



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

OCT 20 2008

09-AMCP-0015

Mr. N. Ceto, Program Manager
Office of Environmental Cleanup
Hanford Project Office
U.S. Environmental Protection Agency
309 Bradley Blvd., Suite 115
Richland, Washington 99352

RECEIVED
OCT 24 2008
EDMC

Dear Mr. Ceto:

STATEMENT OF DISPUTE REGARDING DISAPPROVAL OF HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) CHANGE FORM M-16-08-06 "EXTENSION OF M-016-56 FOR INTERIM REMEDIAL ACTIONS AT 100-IU-2 AND 100-IU-6"

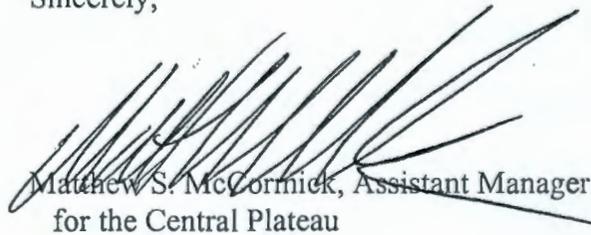
This purpose of this letter is to provide the Statement of Dispute pursuant to Article XVI, Paragraph 59, of the Tri-Party Agreement thereby elevating this dispute to the Inter-Agency Management Integration Team (IAMIT).

On September 18, 2008, the U.S. Department of Energy, Richland Operations Office (RL) received the U. S. Environmental Protection Agency (EPA) letter documenting EPA's disapproval of Tri-Party Agreement Change Form M-16-08-06. On September 25, 2008, RL initiated the dispute resolution procedures of the Tri-Party Agreement on this matter. Discussions have since taken place at the Project Managers level according to the requirements of Tri-Party Agreement but, have not reached a resolution.

RL will make reasonable and good faith efforts to resolve this dispute with EPA at the IAMIT level.

If you have any questions, please contact me, or your staff may contact Mark French, Office of the Assistant Manager for the River Corridor, on (509) 373-9863

Sincerely,



Matthew S. McCormick, Assistant Manager
for the Central Plateau

AMCP:MSF

Attachment

cc: See Page 2

Mr. N. Ceto
09-AMCP-0015

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cc w/attach:

G. Bohnee, NPT
L. Buck, Wanapum
C. E. Cameron, EPA
S. Harris, CTUIR
J. A. Hedges, Ecology
R. Jim, YN
S. L. Leckband, HAB
K. Niles, ODOE
J. B. Price, Ecology
E. R. Skinnarland, Ecology
Administrative Record (OU 100-IU-2/6)
Environmental Portal

cc w/o attach:

L. D. Arnold, FHI
M. A. Buckmaster, WCH
J. W. Donnelly, WCH
R. D. Morrison, YAH
R. E. Piippo, CHPRC
J. E. Rasmussen, YAH
J. G. Vance, FFS

OCTOBER 20, 2008

**STATEMENT OF DISPUTE REGARDING CHANGE REQUEST M-16-08-06
AND
MILESTONE M-016-56
“COMPLETE THE INTERIM REMEDIAL ACTIONS FOR 100-IU-2 AND
100-IU-6”**

A. NATURE OF DISPUTE

This dispute is raised pursuant to Article XVI, paragraph 59, of the Hanford Federal Facility Agreement and Consent Order, commonly referred to as the Tri-Party Agreement (TPA). The U.S. Environmental Protection Agency (EPA) disapproved Change Control Form M-16-08-06 on September 18, 2008, which proposed a three-year extension to Milestone M-016-56, “Complete the Interim Remedial Actions for 100-IU-2 and 100-IU-6,” by December 31, 2008. EPA received Change Control Form M-16-08-06, hereinafter referred to as M-16-08-06 change request, on September 12, 2008, from the U.S. Department of Energy, Richland Operations Office (RL) [08-AMRC-0209]. RL submitted a letter to EPA initiating dispute at the Project Manager Level on September 25, 2008, (08-AMRC-0247).

Completion of M-016-56 (32 waste sites) by December 31, 2008, is not achievable due to a variety of factors within the entire River Corridor and at the 100-IU-2 and 100-IU-6 Operable Units. These factors include:

1. Performing other high risk/high priority work in the River Corridor that have significantly reduced risk, allowed attainment of other milestone requirements, aggressively pursued chromium remediation/investigations, and utilized available facilities at 100-K basins for special waste handling needs for security and safety risks. Specifically, spent nuclear fuel (SNF) discovered during remediation activities was in temporary storage at multiple waste sites in multiple reactors areas needing to be properly packaged. The 100-K basins were available to take SNF until April 2008, and removal of the SNF from the 100-B/C Area, 100-F Area, and 100-D Area was a higher priority and RL was able to complete this work. Additionally, RL performed additional characterizations at 100-B/C at 100-C-7, and accelerated investigation and remediation activities for chromium waste sites at the 100-D and 100-H Areas. As such, full-scale remediation at 100-IU-2 and 100-IU-6 was impacted.
2. Within the 100-IU-2 and 100-IU-6 Operable Units there have been a variety of technical challenges and changes to the original milestone scope. To date, remediation of 19 of the 32 original waste sites has been completed, and RL has conducted cleanup on two high priority sites (600-149 and 600-111) identified by EPA last year. Remediation of these two sites is complete and final closeout documents are scheduled to be completed by December 31, 2008. Unexploded

ordnance was also discovered at one of these high priority sites, and additional precautionary steps were necessary to ensure safety of workers.

Remediation at the remaining 13 sites has not begun. Two of the 13 sites (600-109 and 600-202) are currently undergoing historic property clearances as they were eligible for listing on the National Register of Historic Places. This is contrary to the approved Remedial Design Report/Remedial Action Work Plan for the 100 Areas (RDR/RAWP) which states, "There are no known historically significant properties within the proposed footprints of the waste site excavations." Remediation cannot proceed at 600-149 and 600-202 until there is a Mitigation Plan approved by the National Parks Service. A visit by a National Park Service archeologist has occurred and potential mitigation options are being developed. Mitigation is a necessary step to comply with the Applicable, or Relevant and Appropriate Requirements listed in the Record of Decision (ROD). These two sites are expected to be cleared for remediation later in Fiscal Year 2009 upon approval of a final Mitigation Plan. RL has briefed EPA on several occasions with this process and will continue to keep EPA informed (see Attachment 2).

3. An additional 43 new orphan waste sites have been identified in the 100-IU-2 and 100-IU-6 Operable Units as of August 2008 based on the orphan sites walk-down process, including one (1) additional waste site that EPA and RL agreed to move from the 200-MG-1 Operable Unit to the 100-IU-6 Operable Unit in November 2007 (change notice C-07-06). In total, there are 57 waste sites within the 100-IU-2 and 100-IU-6 operable units.

RL has requested an extension based on good cause due to the above impacts according to those outlined in Article XL of the TPA.

B. MILESTONE HISTORY

M-016-56 was developed in April 2002 under a Class I change request (M-16-01-05). In September 2006, RL submitted TPA change request M-16-06-03 (06-AMRC-0365) for creating a new milestone (M-016-94) to Complete Interim Remedial Actions at the 100-B/C Area not covered by M-016-45, and extending M-016-45 (Complete Interim Remedial Actions at the 100-B/C Area). In this change request, RL identified funding impacts to M-016-56 resulting from the impacts outlined in Section A of this Statement of Dispute. EPA approved this change request but EPA struck the funding impact statement regarding 100-IU-2 and 100-IU-6.

C. CHRONOLOGY/TIMELINE

See Attachment 1 and Attachment 2. Attachment 1 is a timeline of communications between RL and EPA since September 2006 to September 2008 regarding M-016-56.

Attachment 2 is a timeline for the historical property designation process for the 600-109 and 600-202 waste sites in 100-IU-2 and 100-IU-6.

D. BRIEFINGS/STATUSES PROVIDED TO EPA ON M-016-56

See Attachment 1. Also, RL provided an update to EPA on the historical property reviews for the 600-202 and 600-109 waste sites at the August 14, 2008 Project Managers Meeting. No issues or objections were raised at the meeting. These minutes are in the administrative record. Specifically, the minutes reflect a status of accomplishments and a 90-day look ahead for the reviews needed to comply with the National Historic Preservation Act (NHPA), including a statement that remedial actions can not begin at two waste sites until the requirements of the NHPA are concluded.

E. DEPARTMENT OF ENERGY, RICHLAND OPERATIONS POSITION

1. RL has made progress on this milestone, including remediation of two high priority waste sites identified by EPA. RL continues to work the process at the two historical property sites in order to gain clearance to perform remediation in the future.

Other priority work in the River Corridor, outlined above, did take resources away from performing full-scale remediation at 100-IU-2 and 100-IU-6. Although the work at 100-IU-2 and 100-IU-6 was driven by a milestone, RL attempted to balance working other River Corridor priorities outlined in Section A, while conducting cleanup on the two high priority sites, identified by EPA, at 100-IU-2 and 100-IU-6. RL took into consideration that the 100-IU-2 and 100-IU-6 Operable Units within the River Corridor were used for homesteads and farms prior to the Manhattan Project. After the start of the Manhattan Project, these areas became primary locations for housing Hanford workers during the construction era. Waste sites associated with these areas are primarily debris sites or old homestead landfills, and do not contain waste sites, which resulted from dumping or discharging liquid waste from nuclear reactor areas, or contaminated debris from reactor operations. Furthermore, there are no known soil waste sites in 100-IU-2 and 100-IU-6 Operable Units contributing to groundwater contamination in these areas, and there are no groundwater remedial actions in progress other than continued groundwater monitoring.

2. Taking into consideration the changes above, and considering the scope growth at 100-IU-2 and 100-IU-6 with more waste sites, RL wishes to work with EPA to develop a comprehensive remediation schedule that takes into consideration remediation of the remaining 13 sites within M-016-56, the 43 new orphan waste sites for 100-IU-2 and 100-IU-6 Operable Units, and the one waste site moved from the 200 Area to the 100-IU-6 Operable Unit.
3. Performing remediation of all these sites does require cooperation and involvement from both agencies so that the 43 new waste sites can be sampled if necessary, cost

estimates prepared, and these new sites incorporated into the 1999 Remaining Sites Record of Decision for the 100 Areas through issuance of an Explanation of Significant Difference.

F. WORK AFFECTED BY THE DISPUTE

1. Remediation schedule of the 57 remaining waste sites in 100-IU-2 and 100-IU-6, and revising the ROD and RDR/RAWP to reflect changes in historical property processes for waste sites listed for remediation.

G. INFORMATION RL IS RELYING ON TO SUPPORT ITS POSITION

RL is relying on information in this Statement of Dispute and any referenced documents or letters identified herein.

H. DESCRIPTION OF ALL STEPS TAKEN TO RESOLVE DISPUTE

RL and EPA have been in dispute at the project manager level since September 18, 2008. Several discussions between the RL project manager and EPA project manager have occurred. EPA informed RL on October 15, 2008, their desire to discontinue the dispute at the Project Manager level.

ATTACHMENT 1

CHRONOLOGY OF EVENTS FOR THE 100-IU-2/6 MILESTONE (M-016-56)

SEPT. 2006: RL SUBMITTED TPA CHANGE PACKAGE NUMBER M-16-06-03 TO EPA TO CREATE NEW 100-B/C MILESTONE (M-016-94), AND EXTEND M-016-45 6-MONTHS FROM DECEMBER 2006 TO JUNE 2007.

TPA PACKAGE STATED, "REQUIRES MOVING FUNDING FROM 100-IU-2/6, WHICH MAY PROHIBIT COMPLETING M-16-56...SEPARATE CHANGE PACKAGE WILL BE DEVELOPED FOR THIS MILESTONE, IF NECESSARY." EPA STRUCK THIS SENTENCE WHEN APPROVING THE CHANGE PACKAGE.

FEB – MAY 2007: RL BEGAN DISCUSSIONS WITH EPA AND ECOLOGY ON THE OVERALL RIVER CORRIDOR PRIORITIES AND ALIGNMENT; VERIFYING WORKSCOPE, MILESTONES, AND POTENTIAL ISSUES WITH MILESTONES

NOTE: THESE DISCUSSIONS RESULTED IN RUNNING A BASE CASE, AND SEVERAL ALTERNATE SCENARIOS TO SEE IMPACTS. THESE EVALUATIONS WERE CRITICAL IN ORDER TO PROVIDE JUSTIFICATION TO OTHER MILESTONE EXTENSION REQUESTS AT THE TIME. THE 100-IU-2 AND 100-IU-6 MILESTONE WAS IDENTIFIED IN THE SCENARIOS AS BEING MISSED.

- MAR 2007 AT THE TPA QUARTERLY, M-016-56 (IU-2 AND IU-6) WAS IDENTIFIED AS "AT RISK," NO ISSUES NOTED.
- JUNE 16, 2007: THE 2-YEAR SCOPE AND SCHEDULE MEETING (CONTRACTOR PERFORMANCE PLAN) WAS HELD WITH RL, ECOLOGY, AND EPA; M-016-56 WAS IDENTIFIED AS AN ISSUE; NO COMMENTS OR ISSUES WERE NOTED; THE FOCUS FOR IU-2/6 WAS THE CLEANUP OF TWO HIGH PRIORITY SITES NOTED BY EPA, WHICH ARE THE SMALL ARMS RANGE (600-149) AND PLUTONIUM CRITICALITY LAB WASTE SITE (600-111).
- JUNE 2007: AT TPA QUARTERLY, M-016-56 IDENTIFIED AS "AT RISK," AND WILL BE UNRECOVERABLE BY THE SEPTEMBER MILESTONE MEETING.
- JUNE 2007: DUE TO THE RIVER CORRIDOR PRIORITY DISCUSSIONS AND WORK ALIGNMENT MEETINGS HELD OVER 4-MONTHS BETWEEN RL, EPA, AND ECOLOGY, AND PREPARATION OF THE 118-B-1 ESD, MILESTONES M-16-45, M-16-50, AND M-16-51 WERE EXTENDED & APPROVED.
- A CHANGE REQUEST FOR THE 100-IU-2/6 MILESTONE WAS NOT SUBMITTED FOR EXTENSION IN THESE TPA CHANGE PACKAGES AS IT WAS DETERMINED TO WAIT UNTIL AFTER THE BROADER TPA NEGOTIATIONS.
 RL'S PLAN WAS TO SUBMIT A CHANGE PACKAGE FOR M-016-56 FOLLOWING THE COMPLETION OF THE BROADER TPA NEGOTIATIONS.
- JUN – OCT.2007: BROADER TPA NEGOTIATIONS CONTINUE; TRI-CITY HERALD ARTICLE INDICATED

NEGOTIATIONS HAD NOT REACHED ANY DECISIONS AND PUBLIC INPUT WOULD BE SOUGHT BEFORE PROCEEDING. THE EXTENT OF MILESTONE ISSUES ACROSS THE ENTIRE SITE WAS EVIDENT RELATIVE TO BUDGETS; A PUBLIC WORKSHOP WAS HELD OCTOBER 2007.

- SEPT. 2007: AT TPA QUARTERLY, M-016-56 IDENTIFIED AS "AT RISK." RL STATED A DRAFT TPA CHANGE PACKAGE WOULD BE PROVIDED SOON TO MODIFY THE DUE DATE.
- OCT. 25, 2007: RL CONDUCTED A CPP BRIEFING TO EPA/ECOLOGY. M-016-56 IDENTIFIED AS AT RISK.
- OCT. 2007: RL CONTACTED THE EPA PROJECT MANAGER ON OPTIONS FOR THE TPA PACKAGE PRIOR TO SENDING OVER A DRAFT CHANGE PACKAGE. EPA PROJECT MANAGER WAS CONTACTED AND STATED THE EPA MANAGER WAS NOT INTERESTED IN REVISING ANY MILESTONES AT THIS TIME BASED ON THE LACK OF PROGRESS ON THE BROADER TPA NEGOTIATIONS. DRAFT TPA CHANGE WAS PREPARED AND PLACED ON HOLD BY RL PENDING FURTHER DISCUSSION.
- NOV. 2007: RL REVISED THE DRAFT TPA CHANGE PACKAGE WITH JUSTIFICATIONS REGARDING HIGH RISK ACTIVITIES BEING FUNDED IN THE RIVER CORRIDOR OVER THE PAST SEVERAL YEARS.
- DEC. 2007: RL SCHEDULED A MEETING IN JANUARY WITH EPA REGARDING M-16-56. NOTE: DECEMBER TPA QUARTERLY MEETING WAS CANCELLED.

- JAN. 2008: MEETING WAS HELD WITH RL PROJECT MANGER, RL ASSISTANT MANAGER, EPA PROJECT MANAGER, AND EPA MANGER ON M-016-56, AND SPECIFIC SCOPE FOR 600-149.
- FEB. 2008 EPA AND RL STAFF MET AGAIN TO DISCUSS PATH FORWARD. DISCUSSIONS CONCLUDED WITH IDENTIFYING COMMITMENTS IN A NEW, SEPARATE CHANGE PACKAGE FOR THE NEW WORK SCOPE DISCOVERED IN 100-IU-2/6 FROM THE ORPHAN SITE EVALUATION WALKDOWN, AND PREPARATION OF A SEPARATE CHANGE PACKAGE FOR M-016-56.
- MAR. 2008 AT TPA QUARTERLY, M-016-56 IDENTIFIED AS "TO BE MISSED." RL STATED A DRAFT TPA CHANGE PACKAGE WAS PREPARED AND FOLLOW-ON DISCUSSIONS WILL OCCUR. NO ISSUES WERE IDENTIFIED.
- JUN. 2008 AT TPA QUARTERLY, M-16-56 IDENTIFIED AS "TO BE MISSED." RL STATED A REVISED CHANGE PACKAGE IS UNDER DEVELOPMENT & MORE WORK IS NEEDED ON IDENTIFYING NUMBER OF WASTE SITES. NO ISSUES WERE IDENTIFIED.
- DISCUSSIONS BETWEEN EPA AND RL PROJECT MANAGER RESULTED IN A DESIRE FROM EPA TO SUBMIT A CHANGE PACKAGE FOR NEW COMMITMENTS FOR NEW SCOPE AND OBTAIN EPA APPROVAL OF THAT FIRST. FOLLOWING THIS ACTION, RL WOULD SUBMIT THE M-16-56 CHANGE PACKAGE FOR AN EXTENSION.
- AUG. 2008 RL REVIEWED BOTH CHANGE PACKAGES FOR THE EXTENSION OF M-016-56 & THE CHANGE PACKAGE FOR CREATING NEW COMMITMENTS FOR THE NEW SCOPE. RL EVALUTED THE

SEQUENCE OF CHANGE PACKAGE SUBMITTALS
DISCUSSED IN JUNE 2008.

SEPT. 2008

RL SUBMITTED TO EPA THE CHANGE PACKAGE FOR M-016-56 ASKING FOR AN EXTENSION DUE TO GOOD CAUSE, AND IN THE COVER LETTER NOTED THE CHANGE PACKAGE FOR THE NEW SCOPE WAS DRAFT AND COULD NOT BE APPROVED UNTIL A COST AND SCHEDULE IS APPROVED AND THE SCOPE ADDED TO THE PROJECT BASELINE.

SEE SECTION A OF THE STATEMENT OF DISPUTE FOR THE REFERENCES TO THE LETTERS.

SEPT. 2008

AT TPA QUARTERLY, M-016-56 IDENTIFIED AS "TO BE MISSED." NO ISSUES WERE IDENTIFIED.

SEPT. 2008

EXCAVATION OF 600-149 AND 600-111 HIGH PRIORITY SITES ARE COMPLETE & COMPLETION OF BACKFILL AND REVEGETATION IS ON SCHEDULE FOR COMPLETION BY 12/31/2008. THIS COMMITMENT WAS MADE TO EPA IN JUNE 2007 TO COMPLETE THESE TWO HIGH PRIORITY SITES BY DECEMBER 31, 2008.

ATTACHMENT 2

SUMMARY OF EVENTS ON THE HISTORICAL PROPERTIES PROCESS AT 100-IU-2 AND 100-IU-6

The Hanford Construction Camp Burn Pit (45BN1437), also known as Waste Site 600-202, has been at the center of controversy since characterization sampling took place in January 2005. As early as August 25, 2005, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) questioned the process by which this site was reviewed for cultural significance and the staff who did the evaluation. Specifically, the CTUIR stated: "The [Cultural Resources Protection Program] CRPP feels that RL needs to bring in an historic sites archaeologist to properly document this site." On November 22, 2005, RL submitted a "National Register of Historic Places Registration Form for Waste Site 600-202" to the Washington State Historic Preservation Office (SHPO) for review. RL's position was that the site was not eligible for listing in the National Register, an opinion shared by the SHPO in their letter of concurrence dated December 7, 2005. However, as allowed by Section 800.4(c)(2) of the Advisory Council's regulations "Protection of Historic Properties" (36CFR800), Dr. Roderick Sprague, University of Idaho, objected to the determination and filed an appeal for reconsideration by the Keeper of the National Register, National Park Service, Department of the Interior. As noted in Section 60.12 of the "National Register of Historic Places" (36CFR60), the procedural requirements for listing properties on the National Register, "the decision of the Keeper is the final administrative action on such appeals." On May 1, 2006, the CTUIR joined in the appeal initiated by Dr. Sprague. The decision of the Keeper was documented in a letter to RL dated December 21, 2006, in which the Keeper determined 45BN1437 was eligible for listing in the National Register of Historic Places.

With that determination by the Keeper, RL needed to develop appropriate mitigation measures, as required by Section 800.6(c) of 36CFR800, for the loss of 45BN1437 through remediation of the waste site. Measures proposed by RL, in acknowledgement of the long-standing appeal of the CTUIR, were that an historic archaeologist assist in the development of the mitigation plan and be present to monitor the remedial action. The Keeper reinforced this commitment in her December 21, 2006 determination in noting that "historical archaeology is particularly adept at providing information that cannot be found in other types of documentation." More recently, in proposing base-level requirements for mitigation, the CTUIR held that RL needed to "obtain the services of an archaeologist with WWII or at least 20th century expertise to facilitate future efforts" (February 14, 2007). RL agreed to that threshold of expertise; however, no archaeologist on the Hanford Site met either criterion. In seeking an appropriate subject matter expert (SME), Dr. Douglas Wilson, National Park Service, Portland, Oregon, was identified as an SME who did meet the requirements, was an expert in recent historic archaeology, was locally available, and could work through an Interagency Work Agreement (IWA) thereby facilitating the contracting process and holding down costs. Dr. Wilson is

already familiar with Cultural Resource Management (CRM) practices, including site assessment and the development of appropriate and compliant mitigation measures, is cognizant of the history of 45BN1437, and is acceptable to both RL and the CTUIR. Dr. Wilson has unique capabilities and is a recognized expert.