



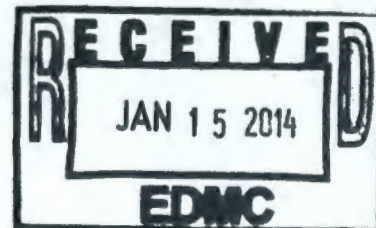
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99-EAP-422

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Addressees:

TANK WASTE "PRIVATIZATION" NEGOTIATIONS

The U.S. Department of Energy (DOE) has carefully considered the State of Washington Department of Ecology (Ecology) July 20, 1999, proposal for modifying the Tri-Party Agreement to incorporate the present Hanford tank waste treatment strategy. While there are elements within the proposal that the Department finds acceptable, a considerable portion of the Ecology draft change request suggested commitments that are inconsistent with the Agreement in Principle (AIP) and should be revised. Because of the extent of the differences between our positions, we have chosen to submit a DOE draft change request that reflects the Department's position.

The Department supports Ecology's position that DOE will be accountable for putting tank waste treatment capability in place for the Hanford Site. Toward that end, the DOE has agreed to an enforceable commitment to make a decision on an Authorization to Proceed (ATP) on a date certain in the near future. Additionally, we agree with Ecology that the new, evolving project baseline needs to be the foundation of the Department's regulatory commitments. As such, as stipulated by the AIP signed by the Parties in May 1999, we have also agreed to put in place target dates for the tank waste treatment project that will convert to enforceable milestones as soon as DOE has the proper contractual vehicles in place to support those commitments. Included is a set of convertible target dates that reflect the work of the Project Hanford Management Contract (PHMC) in supporting the privatization contractor. Where adequate planning bases have not been developed, DOE has agreed to leave in place the present enforceable Tri-Party Agreement regulatory framework. The operative concept here is a Department policy not to make enforceable commitments before a reasonable project-planning basis is constructed.

A fundamental concern held by DOE is the degree to which some provisions of the July 20, 1999, draft change requests appear to be inconsistent with the AIP and inconsistent with the understandings taken away by senior DOE managers from the April 1, 1999, meeting with Ecology and U.S. Environmental Protection Agency (EPA). In addition, conversations with senior Ecology managers appear to be inconsistent with the positions taken by the Ecology

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Tri-Party Agreement negotiating team. The following represents the major issues the Department has with the July 20, 1999, Ecology proposal:

- Ecology's approach to establishing individual milestones for pretreatment, low-activity vitrification, and high-level waste vitrification does not support our approach to purchase a waste treatment service from British Nuclear Fuel Limited, Inc. (BNFL), and is inconsistent with the AIP (third paragraph, page three). The approach we have proposed to Ecology provides an enforceable path to deliver an integrated waste treatment capability and commitment to a specific quantity of waste by a specific date. Although we are willing to make certain convertible target date commitments, we do not endorse a wholesale "milestone per year" concept based on conventional regulatory practice.
- The seven enforceable pre-ATP milestones proposed are not consistent with the Department's understanding that few if any enforceable commitments would be required before ATP (from discussions during the April 1, 1999 senior management meeting). DOE has proposed two enforceable pre-ATP milestones.
- The new enforceable milestone to seek Congressional approval for a contingency line item and an immobilization project is inconsistent with the AIP and discussions held April 1, 1999, regarding how the alternate path would be managed in the Tri-Party Agreement (section 7b of the AIP).
- Ecology's proposal does not allow for adjustment of the convertible target dates after ATP to conform to the Phase 1 Part B-2 integrated project schedule and the application of a total contingency that does not exceed twelve months. This adjustment is critical for DOE and is consistent with the AIP (Section 6c of the AIP).
- Ecology offered enforceable milestones covering alternate path activities. In the April 1, 1999 meeting, DOE made the case that the alternate path options are not well understood and making enforceable commitments now was not possible. The AIP reflected that rationale and provided for a single enforceable date by which the Parties would meet to chart the alternate path (section 7b of the AIP).
- Ecology has asked that DOE waive its Force Majeure rights under the Tri-Party Agreement. We do not agree with this provision and it was not a condition of the AIP.
- We do not agree with the position taken by Ecology regarding the Resource Conservation and Recovery Act (RCRA) Land Disposal Restrictions (LDR) provisions under the Federal Facility Compliance Agreement (FFCA). Simply stated the Department views the Tri-Party Agreement as the site treatment plan under RCRA and the FFCA. DOE clearly understands its obligations to manage LDR materials. DOE views the process provided by the Tri-Party Agreement as being adequate.

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- We do not agree with Ecology's proposals for increasing the regulators' management authority over DOE project baselines. In an era of seeking to drive down costs and promote project management efficiencies, increased flexibility is required to accomplish more work for the money. Ecology's proposal drives in the other direction. Additionally, these proposals create an opportunity to apply regulatory sanctions potentially well in advance of the milestone performance date.

The Department has a strong desire to effectively deal with the issues that separate the Parties. It is our position that the senior management of DOE, Ecology, and EPA need to quickly meet to deal with these issues. We are anxious to hear from you as soon as you are prepared to discuss these challenges.

If there are any questions, please contact George Sanders, Administrator, Hanford Tri-Party Agreement, on (509) 376-6888.

Sincerely,



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