



**U.S. Department of Energy
Hanford Site**

DEC 11 2019

19-TPD-0029

Ms. Alexandra K. Smith, Program Manager
Nuclear Waste Program
Washington State
Department of Ecology
3100 Port of Benton Blvd.
Richland, Washington 99354

Dear Ms. Smith:

U.S. DEPARTMENT OF ENERGY, OFFICE OF RIVER PROTECTION RESPONSE TO LETTER 19-NWP-194, "DEPARTMENT OF ECOLOGY'S (ECOLOGY) REVIEW AND ASSESSMENT OF THE MAINTENANCE AND PERFORMANCE MONITORING PLAN, RPP-RPT-61684"

- References:
1. Ecology letter from J. J. Lyon to B. A. Harkins, ORP, "Department of Ecology's (Ecology) Review and Assessment of the Maintenance and Performance Monitoring Plan, RPP-RPT-61684," 19-NWP-194, dated December 3, 2019.
 2. Washington State Department of Ecology Document of Receipt; RPP-RPT-61684, "Maintenance and Performance Monitoring Plan," dated October 10, 2019
 3. ORP letter from R. G. Hastings to A. K. Smith, Ecology, "Completion of Maintenance and Monitoring Plan Submittal to Meet Hanford Facility Agreement and Consent Order Milestone M-045-92AC," 19-TPD-0027, dated October 31, 2019.

The U.S. Department of Energy (DOE), Office of River Protection acknowledges receipt of your letter (Reference 1). For the reasons set forth in detail below, DOE declines to invoke dispute at this time, as suggested by Washington State Department of Ecology (Ecology).¹ The DOE is committed to compliance with the processes set forth in the Hanford Federal Facility Agreement and Consent Order (Tri Party Agreement or TPA).

¹ Letter 19-NWP-194 inappropriately suggests DOE has a seven (7) day deadline to invoke dispute, as set forth on page 2 of this letter.

Ecology’s contention that the DOE failed to “submit” a primary document is not accurate. As set forth in the TPA, Milestone M-045-92AC² “Submit to Ecology for Approval a Maintenance and Performance Monitoring Plan for Interim Barriers” established the DOE’s obligation to submit a Maintenance and Performance Monitoring Plan as a primary document. The due date to submit the plan was October 31, 2019. On October 10, 2019, the DOE provided primary document RPP-RPT-61684, “Maintenance and Performance Monitoring Plan” to Ecology via hand delivery (Reference 2), several days before it was due. The DOE confirmed Ecology’s receipt of RPP-RPT-61684 as stated in the DOE’s October 31, 2019 letter (Reference 3). Approximately 54 days after receiving RPP-RPT-61684, Ecology provided letter 19-NWP-194 to the DOE on December 3, 2019.

As required by Milestone M-045-92AC, RPP-RPT-61684 addressed the following information:

Crosswalk: Location of Milestone Requirements within RPP-RPT-61684	
M-045-92AC Required Elements	RPP-RPT-61684 Section
Systematic inspections and maintenance of the interim barriers to ensure their performance over their 25-year service life.	2.1, 2.3, 2.2.1 & 2.2.2 - Sections 2.1 and 2.3 address systematic inspections, and Sections 2.2.1 and 2.2.2 address systematic maintenance.
A plan to perform systematic performance monitoring of tank farms covered with interim barriers. For each tank farm with an interim barrier, the plan will evaluate and propose, <i>as appropriate</i> ³ :	3.0 and 4.0 - Section 4.0 addresses the current and planned performance monitoring program and results of that monitoring. Section 3.0 addresses plans for additional in-tank and ex-tank monitoring.
<ul style="list-style-type: none"> In-tank monitoring (e.g., surface level and liquid observation wells), and ex-tank drywell monitoring. 	3.3 - There are no plans to perform in-tank or ex-tank monitoring in tank farms with interim surface barriers beyond that already agreed upon through approved monitoring plans.

² Letter 19-NWP-194 incorrectly refers to TPA Milestone M-045-92, since DOE submitted RPP-RPT-61684 in fulfillment of Milestone M-045-92AC. Since the incorrectly referenced milestone is not due until October 31, 2023, it is premature to consider whether a failure to meet it occurred.

³ Emphasis added to language in bold italics

<ul style="list-style-type: none">• Results of completed drywell monitoring data collection and evaluation.	3.1 - No drywell monitoring was completed in tank farms with an interim barrier.
<ul style="list-style-type: none">• Results of completed tank leak assessments.	3.2 - No tank leak assessments were completed in tank farms with an interim barrier.
Submit yearly reports summarizing the results of maintenance and performance monitoring activities for the previous year, and research completed to evaluate new technologies.	2.2 & 4.2 - Sections 2.2 and 4.2 contain a summary of results from the planned activities for their respective scopes. This includes observations and actions from the field for inspections, along with the analysis and presentation of moisture monitoring. No new technologies were evaluated, thus no discussion was provided.

Milestone M-045-92AC undisputedly characterizes RPP-RPT-61684 as a TPA primary document. TPA Section 9.2 (Document Review and Comment Process) describes the process Ecology must follow for reviewing and commenting on primary documents (Section 9.2.1 Primary Documents). Figure 9-1 provides the process flow for reviewing and commenting on primary documents and the required time periods for specific actions, including but not limited to Ecology's obligation to respond with comments to primary documents within 45 days of their submission. The lead regulatory agency may extend the comment period for a specified period by written notice to the DOE prior to the end of the initial comment period. This written notice is the only method available to a lead regulatory agency to extend the comment period for review of primary documents. On many previous occasions, Ecology has successfully used this method to extend primary document comment periods. With regard to RPP-RPT-61684, Ecology failed to provide written notice to the DOE that the initial comment period would be extended prior to the end of the initial comment period.

Ecology must provide comments on the primary document with adequate specificity so that the DOE can make necessary changes to the document. Any comments shall refer to any pertinent sources of authority or references upon which the comments are based. Ecology failed to provide comments to DOE on RPP-RPT-61684 within Ecology's 45-day required timeframe. Ecology has not provided DOE comments with adequate specificity. Ecology has not provided DOE with any comments to RPP-RPT-61684.

Ecology's letter (Reference 1) suggests that DOE may invoke the TPA dispute resolution process "[p]ursuant to Article IX, second paragraph of 31, 'DOE shall have seven (7) days after receipt of the assessment to invoke Dispute Resolution on the question of whether the failure did in fact occur.'" Ecology inappropriately refers to the dispute resolution paragraph under Article IX "Stipulated Dangerous Waste Penalties," which only provides DOE the option to invoke Dispute Resolution within seven (7) days of an assessment of stipulated penalties. Therefore, DOE declines to inappropriately invoke dispute, as suggested by Ecology. DOE is committed to compliance with the applicable TPA processes.

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If you have any questions, please contact me, or your staff may contact Rod Lobos,
Environmental Compliance Division, on (509) 376-0095.

Sincerely,



Brian T. Vance
Manager

TPD:JMS

cc: J. Alzheimer, Ecology
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