

RECEIVED

OCT 29 2019

EDMC



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

3100 Port of Benton Blvd • Richland, WA 99354 • (509) 372-7950  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

October 25, 2019

19-NWP-174

William F. Hamel, Assistant Manager  
Richland Operations Office  
United States Department of Energy  
PO Box 550, MSIN: H5-20  
Richland, Washington 99352

Re: Tri-Party Agreement Milestone Series M-091 Negotiations and History of M-091

Dear William F. Hamel:

Your letter 19-AMRP-0080, dated September 9, 2019, asked the Department of Ecology (Ecology) to reconsider our position on including an enforceable date in the M-091 milestone series. The enforceable date would be for the United States Department of Energy (USDOE) to either initiate treatment to Land Disposal Restriction (LDR) standards for transuranic mixed (TRUM) waste or begin shipping TRUM to the Waste Isolation Pilot Plant.

USDOE asks Ecology to reconsider including an enforceable date “because the availability of resources to perform shipments to the Waste Isolation Pilot Plant (WIPP) are beyond RL’s control” and “RL does not believe it is appropriate to agree to enforceable milestones that rely on third party actions.”

Ecology respectfully reminds you that:

- The original 1989 Tri-Party Agreement (TPA) set a 1995 deadline for USDOE to submit to Ecology specific milestones for the acquisition or modification of facilities necessary for the management of the backlog of TRUM and mixed low-level waste (MLLW) that USDOE was storing at Hanford in violation of the Resource Conservation and Recovery Act (RCRA) and the Hazardous Waste Management Act (HWMA).
- When it became clear that USDOE could not meet the 1995 deadline to develop plans for managing the TRUM and MLLW, Ecology agreed to extend the deadline by four years, in exchange for a new milestone series established in 1996 – milestone series M-91.

Among other things, M-91 required USDOE to submit to Ecology a Project Management Plan to establish “all major project tasks and deliverables for treatment/storage of Hanford site TRU/TRUM . . .” by June 2000.

In addition, USDOE agreed to complete retrieval of Contact Handled (CH) small container TRUM by September 2004 (project W-113). <https://pdw.hanford.gov/document/D8818690>



- In 2000, Ecology and USDOE engaged in a TPA dispute resolution process concerning deficiencies with USDOE's Project Management Plan and associated milestone change packages, including USDOE's request to indefinitely delay the M-091-01 December 2000 deadline to acquire facilities for the storage and treatment/processing of TRUM.

Several years of negotiations ended without agreement and in 2003 Ecology issued a Director's Determination and an Administrative Order establishing schedules for retrieval, characterization, and treatment of retrievably stored TRUM. USDOE appealed both the Director's Determination and the Administrative Order, and the parties settled the appeals with a 2003 Settlement Agreement that amended the M-091 milestone series.

The revised milestones established a 2012 deadline to complete acquisition of capabilities and/or facilities necessary for the retrieval, designation, storage, and treatment/processing of certain TRUM. In addition, USDOE and Ecology agreed to push back the deadline to retrieve all CH TRUM by six years to 2010 (M-91-40).

Further, the parties agreed to milestones requiring USDOE to treat TRUM to LDR standards pursuant to new deadlines, with the option to certify TRUM for disposal at WIPP in lieu of LDR treatment. <https://pdw.hanford.gov/document/D5100949>

- In 2010, Ecology agreed to another round of USDOE's proposed major delays in the M-91 milestones, including delays in waste retrievals and delays in acquiring facilities necessary to treat retrieved waste.

Ecology agreed to replace the 2012 deadline to complete acquisition of capabilities and/or facilities necessary for the retrieval, designation, storage, and treatment/processing of TRUM with a 2018 deadline to complete design of such capabilities and/or facilities. Ecology also agreed to push back the retrieval deadline for CH TRUM by another six years to 2016.

In return for Ecology granting the major delays, and because USDOE did not want to treat the M-91 TRUM waste at Hanford, USDOE specifically proposed to include milestones allowing USDOE to choose certification and shipment of TRUM waste for disposal at WIPP in lieu of LDR treatment. <https://pdw.hanford.gov/document/1009201523>

- In 2016, USDOE requested, and Ecology granted, a further 12-year delay beyond the 2010 milestones for TRUM retrieval (20 years beyond the date agreed to in the 2003 Settlement Agreement). The parties further agreed to add a milestone establishing the completion date for offsite shipment of all M-91 TRUM waste by September 2030.  
<https://pdw.hanford.gov/document/0078934H>

USDOE is now proposing an additional 20-year delay beyond the 2016 amendments to the M-91 milestones for both retrieval and offsite shipment of TRUM. This is **40 years** beyond the retrieval date agreed to in the 2003 Settlement Agreement and subsequent 2004 M-91 amendments.

In order for Ecology to consider agreeing to yet another major delay, we must be assured that USDOE will begin treatment and/or certification and shipment of TRUM to WIPP within a reasonable timeframe. This is no different than the M-91 milestones to which USDOE has already agreed (and in fact requested) that require USDOE to treat the waste to LDR standards and/or certify and ship the TRUM to WIPP by a date certain.

Ecology would also like to remind USDOE that we have already made numerous concessions to USDOE on treatment and shipping schedules. For example, the TPA requires annual interim milestones showing progress toward completion of major milestones. TPA milestone M-091-44T, agreed to in the 2010 negotiations, required USDOE to submit a change package for annual milestones to treat or certify and ship TRUM.

Pursuant to the 2016 negotiations, the parties replaced the requirement to submit annual milestones with a requirement to establish a schedule for achieving offsite shipment of all TRUM waste. In the current negotiations under M-091-53, Ecology has tentatively agreed to further modify this requirement by allowing annual certification and shipping schedules to be included in the *Hanford Site TRUM Waste and MLLW Project Management Plan*, due annually per TPA milestone M-091-03, rather than requiring USDOE to establish separate, interim milestones.

USDOE is already subject to milestones that establish treatment and/or certification and shipping deadlines pursuant to the approach proposed by USDOE during the 2010 negotiations and agreed to by both parties. A milestone establishing a start date for treatment and/or certification and shipping is no different, and is entirely appropriate given USDOE's extraordinary delays in addressing the backlog of TRUM at Hanford.

If there are any questions regarding this letter please contact Kelly Elsethagen, Ecology's M-91 TPA Project Manager, at [kelly.elsethagen@ecy.wa.gov](mailto:kelly.elsethagen@ecy.wa.gov) or (509) 372-7923.

Sincerely,

  
Alexandra K. Smith  
Program Manager  
Nuclear Waste Program

cc: See page 4

William F. Hamel  
October 25, 2019  
Page 4 of 4

19-NWP-174

cc electronic:

Dave Bartus, EPA  
Al Farabee, USDOE-RL  
Mark French, USDOE-RL  
Inrid Siddoway, USDOE-RL  
Jon Perry, MSA  
Michael Turner, MSA  
ERWM Staff, YN  
Ken Niles, ODOE  
Kelly Elsethagen, Ecology  
Mark Pakula, Ecology  
John Price, Ecology  
Environmental Portal  
Hanford Facility Operating Record  
MSA Correspondence Control  
USDOE-RL Correspondence Control  
USEPA Region 10 Hanford Field Office Correspondence Control

cc: Mason Murphy, CTUIR  
Jack Bell, NPT  
Laurene Contreras, YN  
Susan Leckband HAB  
Hanford Administrative Record  
NWP Central File