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December 5, 2019 19-NWP-199

Brian T. Vance, Manager
Richland Operations Office
United States Department of Energy
PO Box 550, MSIN: H5-20
Richland, Washington 99352

Re: Director's Determination in the Matter of Milestone M-035-09K and Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5.

Dear Brian T. Vance:

Enclosed is a Director's Determination to resolve the Hanford Federal Facility Agreement and Consent Order (HFFACO) dispute regarding the Washington State Department of Ecology (Ecology) Nuclear Waste Program's decision set forth in Letter 19-NWP-092, dated August 19, 2019, that the Department of Energy - Richland Operations Office (USDOE) missed the completion of HFFACO milestone M-035-09K and has not complied with HFFACO Action Plan Sections 9.6.2 and 9.6.5.

This Director's Determination is appealable as provided in HFFACO Part Two, Article VIII, Paragraph 30(D).

Ecology's solemn mission is to protect, preserve, and enhance the environment for current and future generations. At Hanford, Ecology carries out this mission in part through permitting the treatment, storage, and disposal of hazardous waste; making cleanup and corrective action decisions; and conducting regular inspections to ensure the proper cleanup and management of hazardous waste.

Ecology's ability to carry out these important responsibilities depends upon in-depth access to relevant information and data. Without it, Ecology's permit writers, inspectors, scientists, and management cannot make sound, comprehensive, and timely regulatory decisions. Without it, Ecology is also unable to verify and validate USDOE's and its contractors' cleanup activities to ensure compliance with applicable laws.

For these reasons, Hanford site information and data is a critical resource, and USDOE's adherence to the HHFACO data access requirements is paramount to ensuring the proper cleanup, management, and regulatory oversight of hazardous waste at Hanford.

Transparency around the Hanford site and USDOE's environmental cleanup activities is critical to building trust in the community, with stakeholders, and with the regulatory agencies charged with oversight of those activities. This can be achieved in part by ensuring information and data is shared as agreed to and in an open manner.

In recognition of this, the Tri-Parties included the M-035 milestone series in the HFFACO to ensure that the United States Environmental Protection Agency and Ecology have appropriate access to data relevant to performing their regulatory and oversight roles. Through the M-035 milestone series, USDOE has specifically committed to provide Ecology with direct electronic access to Hanford information and data.

Ecology spent the last several years attempting to work cooperatively with USDOE to bring USDOE into compliance with these HFFACO data access requirements. On several occasions, our staff have reached tentative and conceptual agreement on mutually agreeable paths toward obtaining compliance. Yet each time, USDOE management has refused to sign off on those tentative agreements, preferring instead to pursue the HFFACO dispute process.

The enclosed Director's Determination resolves the dispute in a manner that sets forth a reasonable schedule to bring USDOE into compliance with HFFACO data access requirements. Carrying out this schedule will ensure the degree of data access required by HFFACO in a way that will ensure timely and tenable regulatory decisions without the need to resort to litigation. It also assures Ecology and the public that USDOE is carrying out a safe, efficient, and effective cleanup at Hanford.

If you have any questions, please do not hesitate to contact me at alex.smith@ecy.wa.gov or (509) 372-7905.

Sincerely,

Alexandra K. Smith
Program Manager
Nuclear Waste Program

Enclosure: Director's Determination

cc electronic:

Dave Einan, EPA
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Kathy Conaway, Ecology
Jared Mathey, Ecology
Adam Palomarez, Ecology
John Price, Ecology
Alex Smith, Ecology
Environmental Portal
Hanford Facility Operating Record
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
TPA Administrative Record
NWP Central File

FINAL DETERMINATION

Final Determination pursuant to the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement or TPA) in the matter of milestone M-035-09K and Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5.

This Final Determination concludes efforts at resolving a dispute under the Tri-Party Agreement between the Washington State Department of Ecology (Ecology) and the United States Department of Energy (Energy or USDOE) (collectively, the Parties). As such, this constitutes my Final Determination pursuant to Tri-Party Agreement Part Two, Article VIII, Paragraph 30(D). This determination has been made following review and consideration of Ecology's administrative record in this matter.

I. Introduction

For more than four decades, the United States used the 580 square-mile Hanford Nuclear Reservation (Hanford) in Eastern Washington to produce plutonium for use in its nuclear weapons arsenal. The federal government constructed and operated nine nuclear reactors along Hanford's Columbia River corridor with the primary purpose of irradiating nuclear fuel rods to generate plutonium. In five enormous reprocessing plants near Hanford's center, the spent nuclear fuel rods from the reactors underwent reprocessing to extract weapons-grade plutonium and uranium through chemical processes. Numerous support buildings and waste sites supported plutonium production.

In the late 1980s, the plutonium production mission at Hanford changed to an environmental cleanup mission. Since then, Energy has endeavored to cleanup Hanford with regulatory oversight by Ecology and the U.S. Environmental Protection Agency (EPA or USEPA), pursuant to a number of federal and state laws, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601–9675, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901–6992k, and the state Hazardous Waste Management Act (HWMA), RCW 70.105.

On May 15, 1989, Energy, Ecology, and USEPA (collectively, the Tri-Parties) executed the Tri-Party Agreement pursuant to § 120(e) of CERCLA, §§ 6001, 3008(h), and 3004(u) and (v) of RCRA, Executive Orders 12580 (Jan. 1987) and 12088 (Oct. 1978). The Tri-Party Agreement Action Plan contains plans, procedures, and implementing schedules for conducting cleanup work at Hanford and is an integral and enforceable part of the Tri-Party Agreement.

This Final Determination resolves the Tri-Party Agreement Part Two, Article VIII, Paragraph 30(D) dispute resolution process Energy invoked by its letter 19-AMRP-0075 to Ecology, dated August 20, 2019, disputing Ecology's position that Energy missed completion of Tri-Party Agreement Appendix D milestone M-035-09K and that Energy

is not in compliance with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5, as set forth in Ecology letter 19-NWP-092, dated August 19, 2019.

II. Tri-Party Agreement Data Access Requirements

In October 1993, the Tri-Parties reached tentative agreement on changes to the Tri-Party Agreement that included agreement on "language by which USDOE commits to provide immediate access to all Hanford site environmental/cleanup data bases." Tentative Agreement on Tri-Party Agreement Negotiations (1993 Tentative Agreement) (Oct. 1993) at 193. The Summary of the Tri-Party Agreement Process Negotiation explains that "Ecology and EPA shall be granted access to all data that is relevant to work performed, or to be performed, under the TPA. EPA and Ecology shall have direct read, retrieve, and transfer access to all relevant electronic data and databases." *Id.* at 136.

After public review of the 1993 Tentative Agreement, the Tri-Parties formally adopted the changes set forth in the 1993 Tentative Agreement. Specifically with regard to data access, the Tri-Parties agreed to:

> (1) replace Tri-Party Agreement Action Plan Section 9.6, Data Reporting Requirements, with a new Section 9.6, Data Access and Delivery Requirements; and
>
> (2) establish a new milestone series, M-035, to address data management.

The new Tri-Party Agreement Action Plan Section 9.6, Data Access and Delivery Requirements, was adopted in Revision 4 to the Tri-Party Agreement on January 25, 1994. With the exception of minor conforming changes, this version of Section 9.6 remains in force in the most current version of the Action Plan (Aug. 17, 2017):

> **9.6 Data Access and Delivery Requirements**
>
> **9.6.1 Data Reporting Requirements**
>
> The project managers will provide a list of the nonlaboratory data collected at each operable unit, and TSD group/unit on behalf of their respective parties at the monthly unit managers meetings. This will allow each party to determine its data needs and to establish the format, quality, and timing for submitting the data.
>
> **9.6.2 Agreement Data**
>
> Ecology and EPA shall be granted access to all data that is relevant to work performed, or to be performed, under the Agreement. Access to Agreement related databases will be documented in the Agreement

Appendix F document "Agreement Databases, Access Mechanisms, and Procedures" (includes all databases and the method of accessing each database). This document will also describe method(s) for regulatory access to DOE communications networks and system configurations to meet electronic transfer of data.

9.6.3 Validation

Data validation shall be performed in accordance with approved sampling and analysis plans and quality assurance project plans (QUAPjPs). Laboratory analytical data validation procedure shall incorporate Data Validation Guidelines for Contract Laboratory Program Organic Analyses and Data Validation Guidelines for Contract Laboratory Program Inorganic Analyses. The DOE shall make available to EPA and Ecology validated and unvalidated laboratory analytical data. Any document produced by any of the three parties which contains unvalidated or otherwise caveated data shall be marked as such.

The lead regulatory agency shall be notified of the availability of laboratory analytical data via electronic mail, facsimile transmission, or other means as agreed by the parties involved. Notification shall occur within one week of data entry and shall include the following information:

- date(s) of collection
- unit(s) where data collected
- type of data, e.g., ground water
- location of where data is stored, e.g., database
- unique identifier given to each piece of data, e.g., sample ID.

9.6.4 Non-Electronic Data Reporting

For data not available in electronic format, DOE shall meet the data reporting requirements by providing a summary list of new data at the project managers meetings, or as otherwise requested by the lead regulatory agency. This list will include, at a minimum, the information described in the preceding paragraph addressing notification. The lead regulatory agency shall determine on a case-by-case basis if data warrants a more detailed presentation or analysis. This reporting method shall also be used for field screening data. Field screening data shall be accompanied by maps or sketches with sufficient detail to determine where the data was obtained.

The information shall be submitted to the requesting party within ten days of receipt of the lead regulatory agency's written request, or as

otherwise agreed to by the parties involved. In addition, other reporting requirements may be specifically required by the RCRA permit, RCRA closure plans or work plans.

9.6.5 Electronic Data Access Requirements

EPA and Ecology shall have direct read, retrieve, and transfer access to all relevant electronic data and databases. All validated data will be entered into the selected database in accordance with the Data Delivery Schedules in Section 9.6.6. Unvalidated data will be available within 7 days after receipt from the laboratories. Electronic access to Hanford data will be provided to EPA, Ecology and their respective contractor staff when:

- The computer network infrastructure is available to support user access (for systems that cannot support direct access data shall be provided through redundant systems or through copies of data stored in other systems), and

- The database system is accessible and utilized by Hanford personnel doing Agreement related work.

9.6.6 Data Delivery Schedules

The level of quality assurance for each characterization sample shall meet the requirements of Agreement Article XXXI (Quality Assurance) and shall depend on the specified Data Quality Objectives (DQO) as stated in the specific sampling and analysis plans and quality assurance project plans (QAPjPs). Laboratory analysis and quality assurance documentation, including validation, and transmittal to the regulators, shall be limited to the following schedule:

- Transuranic and hot cell samples - 136 days annual average, but not to exceed 176 days
- Single-shell tank samples - 216 days
- Low-level and mixed waste (up to 10 mr/hour) samples - 111 days annual average, but not to exceed 126 days
- Nonradioactive waste samples - 86 days.

All schedules in this section are effective beginning with the date of individual sampling activities. For unique circumstances, a schedule other than that specified in this section can be agreed to by DOE and the lead regulatory agency. The DOE will integrate all of the data discussed in this section into the appropriate databases and reports.

9.6.7 Other Data Reporting Requirements

The Tri-Party Agreement Strategic Data Management Plan (reference M-35-02) will identify what types of information the DOE will index and a schedule to accomplish the indexing. The indexes will be available to all parties. Depending on the information, the regulators may request the information either electronically and/or by hardcopy. The hardcopy information shall be provided by DOE within 10 days after receipt of written request.

9.6.8 EPA and Ecology Data

Analytical data that is developed by EPA and/or Ecology and is of value to the three parties will be made available in the appropriate media to the three parties. The regulator(s) developing the analytical data shall provide the data in a format suitable for data storage and retrieval. Other data or information requests will be reviewed and handled on a 'case-by-case' basis directly by the parties involved.

9.6.9 Data Management Agreements

The Data Management project manager meeting will provide the forum for addressing data management needs and issues. Meetings will be held with EPA and Ecology at a frequency agreed to by the parties.

The M-035 milestone series proposed in the 1993 Tentative Agreement established Ecology and USEPA as dual regulatory leads for the M-035 milestones. The Tri-Parties adopted the new M-035 milestone series, including a major milestone and four interim milestones, through Change Control Form Number M-35-93-01, dated January 25, 1995, as follows:

M-35-00 Complete Data Management enhancements as negotiated and approved in M-35-00 interim milestones.

Date: TBD

M-35-01 Laboratory analytical data developed from SST and DST characterization, as required by Milestone M-44, will be provided to EPA and Ecology via offsite electronic database access with the following characteristics:
- Direct high speed access via T-1 datalink or direct LAN connection.
- Read, table creation, and downloading capability in the TCO and/or TWINS.

-User will be provided 40 MB of user disk space for storage and manipulation of tank data.

Date: 4/30/94

M-35-02 DOE shall develop and submit to the regulators a "TPA Strategic Data Management Plan" as a primary document which will include or address the items listed below:

a. Identification of TPA related data, TPA data users, purpose of data use, information to be indexed and accessed, and an implementation schedule.

b. Site standards for data management, GIS spatial data, locational data collection, etc.

c. Data Management organizational structure to implement the processes defined in this plan.

d. The following ten data management initiatives will be evaluated and where appropriate implementation actions and schedules will be included in the Strategic Data Management Plan.
The initiatives are:
- Locational Data Collection Standards
- Database Documentation and Listing of Existing Systems Update
- Data Reference Search Information System
- EII Procedures Update
- Digital GIS Base Map Data Collection
- Sitewide Orthophotography Program
- Monument Control Network System
- Engineering Survey Data Collection Standards
- Standard Well ID/Naming and Location Coordinates
- Historic Data Management.

An agreed upon description is documented under "Purpose" for each of these initiatives in Appendix G, Data Management Initiatives, dated September 20, 1993.

DATE: 09-30-94

M-35-03 Develop and submit to the regulators Data Management plans for each DOE-RL program office (ER, WM, TWRS).

DATE: 03-31-95

M-35-04 DOE submit a signed change package with major and interim milestones and target dates for data management initiatives in the Strategic Data Management Plan.

DATE: 01-31-95

In September 1994, per M-035-02, Energy approved for public release and published as a primary document the Tri-Party Agreement Strategic Data Management Plan, DOE/RL-94-111. The Plan's vision was "to provide an environment where every person has the information needed to do their job." Tri-Party Agreement Strategic Data Management Plan, DOE/RL-94-111, at 1 (1994). The 1994 Strategic Data Management Plan was "built on the assumption that information is a Hanford Site resource and a primary deliverable to our customers. Therefore, effective management is critical for the Hanford Site to meet internal and external demands for data, which are the basis for decisions and the vehicle through which actions are implemented and reported." *Id.*

Per M-035-04, initiatives identified in the Tri-Party Agreement Strategic Data Management Plan, DOE/RL-94-111, formed the basis of new milestones and target dates to enhance data management. The Tri-Parties adopted the new milestones through Change Control Form Number M-35-95-01, dated February 13, 1995, as follows:

M-35-05 "Publish Historical Information Access Improvement Plan" 11/30/95

Activities under this interim milestone include submittal of a plan, procedure, and implementation schedule to improve access and retrieval of TPA related historical information. The plan will include the sources of information, availability, funding, distribution, performance criteria, and training. The implementation schedule will be coordinated with Ecology and EPA.

M-35-05-T01 "Submit a draft Historical Information Access Improvement Plan to Ecology and EPA for comment (45 day comment period)." 6/30/95

* * *

M-35-06 "Update Tri-Party Agreement Databases, Access Mechanism and Procedures document" 1/31/96

Activities under this interim mielstone [sic] include describing and implementing a procedure to identify new and existing Hanford site TPA related automated information systems that need to be shared with Ecology and EPA. The procedure will define criteria which identifies a TPA related database, and provide the regulators the ability to request access to information not previously identified. This

procedure will be published in the document entitled "Tri-Party Agreement Databases, Access Mechanism and Procedures".

M-35-06-T01 "Prepare draft Tri-Party Agreement Databases, Access Mechanism and Procedures "11/30/95

M-35-07 "Develop an Information Locator Service on HLAN." 3/31/96

Activities under this interim milestone include implementing an interim information locator directory on HLAN; developing a procedure that will document RL and contractor roles, responsibilities, and process for identification and dissemination of all TPA related information; and, in coordination with Ecology and EPA, DOE will also develop a long term plan and implementation schedule for improving information location access services (*see* M-35-07-T03).

M-35-07-T01 "Implement an Interim Information Locator Directory on HLAN." 6/30/95

M-35-07-T02 "Document roles and responsibilities for identification and dissemination of all TPA related information.["] 9/30/95

M-35-07-T03 "Publish Information Locator Service/Access Plan." 3/31/96

M-35-08 "Complete negotiation of definitive implementation schedules for identified information access enhancements to Ecology and EPA" 6/30/96

M-35-09 "Conduct biennial assessments of information and data access needs with EPA and Ecology. DOE-RL will propose implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments.["] 3/31/98 (and biennially thereafter).

Pursuant to M-035-06, Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69 was initially published in November 1993.

Currently, the only M-035 series milestones that remain as Tri-Party Agreement requirements are major milestone M-035 and interim milestone M-035-09:

M-035 Complete Data Management enhancements as negotiated and approved in M-35-00 interim milestones.

Due Date: TBD

M-35-09 Conduct biennial assessments of information and data access needs with EPA and Ecology. DOE-RL will propose implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments.

Due Date: 3/31/98 (and biennially thereafter).

M-35-09 Implementation

Milestone M-035-09 is intended to ensure Energy's compliance with Tri-Party Agreement data access requirements, including Action Plan Sections 9.6.2 and 9.6.5, through biennial data access assessments. As a result of the biennial assessments, Energy is required to propose Tri-Party Agreement milestones to enhance data access to address concerns raised during the biennial assessments.

1998 to 2016 Biennial Assessments

From 1998 to 2016, Energy conducted M-035-09 biennial assessments related to data access through M-035 project manager meetings between Ecology, Energy, and USEPA. The parties collaboratively worked through data access challenges during these biennial assessments. Subsequently, for each of those 10 milestone cycles, Energy obtained Ecology and USEPA agreement that no new milestones were necessary and that the M-035-09 milestone had been met. This agreement was documented in letters signed by each of the Tri-Parties as follows:

- Letter 98-SID-122, dated March 11, 1998, regarding completion of M-035-09A
- Letter 00-ORL-035, dated March 6, 2000, regarding completion of M-035-09B
- Letter 02-RCA-0235, dated March 21, 2002, regarding completion of M-035-09C
- Letter 04-OES-0029, dated March 23, 2004, regarding completion of M-035-09D
- Letter 06-BOP-0022, dated March 21, 2006, regarding completion of M-035-09E
- Letter 08-ISI-0012, dated March 18, 2008, regarding completion of M-035-09F
- Letter 10-ISI-0087, dated March 30, 2010, regarding completion of M-035-09G
- Letter 12-ISI-0024, dated March 20, 2012, regarding completion of M-035-09H
- Letter 14-AMRP-0119, dated February 27, 2014, regarding completion of M-035-09I
- Letter 16-AMRP-0115, dated February 23, 2016, regarding completion of M-035-09J

2018 Biennial Assessment

As part of the latest biennial assessment that began after the parties completed the M-035-09J data access assessment in 2016, Ecology identified concerns that Energy was not meeting Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5 data access requirements. Specifically, Ecology expressed concern that its staff does not have direct read, retrieve, and transfer access to some Tri-Party Agreement-related electronic databases, in particular, Energy's primary Hanford electronic records repository, the Integrated Document Management System (IDMS).

Ecology repeatedly stated its position during M-035 project manager meetings, quarterly milestone review meetings, and in written correspondence that new milestones are necessary for Energy to come into compliance with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5. *See, e.g.*, October 3, 2017 M-035-09 Project Manager Meeting Minutes at 3; January 3, 2018 email from Ecology's M-035 Project Manager Adam Palomarez to Energy's M-035 Project Manager Ben Ellison; May 29, 2018 M-035-09 Project Manager Meeting Minutes at 2; September 4, 2018 M-035-09 Project Manager Meeting Minutes at 4; November 8, 2018 M-035-09 Project Manager Meeting Minutes at 4; December 20, 2018 Central Plateau/River Corridor Quarterly Tri-Party Agreement Milestone Review Meeting Minutes at 8 (M-035-09 slide); March 7, 2019 M-035-09 Project Manager Meeting Minutes at 3; Letter 19-NWP-050 (Mar. 15, 2019).

For more than two years, Ecology attempted to work collaboratively with Energy on meaningful approaches to enhance data access as required by the Tri-Party Agreement in order to assist Energy in developing Tri-Party Agreement milestones for data access enhancements as required by M-035-09K.[1] Despite granting Energy four extensions that extended the M-035-09K by a year, and Ecology's Letter 19-NWP-050 notifying Energy that "[c]ompletion of Milestone M-35-09K must include implementation schedules to bring USDOE into compliance" with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5, Energy failed to propose any milestones.

Instead, on March 29, 2019, Energy unilaterally announced that no new milestones were required and that it had completed M-035-09K. For the first time in 10 biennial milestone cycles (20 years), Energy bypassed regulator concurrence on the completion of M-035-09. Without notice to Ecology or EPA, Energy then deleted the milestone from the Tri-Party Agreement Action Plan Appendix D, Work Schedule Milestones and Target Dates.

Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6

As part of the M-035 milestone series, Energy was required to prepare and publish a Tri-Party Agreement Databases, Access Mechanism and Procedures document. Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69 was initially approved for public release and published in November 1993.

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[1] Ecology took the lead in discussing its data access needs and developing data access enhancement milestones during the M-035-09K milestone biennial assessment in part because USEPA's Hanford data access needs differ from Ecology's. USEPA's federal network security restrictions do not allow direct connection with Energy's non-public databases, such as IDMS. In addition, EPA focuses mainly on CERCLA work, whereas Ecology covers both CERCLA and RCRA work. Tri-Party Agreement-related data for CERCLA work is publicly accessible through the Pacific Northwest National Laboratory-Hanford Online Environmental Information Exchange (PHOENIX) web applications. There is no publicly available RCRA equivalent.

Since then, Energy has revised and republished DOE/RL-93-69 five times as follows:

- Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 2 (Jan. 1996)
- Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 3 (Jan. 1996)
- Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 4 (Apr. 2004)
- Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 5 (Dec. 2009)
- Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 6 (May 2018)

According to the 1994 Tri-Party Agreement Strategic Data Management Plan at 10, Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69 "identified TPA-related databases" and "will be updated as required to reflect changes and identify new TPA-related databases." Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Revision 1 explained that the document contains the information required for Ecology and USEPA to access databases related to the Tri-Party Agreement. Specifically, the document "identifies the procedure required to obtain access to the Hanford computer networks and the TPA related databases. It addresses security requirements, access methods, database availability dates, database access procedures, and the minimum computer hardware and software configurations required to operate within the Hanford networks." Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 1, at 1. Each version of the Tri-Party Agreement Databases, Access Mechanism and Procedures defines "Tri-Party Agreement relevant data" as "data that are relevant to work performed, or to be performed, under the Tri-Party Agreement." *See* Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Rev. 2, at 1-1; Rev. 3, at 11; Rev. 4, at 1; Rev. 5, at 1; Rev. 6, at 1.

Although Tri-Party Agreement Action Plan Section 9.6.2 states "[a]ccess to [TPA] related databases will be documented in the Agreement Appendix F document 'Agreement Databases, Access Mechanisms, and Procedures,'" Energy did not modify Tri-Party Agreement Appendix F to include the Tri-Party Agreement Databases, Access Mechanisms, and Procedures document until 2014. Energy's Change Control Form number F-13-01 added the then-current Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 5 (issued April 16, 2010) to Appendix F.

Energy initiated an update to Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 5, in 2015. Energy, Ecology, and USEPA engaged in three years of communications that led to various changes. *See, e.g.,* December 9, 2015, March 23, 2017, October 3, 2017, February 20, 2018, and May 29, 2018 M-035-09 Project Manager Meeting Minutes. Among other things, Tri-Party Agreement Databases, Access

Mechanisms, and Procedures, DOE/RL-93-69, Revision 6 rectified the omission of IDMS, Energy's primary records repository for Hanford, as a Tri-Party Agreement-related database expressly listed in DOE/RL-93-69.

On May 29, 2018, Energy approved for public release and issued Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6. On July 24, 2018, Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6 was added to the Hanford Administrative Record. Energy's contractor Mission Support Alliance, LLC (MSA) later verbally communicated to Ecology that MSA did not update Tri-Party Agreement Appendix F to reflect Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6 due to administrative error.

On or about August 7, 2019, Ecology's then Waste Management Section Manager Mark Pakula reported that at a meeting between Ecology and Energy senior management, Energy's Assistant Manager for River and Plateau Remediation, William Hamel, stated to Mr. Pakula that Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6 had been "killed" because it included IDMS as a Tri-Party Agreement-related database. Subsequent to learning this information, Ecology staff searched the Hanford Administrative Record and discovered that Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6 was no longer available in the Hanford Administrative Record or on the Hanford.gov website. At a meeting on or about August 28, 2019, Ecology staff questioned Energy staff about the removal of Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, Revision 6 from the Administrative Record. Energy staff agreed that Energy had removed DOE/RL-93-69, Revision 6 from the Administrative Record without prior discussion with Ecology or USEPA.

III. History of the Dispute

Tri-Party Agreement milestone M-035-09 requires Energy to conduct biennial assessments of information and data access needs with USEPA and Ecology, and propose implementation schedules (Tri-Party Agreement milestones) as a result of those biennial assessments. The latest biennial assessment milestone is M-035-09K:

Number	Milestone	Due Date
M-035-09K Lead Regulatory Agency: Dual	Conduct biennial assessments of information and data access needs with EPA and Ecology. DOE will propose implementation schedules (TPA Milestones) for enhancements as a result of the biennial assessments. 3/31/98 (and biennially thereafter).	03/31/2018

M-035-09K was originally due on March 31, 2018; however, the parties extended the deadline four times to March 31, 2019, as follows:

- Tri-Party Agreement Change Number M-35-18-01, dated February 26, 2018, extended the M-035-09K due date from March 31, 2018 to June 30, 2018
- Tri-Party Agreement Change Number M-35-18-02, dated May 15, 2018, extended the M-035-09K due date from June 30, 2018 to September 30, 2018
- Tri-Party Agreement Change Number M-35-18-03, dated September 4, 2018, extended the M-035-09K due date from September 30, 2018 to December 31, 2018
- Tri-Party Agreement Change Number M-35-18-04, dated November 30, 2018 extended the M-035-09K due date from December 31, 2018 to March 31, 2019

On October 3, 2017, Ecology, USEPA, and Energy/MSA held a project manager meeting to discuss M-035 Biennial Assessments of Information and Data Access Needs. At this meeting, Ecology raised concerns about its inability to access Tri-Party Agreement-related information and data in IDMS. October 3, 2017 M-035-09 Project Manager Meeting Minutes at 3.

On January 16, 2018, Ecology Energy/MSA held another project manager meeting to discuss M-035 Biennial Assessments of Information and Data Access Needs. The Tri-Parties discussed categories of Tri-Party Agreement-related electronic data to which Ecology did not have direct read, retrieve, and transfer access, including:

- Non-sensitive released documents and drawings for Energy's prime contractors
- Non-sensitive procedures for Energy's prime contractors
- Non-sensitive Work packages for Energy's prime contractors
- Non-sensitive waste & fuels PIN files for Energy's prime contractors
- IDMS Search All Meta Data tool (SAM)

January 16, 2018 M-035-09 Project Manager Meeting Minutes at 8. On February 20, 2018, Ecology Energy/MSA held another project manager meeting to discuss M-035 Biennial Assessments of Information and Data Access Needs and agreed to an extension of the due date.

On May 29, 2018, Ecology and Energy/MSA held a project manager meeting to continue the discussion of M-035-09 Biennial Assessments of Information and Data Access Needs. Ecology again expressed its concern about the lack of adequate access to IDMS. To address the situation, "DOE agreed to pursue having contractors replicate the Operating Records they are putting into IDMS and add them into one central location, and that all contractors will begin managing their Operating Records for Ecology to access." May 29, 2018 M-035-09 Project Manager Meeting Minutes at 2. To accomplish this, Energy agreed to request from each of its prime contractors an assessment of any impacts of centralizing their operating records within IDMS for Ecology access. Energy planned to send formal letters to its prime contractors before June 15, 2018. At this meeting, Ecology again

emphasized the need to put an implementation plan in place before M-035-09K could be considered complete. May 29, 2018 M-035-09 Project Manager Meeting Minutes at 3.

On July 17, 2018, Ecology and Energy/MSA held another project manager meeting to continue the discussion of M-035-09 Biennial Assessments of Information and Data Access Needs. Energy again discussed its plan to have its prime contractors relocate operating records they are already putting into IDMS into one central location for Ecology to access electronically. July 17, 2018 M-035-09 Project Manager Meeting Minutes at 2. Energy stated that it sent a letter to one of its prime contractors, MSA, requesting an impact assessment as discussed in the May 29, 2018 meeting, but it had not sent letters to two other prime contractors, CH2MHill Plateau Remediation Company (CHPRC) and Washington River Protection Solutions (WRPS). July 17, 2018 M-035-09 Project Manager Meeting Minutes at 2.

On September 4, 2018, Ecology and Energy/MSA held a project manager meeting to continue the discussion of M-035-09K. At this meeting, Energy reported that it had issued letters requesting impact assessments associated with establishing a centralized operating record in IDMS to its three prime contractors, MSA, CHPRC, and WRPS; however, Energy granted CHPRC and WRPS a 60-day extension to respond. September 4, 2018 M-035-09 Project Manager Meeting Minutes at 4. Ecology expressed concern "that 9 months had passed since the initial biennial meeting," and it "stated an unwillingness to extend the milestone indefinitely," however, Ecology agreed to another 90-day extension for M-035-09K. *Id.*

On November 8, 2018, Ecology and Energy/MSA held a project manager meeting to continue the discussion of M-035-09K. Energy again discussed its direction to its prime contractors to provide impact assessments associated with creating a centralized operating record in IDMS. MSA explained that during a meeting held on November 7 between Energy and its prime contractors, "CHPRC and WRPS stated they had requested clarification on their respective letters of direction, but had not received responses." November 8, 2018 M-035-09 Project Manager Meeting Minutes at 2.

Energy and Ecology also expressed a mutual understanding that simply copying files to a separate location within IDMS was not adequate, and "Ecology's access must include access to the official record copies for auditing purposes." November 8, 2018 M-035-09 Project Manager Meeting Minutes at 3.

At the November 8, 2018 meeting, Ecology "expressed dissatisfaction at the lack of progress towards a solution" and stated that it was not inclined to further extend the milestone. November 8, 2018 M-035-09 Project Manager Meeting Minutes at 4. Ecology again reiterated that it would not consider M-035-09K complete until a plan to enhance data access was established. *Id.*

On December 6, 2018, Ecology and Energy/MSA held a project manager meeting to continue the discussion of M-035-09K. At this meeting, Energy described a two-phase pilot

project that would result in Ecology's direct read, retrieve, and transfer access to a centralized Hanford operating record within a dedicated IDMS folder. The first phase would involve Energy "coordinating an effort to upload a pilot sample of three [contractor] documents into the newly established IDMS folder." December 6, 2018 M-035-09 Project Manager Meeting Minutes at 2. The second phase would "include testing and coordinated DOE/Ecology strategy development, as well as definition of what constitutes an operating record." *Id.* Energy further expressed "management support of the centralized operating record activity." *Id.* Ecology acknowledged "that the effort to prepare a centralized operating record is a first step toward providing Ecology with access to the multitude of things they should be able to access . . . ." *Id.* at 3.

On December 20, 2018, the Tri-Parties held a Central Plateau/River Corridor (CP/RC) Quarterly Tri-Party Agreement Milestone Review Meeting during which Energy recognized Ecology's concern that Ecology does not have satisfactory electronic access to Tri-Party Agreement-related records and that Ecology would not consider the milestone complete until an implementation plan, including schedule, to rectify the data access problem was in place. December 20, 2018 Central Plateau/River Corridor Quarterly Tri-Party Agreement Milestone Review Meeting Minutes at 31 (M-035-09 slide). Ecology further reported that the M-035-09K due date was extended to allow time to develop the implementation plan. *Id.* at 8.

On January 9, 2019, Ecology and Energy/MSA held a project manager meeting to continue the discussion of M-035-09K. Energy reported that the phased pilot project discussed in December was moving forward and that "CHPRC's impact assessment was scheduled for delivery in January," but "WRPS had stopped work until the task could be clarified in more detail." January 9, 2019 M-035-09 Project Manager Meeting Minutes at 2.

On March 7, 2019, Ecology and Energy/MSA held a project manager meeting to continue the discussion of M-035-09K. Energy reported that "contractor estimates for developing a centralized operating record were too high," therefore, Energy would allow Ecology staff to access selected IDMS folders instead of pursuing the phased pilot project to create a centralized operating record within IDMS. March 7, 2019 M-035-09 Project Manager Meeting Minutes at 2.

On March 15, 2019, Ecology issued Letter 19-NWP-050 to Energy providing formal notice of Ecology's determination that Energy was in jeopardy of missing milestone M-035-09K; that Energy was not in compliance with Tri-Party Agreement Action Plan Sections 9.6.2 Agreement Data and 9.6.5 Electronic Data Access Requirements; that completion of milestone M-035-09K must include implementation schedules to bring Energy into compliance with Action Plan Sections 9.6.2 and 9.6.5; and that failure to correct the areas of non-compliance may result in an escalation of enforcement and the issuance of an administrative order and a stipulated penalty, as provided by Tri-Party Agreement Article IX.

On March 29, 2019, despite its failure to propose milestones for enhancements to data access as a result of the biennial assessment meetings, Energy issued Letter 19-AMRP-0059 to Ecology and USEPA announcing that no new milestones are required at this time and that it had completed M-035-09K. On or about April 3, 2019, Energy unilaterally deleted M-035-09K from the Tri-Party Agreement Action Plan Appendix D, Work Schedule Milestones and Target Dates.

On April 18, 2019, Ecology requested by email that Energy return M-035-09K to the Tri-Party Agreement and requested Energy send email confirmation when that action was complete. Ecology also requested a meeting with Energy. Ecology did not receive confirmation from Energy that M-035-09K was restored to the Tri-Party Agreement; however, Energy arranged the requested meeting.

On May 28, 2019, Ecology met with Energy to discuss Energy's proposal to conduct a data access pilot project. At that meeting, Ecology again reiterated that Energy is not meeting the electronic data access requirements of the Tri-Party Agreement. Ecology agreed to provide an initial list of Tri-Party Agreement-related data categories. Energy agreed that it would work with its prime contractors to tag the initial categories of Tri-Party Agreement-related data in Ecology's list to test this conceptual data access method. Ecology provided the initial list of Tri-Party Agreement-related data categories to Energy by email on May 31, 2019. By email on June 11, Energy stated its disagreement with Ecology's list.

On June 12, 2019, Ecology met with Energy to discuss M-035-09K and a draft letter Ecology intended to issue to Energy in response to its Letter 19-AMRP-0059. Ecology's draft letter would notify Energy that Energy missed completion of M-035-09K and direct Energy to (1) return milestone M-035-09K to Appendix D of the Tri-Party Agreement Action Plan; and (2) meet the milestone by proposing milestones for enhancements to bring Energy into compliance with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5. At the June 12 meeting, Energy requested that, in lieu of issuing the letter, Ecology grant Energy seven days to restore M-035-09K and submit draft milestones in satisfaction of M-035-09K. Ecology agreed and communicated its expectation that within seven days, Energy would submit a three-part milestone with three dates certain to define a pilot project for data access enhancements; develop an initial Tri-Party Agreement-related document list; and define the criteria for identifying Tri-Party Agreement-related data.

On June 21, 2019, Energy emailed Ecology staff an interim list of Tri-Party Agreement-related documents dubbed the "easy list," noting that "the easy list is not the final list of TPA related docs, just an interim list that allows us to move fwd with a pilot. In parallel, I will establish a forum to address those docs where we need to reach consensus on whether they are TPA related or not." Energy also informed Ecology that it would "proceed to the next step which is preparing a draft change notice that re-establishes M35-09K, but immediately replaces it with a three part milestone that may be updated as progress is made." On June 27, 2019, Energy emailed Ecology staff stating that the "current plan is to provide you the draft milestone replacement wording sometime during the week of 7/08."

On July 16, 2019, Energy emailed Ecology staff what it called a "draft proposed milestone replacement" that was "still being worked" to give Ecology "an idea of what we are thinking." The draft Tri-Party Agreement Change Control Form M-35-19-01 attached to Energy's email did not restore M-035-09K. Nor did Change Control Form M-35-19-01 propose any milestones. Instead, Energy proposed to establish "three target dates for the implementation of a direct document sharing mechanism with EPA and Ecology." Target dates are not enforceable and do not meet the criteria for milestones as defined by the Tri-Party Agreement. Energy's proposed target dates established dates to achieve agreement on the initial "easy list" of Tri-Party Agreement-related documents and project scope; transmit the "easy list" to Energy's prime contractors with direction to propose a pilot implementation schedule; and begin pilot project implementation and provide regulator access to the documents in the agreed-to "easy list."

On July 23, 2019, Ecology emailed Energy a revised draft Change Control Form M-35-19-01 that proposed to establish new "milestones for the implementation of a direct document sharing mechanism with EPA and Ecology," including dates by which Energy would submit an initial list of Tri-Party Agreement-relevant electronic data and databases to provide access in accordance with Tri-Party Agreement Action Plan Section 9.6.5; submit a Tri-Party Agreement change notice to make Tri-Party Agreement Databases, Access Mechanisms, and Procedures, DOE/RL-93-69, a Tri-Party Agreement primary document; provide Ecology and USEPA electronic direct, read, retrieve and transfer access to the initial list of Tri-Party Agreement-related data and databases; and submit to Ecology and USEPA an implementation schedule for categorical clearance improvements for Tri-Party Agreement-relevant databases and documents, including proposed excluded databases, justification for the proposed exclusion, and proposed alternatives to provide regulators with access to Tri-Party Agreement-relevant data located within proposed excluded databases.

On August 19, 2019, Energy and Ecology held an informal meeting to discuss Energy's July 16 proposed target dates and Ecology's July 23 proposed milestones in the competing versions of draft Change Control Form M-35-19-01. At that meeting, Energy's Assistant Manager for River and Plateau Remediation William Hamel stated that he was no longer in agreement with providing Ecology access to IDMS. After a short caucus, Ecology staff determined that further discussion would not result in any further progress. Accordingly, Ecology hand delivered Letter 19-NWP-092 (dated August 19, 2019) to Mr. Hamel, in which Ecology notified Energy that it missed completion of M-035-09K because it failed to propose any implementation schedules (Tri-Party Agreement milestones) for data enhancements and Energy is not in compliance with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5. Letter 19-NWP-092 required Energy to (1) return milestone M-035-09K to Appendix D of the Tri-Party Agreement Action Plan; and (2) meet milestone M-035-09K by signing Ecology's July 23 draft Change Control Form M-35-19-01 as an adequate implementation schedule that would bring Energy into compliance with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5. Letter 19-NWP-092 also notified Energy that further non-compliance could result in the assessment of stipulated penalties under the Tri-Party Agreement.

On August 20, 2019, Energy sent Letter 19-AMRP-0075 to Ecology in response to Letter 19-NWP-092, stating that Energy disagrees with Ecology's position that Energy missed completion of milestone M-035-09K and that Energy has not complied with the data access requirements contained in Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5, and invoking the Tri-Party Agreement dispute resolution process set forth in Tri-Party Agreement Article VII, Paragraph 30.

On September 3, 2019 the Ecology and Energy M-035 project managers met to make reasonable efforts to informally resolve the dispute as required by the Tri-Party Agreement dispute resolution process. During this meeting, the Ecology and Energy project managers reached tentative agreement to resolve the dispute through a series of milestones that would establish a "Tri-Party Agreement Data Management Plan" as a Tri-Party Agreement primary document. To support the development of the Tri-Party Agreement Data Management Plan, the project managers agreed to a series of workshops designed to assist Ecology and Energy in collaboratively defining the categories of data that would be designated as Tri-Party Agreement-related and identifying Tri-Party Agreement-related documents. The Ecology and Energy project managers also agreed to propose future milestones to implement the Tri-Party Agreement Data Management Plan. *See* September 3, 2019 M-035-09 Project Manager Meeting Minutes.

On September 10, 2019, per the commitments made during the September 3, 2019 project manager meeting, Energy transmitted draft Change Control Form Number M-35-19-02, which proposed to establish "three interim milestones that support the development of an actionable *Tri-Party Agreement Data Management Work Plan*, ensuring the intent of the electronic data access requirements in TPA Action Plan §9.6, 'Data Access and Delivery Requirements," is achieved. As the Ecology and Energy M-035 project managers agreed at the September 3, 2019 meeting, Change Control Form Number M-35-19-02 established the Tri-Party Agreement Data Management Work Plan as a primary document pursuant to Tri-Party Agreement Action Plan Section 11. Specifically, the milestones proposed in the September 10, 2019 version of Change Control Form Number M-35-19-02 are as follows:

Number	Milestone	Due Date
M-035-09K01	DOE will submit a draft outline of the *Tri-Party Agreement Data Management Work Plan* (hereafter "the Work Plan") to EPA and Ecology.	10/18/2019
M-035-09K02	DOE, EPA, and Ecology will participate in two structured, facilitated working sessions as follows: 1. DOE, EPA, and Ecology leadership will jointly determine criteria for determining what constitutes TPA-related data (WS1). 2. DOE, EPA, and Ecology technical staff will jointly identify categories of information that constitute TPA-related data using the criteria defined above (WS2). Signed meeting minutes will be issued to the regulatory agencies in accordance with HFFACO Action Plan section 4.1.	11/22/2019
M-035-09K03	DOE will use the information and criteria from M-035-09K01 and M-035-09K02 to prepare and submit the draft Work Plan to EPA and Ecology, along with draft change control form proposing implementation schedules for data access enhancements.	02/07/2020

On September 16, 2019, Energy subsequently provided Ecology with a new version of draft Change Control Form Number M-35-19-02, which replaced the requirement to provide a Data Management Work Plan as a Tri-Party Agreement primary document with providing an unenforceable "strategy." The milestones proposed in the September 16, 2019 version of Change Control Form Number M-35-19-02 are as follows:

Number	Milestone	Due Date
M-035-09K01	DOE will submit a draft outline of the *Tri-Party Agreement Data Management Strategy* (hereafter "the Strategy") to EPA and Ecology. The draft outline will indicate approval authorities for relevant subsections.	10/18/2019
M-035-09K02	DOE, EPA, and Ecology will participate in two structured, facilitated working sessions as follows: 1. DOE, EPA, and Ecology leadership will jointly determine criteria for determining what constitutes TPA-related data (WS1). 2. DOE, EPA, and Ecology technical staff will jointly identify categories of information that constitute TPA-related data using the criteria defined above (WS2). Signed meeting minutes will be issued to the regulatory agencies in accordance with HFFACO Action Plan section 4.1.	11/22/2019
M-035-09K03	DOE will use the information and criteria from M-035-09K01 and M-035-09K02 to prepare and submit the draft Strategy to EPA and Ecology, along with a draft change control form proposing implementation schedules (i.e., TPA milestones) for data access enhancements.	02/07/2020

On September 17, 2019, Ecology responded to Energy's September 16, 2019 version of Change Control Form Number M-35-19-02 via email, stating "Ecology has reviewed the latest draft . . . and has assessed it does not support the tentatively agreed on approach from the USDOE/Ecology TPA dispute meeting on 8/19/2019." Ecology expressed support for the September 10, 2019 version of Change Control Form Number M-35-19-02.

Energy's September 16, 2019 version of Change Control Form Number M-35-19-02 was not acceptable to Ecology because Ecology's position is that the Tri-Party Agreement Data Management Plan must be a Tri-Party Agreement primary document to ensure that all parties have meaningful involvement in the preparation and implementation of the document.

On September 19, 2019, Energy sent Letter 19-AMRP-0081 to Ecology transmitting its Statement of Dispute in this matter, effectively ending negotiations at the project manager level and elevating the dispute to the Interagency Management Integration Team (IAMIT).

On October 1, 2019, Ecology and Energy approved an extension of the Tri-Party Agreement dispute at the IAMIT level until November 21, 2019, to provide additional time to reach resolution regarding a path forward for interim milestone M-035-09K.

On November 6, 2019, Ecology made a final pre-IAMIT good faith effort to work collaboratively with Energy to complete milestone M-035-09K and enhance Ecology's data access in the manner required by the Tri-Party Agreement. Meeting attendees included Ecology's Nuclear Waste Program Manager, Alex Smith, Mr. Price, and Mr. Palomarez, and Energy's Hanford Site Manager Brian Vance, Energy's M-035 Project Manager/Chief Information Officer Ben Ellison, and Mr. Hamel. Ecology presented to Energy a revised draft milestone package (draft Change Control Form Number M-035-19-03). The meeting concluded without agreement on draft Change Control Form Number M-035-19-03.

On November 21, 2019, the IAMIT did not reach unanimous agreement in the Tri-Party Agreement dispute resolution process, accordingly, this Final Determination is due within 14 days of the IAMIT meeting, December 5, 2019.

IV. Findings and Final Determination

Direct read, retrieve, and transfer electronic access to Tri-Party Agreement-related information is critical for the regulatory agencies to provide adequate oversight of the cleanup at Hanford. The Tri-Parties recognized the importance of data and information when they agreed to adopt the M-035 milestone series and new Tri-Party Agreement data access requirements in 1993. Energy's failure to provide data access as agreed to by the Tri-Parties and required by the Tri-Party Agreement hampers Ecology's ability to fully and timely complete its regulatory oversight responsibilities at Hanford.

For over two years between 2017 and 2019, Ecology, in good faith, worked toward a resolution with Energy through the M-035-09K biennial assessment that would satisfy the data access requirements of Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5. Even after reaching tentative agreement several times to resolve the data access issues Ecology identified during the M-035-09K biennial assessment, Energy failed to take any meaningful action to effectuate those tentative agreements. Rather, each time, Energy unilaterally produced a different product in a way that would not bring it into compliance with the Tri-Party Agreement and therefore was not satisfactory to Ecology.

Rather than proposing new Tri-Party Agreement milestones for enhancement of Ecology's data access, as required by M-035-09K, Energy ultimately ignored the data access concerns Ecology raised during the biennial assessments and simply declared no new milestones were required and that M-035-09K was complete.

Additionally, during the M-035-09K biennial assessment, Energy worked with Ecology and USEPA to update and issue Revision 6 of Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69. Energy approved Revision 6 for public

release and informed the regulators that it was placed in the Tri-Party Agreement Administrative Record. Energy subsequently removed DOE/RL-93-69 from the Hanford Administrative Record unilaterally and without notification to or concurrence of the M-035 project managers.

Because the need for new milestones to enhance Ecology's data access was identified in the biennial assessment, and Energy did not propose any milestones, M-035-09K is not complete and Energy missed the M-035-09K extended deadline of March 31, 2019. In addition, Energy has failed to comply with Tri-Party Agreement Action Plan Sections 9.6.2 and 9.6.5 because Energy has not granted Ecology access to all data that is relevant to work performed, or to be performed, under the Tri-Party Agreement and Ecology does not have direct read, retrieve, and transfer access to all relevant electronic data and databases.

Further negotiations in this matter under the Tri-Party Agreement are not likely to succeed.

Consequently, in light of the Administrative Record and the findings outlined above, and in an effort to ensure access to data and information as required by the Tri-Party Agreement, my final determination in this matter is as follows:

(1) Energy's proposals in this matter are unacceptable and are hereby disapproved.

(2) Energy failed to comply and is not in compliance with Tri-Party Agreement Action Plan Appendix D, Work Schedule Milestones and Target Dates, milestone M-035-09K, due March 31, 2019.

(3) Energy failed to comply and is not in compliance with Tri-Party Agreement Action Plan Section 9.6.2, Agreement Data.

(4) Energy failed to comply and is not in compliance with Tri-Party Agreement Action Plan Section 9.6.5, Electronic Data Access Requirements.

(5) Energy improperly removed DOE/RL-93-69, Revision 6, from the Hanford Administrative Record without concurrence from the M-035 project managers, as required by Tri-Party Agreement Action Plan Section 4.1.

(6) No later than thirty (30) days after this Final Determination is issued or affirmed on appeal, Energy shall restore M-035-09K to the Tri-Party Agreement Action Plan Appendix D, Work Schedule Milestones and Target Dates, with a status of missed, until such time that Ecology notifies Energy that it has satisfied the requirements of this Final Determination.

(7) No later than thirty (30) days after this Final Determination is issued or affirmed on appeal, Energy shall restore Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Revision 6 (released May 29, 2018), to the Hanford Administrative Record and Hanford.gov.

(8) No later than thirty (30) days after this Final Determination is issued or affirmed on appeal, Energy shall submit a signed change control form modifying Tri-Party Agreement Appendix F to reference Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69, Revision 6 (released May 29, 2018).

(9) No later than thirty (30) days after this Final Determination is issued or affirmed on appeal, Energy shall grant Ecology direct read, retrieve, and transfer access to Energy's primary Tri-Party Agreement-related electronic document repository (currently IDMS). Such access to IDMS shall include access to the Search All Metadata (SAM) tool. The SAM tool shall display results from all data categories identified in items (10) and (11) below.

(10) No later than thirty (30) days after this Final Determination is issued or affirmed on appeal, Energy shall grant Ecology electronic read, retrieve, and transfer access in the originating database or document repository (currently IDMS) to the following categories of Tri-Party Agreement-related data:

a. Operating Record as defined by Washington Administrative Code Section 173-303-808
b. Treatment, Storage, and Disposal related inspections
c. Job Control System Work Packages
d. Procedures (e.g., Operating, Technical, Environmental, Safety)
e. Piping and instrumentation diagrams
f. Occurrence Reports
g. Waste designation records
h. Discrepancy Notifications
i. Interpretation/clarification requests
j. Double Shell Tank Visual Inspection Reports
k. Double Shell Tank Ultrasonic Testing Reports
l. Problem Evaluations Reports
m. Analytical data packages (e.g., 222-S lab reports)
n. Operating Specification Documents
o. Condition reporting and resolution system reports
p. Open items inspections lists for the Solid Waste Operating Complex

(11) Ecology will provide additional categories of Tri-Party Agreement-related data to Energy in writing at quarterly M-035 project manager meetings. Energy shall grant Ecology electronic read, retrieve, and transfer access to those additional categories of Tri-Party Agreement-related data no later than thirty (30) days after the additional categories are provided to Energy in writing. If Energy determines it cannot grant access within the thirty (30) day period, it will notify Ecology within fourteen (14) days of receiving the additional categories and include in the notification a detailed schedule for granting access to the requested categories along with its rationale for the extended timetable for Ecology's approval.

(12) No later than sixty (60) days after this Final Determination is issued or affirmed on appeal, Energy shall develop and submit to Ecology for approval, as a primary document subject to the requirements of Tri-Party Agreement Action Plan Section 11, a Tri-Party Agreement Strategic Data Management Work Plan that will replace Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69. Energy shall use as a template for the Tri-Party Agreement Strategic Data Management Work Plan both Tri-Party Agreement Strategic Data Management Plan, DOE/RL-94-111, and Tri-Party Agreement Databases, Access Mechanism and Procedures, DOE/RL-93-69. In addition, the Tri-Party Agreement Strategic Data Management Work Plan shall include:

a. All categories of Tri-Party Agreement-related data identified by Ecology.
b. Categories of Tri-Party Agreement-related electronic data that Energy believes should be excluded from Ecology direct read, retrieve, and transfer access, including an adequate legal basis on which Energy believes the data should be excluded.
c. Procedure(s) for Ecology access to electronic databases and information.
d. Procedure(s) to identify new Tri-Party Agreement-related electronic data information systems.
e. Procedure(s) for information clearance that meets the Tri-Party Agreement requirement to provide direct read, retrieve, and transfer access for Tri Party Agreement-related electronic information and hardcopy information to the regulators within 10 days after receipt of written request.
f. Any other information needed to ensure compliance with the Tri-Party Agreement data accesses requirements, including the requirements of Tri-Party Agreement Action Plan Section 9.0.

(13) Within thirty (30) days of Ecology's approval of the Tri-Party Agreement Strategic Data Management Work Plan, Energy shall submit to Ecology for approval a Change Control Form to update Tri-Party Agreement Appendix F and any other affected sections of the Tri-Party Agreement to reference the Tri-Party Agreement Strategic Data Management Work Plan in place of the Tri-Party Agreement Databases, Access Mechanism and Procedures.

(14) Energy and Ecology will review the Tri-Party Agreement Strategic Data Management Work Plan annually. As part of the annual review, Energy shall incorporate any changes to the Tri-Party Agreement Strategic Data Management Work Plan that Ecology determines to be necessary and shall submit to Ecology for approval the revised Tri-Party Agreement Strategic Data Management Work Plan within thirty (30) days of the annual review.

(15) No later than thirty (30) days after this Final Determination is issued or affirmed on appeal, and quarterly thereafter, Energy shall develop and submit to Ecology an electronic index of all documents within Energy's primary Tri-Party Agreement-

related electronic document repository (currently IDMS). The index shall be in an electronic format that is sortable and searchable and must include each document title, version or revision number, author, date, and keyword association and shall include a listing of documents that have been added, replaced, removed from the database, and/or excluded from Ecology's view in the previous quarter. Energy may exclude from the electronic index categories of data recognized as excluded data in the approved Tri-Party Agreement Strategic Data Management Work Plan.

Approved and issued this 5th day of December, 2019.

Maia Bellon by Billy Zehm

Maia D. Bellon, Director
State of Washington, Department of Ecology