



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Seattle, WA 98101

0055428

Reply To
Attn Of: ORC-158

Mr. Keith A. Klein, Manager
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

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EDMC

RE: Disapproval of U.S. Department of Energy (DOE) Hanford Federal Facility Agreement and Consent Order (HFFACO), Change Requests M-13-01-02 and M-16-01-04, dated September 17, 2001

Dear Mr. Klein:

We are writing in response to your letter dated September 17, 2001, seeking to modify HFFACO requirements. Enclosed with your letter were DOE's HFFACO change requests M-13-01-02 and M-16-01-04 requesting a delay in upcoming M-13 and M-16 milestones governing submittal of 200 area RI/FS work plans and completion of 100 area remedial actions.

We have reviewed your letter and the attached change control forms and have carefully considered your request, but must disapprove these DOE requests pursuant to HFFACO Action Plan section 12.3.3. The requests are being disapproved because DOE has not demonstrated that good cause for modification exists and has not met the requirements of HFFACO Action Plan section 12.3.2 for requesting an extension.

DOE proposes that the existing M-13-00L milestone requirement to submit three 200 area RI/FS work plans be changed to require just one. DOE indicates that the change is needed because current efforts to identify the planning gap between current HFFACO milestones and the implementation plan for its Hanford 2012 strategy may impact existing milestones and contracts. DOE proposes that work be delayed even before any agreements have been reached on whether to implement the Hanford 2012 strategy and, if so, how to implement it.

It remains to be seen whether the strategy will even impact the M-13-00L milestone. Submittal of the three work plans as required in the milestone would not preclude shifting to an alternate approach to implement the 2012 strategy. Therefore, the fact that a strategy is in development does not warrant delaying the submittal of two of the three required RI/FS work plans. It is critically important that HFFACO work not be unnecessarily delayed while the parties engage in such planning discussions.

Also, the proposed change to M-13-00L is not consistent with the Fiscal Year 2001-2003 Detailed Work Plan signed by DOE officials last September, which clearly states that three work plans are to be submitted. Nor is the proposed change consistent with the M-13-26 Change Package signed by DOE and EPA on April 19, 2001, which acknowledges that receipt of the 200 PW-1 work plan would be fulfillment, in part, of M-13-00L. DOE did not engage EPA and Ecology in any discussions on changing these milestones in advance of submitting the change requests.

DOE also points to the discussions underway on the Hanford 2012 strategy as the basis for requesting a change to the M-16-00F milestone to establish a completion date for all 100 area remedial actions by December 31, 2001. The proposed change is not warranted. In September 2000, the last Record of Decision was issued for the 100 Area Burial Grounds. The schedule allows DOE time to complete the Remedial Design/Remedial Action Work Plan which includes an enforceable schedule and milestone commitments (about 1 year) and obtain final approval of the plan, thus completing negotiations on the remedial action schedule by December 31, 2001.

The HFFACO reflects the commitment of the three parties to move forward in accordance with existing milestones without delay unless compelling circumstances arise such as a force majeure event or a failure of the regulatory agencies to meet a requirement that results in delay. Ongoing planning discussions that may or may not have implications for milestones M-13-00L and M-16-00F do not constitute good cause.

Section 12.3.2 of the HFFACO Action Plan requires requests for extensions to specify the length of the extension sought and identify any related time table or schedule that would be affected if the extension were granted. DOE has not specified the length of the extension sought for the M-13-00L milestone, but instead has proposed target dates for negotiations to address milestone commitments that would be eliminated or changed by the proposal.

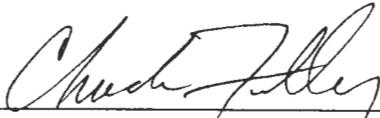
Also, DOE has not identified the impact the change would have on other milestones as required. Delaying RI/FS work would be expected to impact M-15 and M-20 milestones. Milestone M-15 requires the completion of all waste site investigations for the 200 area by December 21, 2008. Milestone M-20 establishes February 2004 as the completion date for submittal of all RCRA land disposal unit closure plans and facility part B permits. The timing on each operable unit RI/FS work plan submittal was coordinated specifically to allow DOE and Ecology to characterize the RCRA land disposal units during the RI/FS, utilize the data to develop the closure plan, and help establish a plan for the entire operable unit cleanup. Again, DOE's request did not identify any discussion of the impact the proposed change would have on these milestones.

EPA and Ecology cannot in good conscience replace the M-13-00L milestone for important site investigation and cleanup work with an unenforceable commitment to negotiate new milestones by target dates, nor can the Agencies agree to delay the M-16-00F deadline when

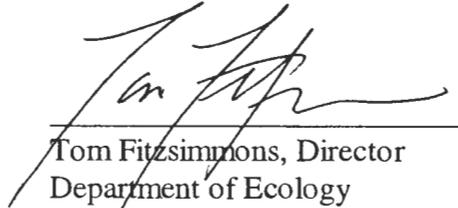
all remedial action decisions in the 100 area have been made. DOE may dispute this disapproval in accordance with the HFFACO.

Finally, change request M-13-01-02 indicates that failure to approve the request will result in DOE submitting the two additional 200 area RI/FS work plans later than the December 31, 2001, milestone completion date. Unless and until a change is approved, DOE remains responsible for complying with existing milestones. Failure to comply with the milestones may result in enforcement action.

Sincerely,



Charles E. Findley
Acting Regional Administrator
U.S. Environmental Protection
Agency, Region 10



Tom Fitzsimmons, Director
Department of Ecology
State of Washington

cc: Russell Jim, YIN
Todd Martin, HAB
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CONTROL**

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OPERATIONS OFFICE**