.

In previous years, Ecology personnel have worked directly with contractor personnel submitting informal comments and using workshop-like meetings to make modifications to the LDR Report presentation and content.

Historical requests for modification to the format and presentation of information in the LDR Report have not resulted in modifications to the Milestone description. Attachment 1 describes the changes made in the 1999 LDR Report based on the close out meetings conducted by Ecology following the compliance inspection and informal transmittals of comments sent in advance of the LDR NOC. These modifications were included in the 1999 LDR Report.

Ecology letter dated May 11, 1999 (26 days after issuance of the 1999 LDR Report), provided notice that Ecology would be transmitting comments under the TPA Primary Document Process (Ref. 9). The comments were transmitted on June 3, 1999 (49 days after issuance of the 1999 LDR Report). It remains unclear to RL why Ecology states that their comments on the 1999 LDR Report mirror their 1998 LDR Report comments. Ecology did not transmit any comments under the provisions of the TPA primary document process on the 1998 LDR Report, therefore the document became final upon expiration of the 30 day comment period without comment or response from the lead regulatory agency.

The 1999 LDR Report was compiled purposefully addressing the informal comments and the outcomes of the technical work session (October 13, 1998) with Ecology personnel. Modifications were made in the 1999 LDR Report based on RL's interpretation of the language contained in the "Requirements for Hanford LDR Plan," (Ref. 8). Attachment 1 provides the location of the modifications included in the 1999 LDR Report that RL submits addresses the issues presented by Ecology.

RL complied with the commitments made to Ecology personnel during the working sessions. RL has published the annual update of the LDR Report as required in the LDR Plan and the specifications of the TPA M-26-01 milestone. RL's annual update of the LDR Report has consistently adhered to the primary document process required by the TPA.

RL continues to comply with the TPA requirements. Ecology did not work diligently on a technical level to resolve differing interpretations. Rather, Ecology elected to use an enforcement mechanism rather than the dispute provisions in the TPA.

III. DOE's Position on the Dispute

The annual update to the LDR Report is performed in accordance with M-26-01 and the "Requirements for the Hanford LDR Plan." The scope of the report, the combination of the waste streams, and the status of existing TPA Milestones have not previously been an issue. Ecology, via technical comments, is attempting to change the intent, the product, and previous agreements reached by the parties to ensure meaningful and efficient compliance with Federal Regulations.

RL views the root of the dispute to be inconsistencies in Ecology's expectations and its misinterpretations of the "Requirements for Hanford LDR Plan" (Ref. 8). Numerous meetings have been held with appropriate technical and management staff to resolve these differences, however, these meetings have been unsuccessful. Attachment 2, "LDR Report Requirements meetings: Noted Inconsistencies and Areas of Disagreement" outlines the basis for RL's position.

RL has complied with all the requirements of TPA Milestone M-26-01. The LDR report has been prepared and submitted annually, as a primary document, in a timely manner, consistent with the required content. Despite repeated failure by Ecology to provide timely, formal comments, RL has reformatted the LDR report in response to Ecology's informal input, and has incorporated informal comments by Ecology on the 1998 report into the 1999 report. A summary of the comment history for the LDR Report is provided (Ref. 10).

RL continues to manage the resolution of the primary document comments in accordance with TPA section 9.2.1. Per Figure 9.1, RL acknowledged within seven days (Ref. 6) Ecology's initiation of the TPA dispute resolution process and submits this Statement of Dispute of the LDR Report technical content.

The detailed requirements associated with M-26 are not driven by specific regulations, but are instead governed by the language of the document "Requirements for the Hanford LDR Plan" (Ref. 8) signed by EPA and Ecology, and the language of the M-26 Milestone itself. The modifications suggested by Ecology are a significant departure from the current LDR Report preparation methodology and would result in a significant change in scope. While RL fully agrees "The goal is to identify all mixed waste streams for the purpose of creating and/or implementing treatment disposal pathways" as stated by Ecology in the September 17, 1999 letter (Ref. 5), RL maintains that the current LDR report satisfies the LDR plan requirements and the goal.

The modifications proposed by Ecology are beyond the requirements of the negotiated and agreed upon requirements as well as the regulatory requirements. Consistent with its stated mission, RL has established systems to ensure the proper allocation of resources to accomplish work scope. These systems contribute to reducing the potential for harm to human health and/or the environment while reducing the "footprint" of Hanford. The modifications proposed by Ecology, while increasing the burden on shrinking resources, do not advance the protection of human health or the environment, or reduce the amount of clean-up that remains to be done.

V. Conclusion

Ecology has failed to abide by the specific approach that has been documented and followed since the initial agreement regarding mixed waste LDR compliance at Hanford. Some of the specific allegations are in direct conflict with work products that have been provided to Ecology annually since 1990 and accepted as meeting the agreed-upon requirements. The approach used for the LDR report has been clarified repeatedly in informal correspondence and improved descriptions in the reports to assist Ecology in reviewing the report.

RL has reviewed the regulations, reviewed documents prepared by its contractors to satisfy the regulations and re-evaluated the LDR report for compliance with the requirements of the "Requirements for the Hanford LDR Plan" issued in 1990. RL maintains its position that the 1999 LDR Report complies with the stated requirements. RL maintains that modification to the report that does not support expedited treatment and disposal of mixed waste would result in irresponsible expenditure of funds. Furthermore, Ecology has made no effort to use the TPA change process to seek to incorporate modifications to clarify/amend its expectations for the Hanford LDR Plan.

Per the TPA Action Plan, Section 9.2.1., the parties are now engaged in dispute resolution.

VI. Relief Sought

RL respectfully requests that the IAMIT resolve this dispute under the dispute resolution provisions of the Tri-Party agreement (Article VIII, Resolution of Disputes). RL believes that this dispute can be resolved at the Project Manager level through negotiation of the definitions at issue found in the "Requirements for Hanford LDR Plan."

RL understands Ecology's actions on the SOD-TPA to be the striking of alleged violations 1,2, and 3 from the June 3, 1999 NOC and agreement that the issues represented by alleged violations 1,2, and 3 will be addressed under TPA dispute resolution provisions by the IAMIT. RL requests that any enforcement actions Ecology has pending be suspended until the IAMIT dispute resolution process is final. RL requests that the resolution of the alleged inconsistencies in the 1990, "Requirements for Hanford LDR Plan," be resolved in conjunction with the IAMIT's deliberations on this matter.

RL foresees the need to re-establish the due date for the 2000 LDR report. The completion of the dispute resolution process may provide direction for the compilation of the 2000 report and the final outcome of the process is not likely to be reached until late in the current preparation for the 2000 report activity.

REFERENCES

1. Letter, L. Ruud, Ecology, to P. Kruger, RL, et al., RL, "Notice of Correction Resulting from the 1998 Land Disposal Restrictions (LDR) Compliance Inspection at Hanford (TPA Milestone M-26-01H)," dated June 3, 1999.
2. Letter, G.H Sanders, RL, to M. A. Wilson, Ecology, "Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) M-26-01H "Transmittal of the Statement of Dispute for the 1998 Land Disposal Restrictions (LDR) Compliance Inspection, Notice of Correction (NOC) at Hanford," dated August 13, 1999.
3. Letter, L. Ruud, Ecology to G.H. Sanders, RL, "Re: Notice of Correction Resulting from the 1998 Land Disposal Restrictions (LDR) Compliance Inspection at Hanford (TPA Milestone M-26-01H)," dated September 17, 1999, "Extending via #4 to Dec. 8, 1999" {L. Ruud handwritten description from Document Receipt Verification form}.
4. Letter, L. Ruud, Ecology to G.H. Sanders, RL, "Re: Notice of Correction Resulting from the 1998 Land Disposal Restrictions Compliance Inspection at Hanford (TPA Milestone M-26-01H)," dated September 17, 1999, "Consolidation 1998 & 1999 Actions," {L. Ruud handwritten description from Document Receipt Verification form}.
5. Letter, L. Ruud, Ecology to G.H. Sanders, RL, {untitled} "References: 1) Letter, Washington State Department of Ecology (Ecology) to U.S. Department of Energy (USDOE), Ecology's Review of USDOE's 1997 Report on Land Disposal Restrictions (LDR) for Mixed Waste," through "6) Letter, USDOE to Ecology, TPA Milestone M-26-01I LDR Report Comment Responses, dated August 18, 1999 (99-EAP-450)," dated September 17, 1999.
6. Letter, G.H. Sanders, RL to M.A. Wilson, Ecology, "Acknowledgement of Dispute Initiation on Primary Document process for the 1999 Land Disposal Restrictions (LDR) Report (Tri-Party Agreement Milestone M-26-01I)
7. Hanford Federal Facility Agreement and Consent Order, Chapter 9, Documentation and Records, 89-10 Rev 5, dated December 1998
8. "Requirements for Hanford LDR Plan," signed by P.T. Day and T.L. Nord, dated April 10, 1990,
9. Letter, L. Ruud, Ecology to G.H. Sanders, RL, "Re: Completion of Hanford Federal Facility Agreement and Consent Order Tri-Party Agreement Milestone M-26-01I (99-EAP-263)," dated May 11, 1999.
10. "LDR Report Comment History"