

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 18, 2022

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

JENNIFER GRANHOLM, Secretary
of the United States Department of
Energy, and the UNITED STATES
DEPARTMENT OF ENERGY,

Defendants.

NO. 2:08-cv-5085-RMP

ORDER GRANTING
DEFENDANTS’
UNOPPOSED MOTION TO
ENTER CONSENT DECREE
MILESTONE EXTENSIONS
AND MODIFYING
AMENDED CONSENT
DECREE BETWEEN U.S.
DEPARTMENT OF ENERGY
AND STATE OF
WASHINGTON

BEFORE THE COURT is an Unopposed Motion to Enter Consent Decree Milestone Extensions by Defendants Secretary of the Department of Energy Jennifer Granholm¹ and the United States Department of Energy (collectively, “Defendants”), ECF No. 258. Having reviewed the motion, the record, and relevant law, the Court is fully informed.

¹ The Court substitutes Secretary Granholm in the caption in this matter. Fed. R. Civ. P. 25(d).

1 Defendants and Plaintiff State of Washington, Department of Ecology
2 (collectively, “the Parties”), stipulate to amendment of the Consent Decree, ECF
3 No. 59, the Amended Consent Decree, ECF No. 222, and its subsequent
4 amendments, ECF Nos. 232, 242, 251, on the basis that the novel coronavirus
5 (COVID-19) pandemic is a *force majeure* event that continues to create work
6 interruptions at the Hanford Site, justifying amendment under Section VII.E
7 (*Force Majeure*) of the Consent Decree. ECF No. 258 at 2–8.

8 The Court finds good cause for amendment based upon the Parties’
9 agreement, as well as Defendants’ showing, that the criteria for amendment of the
10 Consent Decree have been met. Accordingly, **IT IS HEREBY ORDERED** that
11 Defendants’ Unopposed Motion to Enter Consent Decree Milestone Extensions,
12 **ECF No. 258**, is **GRANTED**. The Consent Decree, ECF No. 59, as modified by
13 the Amended Consent Decree, ECF No. 222, and the amendments at ECF Nos.
14 232, 242, and 251 is further amended, by stipulation of the Parties, as follows:

15 **STIPULATION**

16 WHEREAS, on October 25, 2010, the Court entered a Consent Decree
17 between the United States Department of Energy (“DOE”) and the State of
18 Washington, ECF No. 59;

19 WHEREAS, after contested proceedings regarding modification of certain
20 aspects of the Consent Decree, the Court on March 11, 2016, issued an Amended
21 Consent Decree, ECF No. 222, including amendments to the Decree’s milestones
22 for tank waste retrievals and construction of the Hanford Waste Treatment and
23 Immobilization Plant;

24 WHEREAS, on October 12, 2018, the Court entered an agreed extension of
25 the B-2 and B-3 tank retrieval milestones, ECF No. 242;

1 WHEREAS, on May 21, 2020, DOE submitted to the State of Washington a
2 Section VII.E. (*Force Majeure*) proposal to extend certain milestones due to
3 ongoing work interruptions caused by the coronavirus (COVID-19) pandemic;

4 WHEREAS, following good-faith discussions during dispute resolution,
5 DOE and the State of Washington agreed to a method for calculating an extension
6 of several milestones to offset work interruptions occurring between March 23,
7 2020, and the end of Phase 2 of the Hanford Site Remobilization Plan;

8 WHEREAS, on December 10, 2020, the Court granted a joint motion by
9 DOE and the State of Washington to amend the Consent Decree by incorporating a
10 method for calculating schedule extensions necessary to offset *force majeure*-
11 caused work interruptions at the Hanford Site affecting five milestones;

12 WHEREAS, Phase 2 of remobilization at the Hanford Site concluded as of
13 March 13, 2022;

14 WHEREAS, according to the Court-approved method for calculating
15 schedule extensions in this circumstance, the remobilization period between March
16 23, 2020, and March 13, 2022, warrants a 579-day extension to the B-2, B-3, A-7,
17 A-8, and A-9 milestones; and

18 WHEREAS, DOE and the State of Washington have agreed that DOE may,
19 as it deems necessary, seek further milestone extensions pursuant to the Decree's
20 *force majeure* provisions (Section VII.E.) to offset work interruptions at Hanford
21 caused by the COVID-19 pandemic not addressed by previous relief granted by the
22 Court;

23 **THEREFORE, IT IS HEREBY STIPULATED AND ORDERED:**

24 The Consent Decree between the U.S. Department of Energy and the State
25 of Washington, as amended, is modified as follows:

26
ORDER GRANTING DEFENDANTS' UNOPPOSED MOTION TO ENTER
CONSENT DECREE MILESTONE EXTENSIONS AND MODIFYING
AMENDED CONSENT DECREE BETWEEN U.S. DEPARTMENT OF
ENERGY AND STATE OF WASHINGTON ~ 3

1 **I. Section IV.B.2**

2 Section IV.B.2 of the Consent Decree, ECF No. 59, as amended by ECF
3 Nos. 222, 232, 242, and 251, is hereby **VACATED** and **SUPERSEDED** by the
4 following text:

5 In accordance with Appendix B, no later than May 1, 2028, DOE shall
6 complete retrieval of tank waste from nine (9) additional SSTs selected by DOE.

7 **II. Section IV.B.4**

8 The first sentence of Section IV.B.4 of the Consent Decree, ECF No. 59, as
9 amended by ECF Nos. 222, 232, 242, and 251, is hereby **VACATED** and
10 **SUPERSEDED** by the following text, with the remainder of the paragraph to
11 remain unchanged:

12 In accordance with Appendix B, no later than January 30, 2023, DOE shall
13 complete retrieval of five (5) SSTs selected by DOE from the remaining C, A, and
14 AX-Farm SSTs.

15 **III. Appendix B**

16 The Table in Appendix B of the Consent Decree, ECF No. 59, as amended
17 by ECF Nos. 222, 232, 242, and 251, is hereby **VACATED** and **SUPERSEDED**
18 by the following:

19 **1. Tank Waste Retrievals**

20

Project	Description	Date
B-1	Complete retrieval of tank wastes from the following remaining SSTs in WMA-C: C-102, C-105, and C-111.	3/31/2024
B-2	Complete retrieval of tank wastes from the following SSTs in Tank Farms A and AX: A-101, A-102, A-104, A-105, A-106, AX-101, AX-102, AX-103, and AX-104. Subject to the requirements of Section IV-B-3, DOE may	05/01/2028

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	substitute any of the identified 9 SSTs and advise Ecology accordingly.	
B-3	Of the 12 SSTs referred to in B-1 and B-2, complete retrieval of tank wastes in at least 5.	01/30/2023

IV. Appendix A

The Table in Appendix A of the Consent Decree, ECF No. 59, as amended by ECF Nos. 222, 232, 242, and 251, is hereby **VACATED** and **SUPERSEDED** by the following:

1. WTP Construction and Startup

The milestones referred to in Section IV above are as follows:

Project	Description	Date
A-1	Achieve Initial Plant Operations for the Waste Treatment Plan	12/31/2036
A-2 Interim	HLW Facility Construction Substantially Complete	12/31/2030
A-3 Interim	Start HLW Facility Cold Commissioning	06/30/2032
A-4 Interim	HLW Facility Hot Commissioning Complete	12/31/2033
A-5 Interim	LAB Construction Substantially Complete	12/31/2012 (COMPLETED)
A-6 Interim	Complete Methods Validations	06/30/2032
A-7 Interim	LAW Facility Construction Substantially Complete	08/02/2022
A-8 Interim	Start LAW Facility Cold Commissioning	08/01/2024
A-9 Interim	LAW Facility Hot Commissioning Complete	08/01/2025

