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Washington Physicians for Social Responsibility
1604 NE 50th Street
Seattle, WA 98105
(206) 547-2630

Comments on Proposed Changes to the Tri-Party Agreement, February 2009
Submit comments electronically via TPACH@rl.gov.
Deadline May 15, 2009

Ms. Paula Call
U.S. Department of Energy Richland Operations Office
P.O. Box 550, A7-75
Richland, WA 99352

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EDMC

Dear Ms. Call:

We appreciate the opportunity to submit comments on the Proposed Changes to the TPA. We also appreciate the measures taken by the TPA Agencies to facilitate public comments, by allowing electronic submittal and by placing copies of the proposed changes, along with a fact sheet that accurately summarizes the major features of the proposed changes, on a publicly available web site. Below please find comments from the Hanford Task Force of Washington Physicians for Social Responsibility.

Our comments cover the following topics, each of which is described in further detail below:

1. We recommend that the proposed changes, particularly delayed deadlines, be re-evaluated in light of additional funds for Hanford included in the economic stimulus package recently signed into law. We concur with recent Hanford Advisory Board advice on this and related topics.
2. Unaddressed by the proposed changes is the issue of earlier DOE proposals to import new wastes to Hanford. We urge Washington State government to take every opportunity to oppose such imports.
3. We recommend that DOE not be allowed to prepare RODs to meet TPA requirements, reported as an item for future discussion in the Agreement in Principle included with the proposed changes.
4. With regard to proposed changes in deadlines to allow longer use of Pacific Northwest National Laboratory buildings, we recommend a clear statement from the TPA agencies that the buildings in question have been adequately remediated to allow occupational use.
5. For an indicator of how well the TPA is working, we recommend that DOE or the TPA regulators establish a publicly available tabulation of TPA deadlines and their status, indicating which have been met, missed, and/or renegotiated.

Hanford Advisory Board Advice

Since the proposed modifications were negotiated, Congress passed and the President signed an economic stimulus plan, which among other features included additional funding for Hanford. We concur with Hanford Advisory Board (HAB) Consensus Advice No. 216,¹ which advised the TPA agencies to revisit proposed delayed deadlines in light of the additional funding.

With regard to other points in the HAB Advice, we concur that unenforceable target dates and goals should not replace milestones and schedules. The regulators, EPA and WA Ecology, should be provided clearly defined ways to enforce milestones and deadlines. There should be clear penalties for failure to meet any new milestones, unless subsequently renegotiated by the TPA Agencies. In addition, groundwater control and mitigation, though important in the 100 and 300 Areas, should not delay efforts on the massive problem of contamination from the vadose zone, already known plumes, and unlined burial sites in the 200 Area.

No new Hanford wastes

We recognize that these proposed changes were not meant to include the tank wastes. However, left unaddressed by the proposed changes is the U.S. Department of Energy's (DOE's) long history of desiring that Hanford serve as a recipient for radioactive and chemical wastes from other Department sites, and/or from the commercial atomic power industry. As the Tri-Party Agencies are aware, voters in 2004 passed the Cleanup Priority Act in 2004 with 69% approval, a record margin for Washington State initiatives. DOE was successful in overturning this measure in federal district, and then, federal appeals court, and Washington State decided against further appeal.

Nonetheless, voters made clear their preference for the initiative's provisions that DOE clean up all wastes at Hanford, including the tank wastes, and fully comply with environmental requirements before any new waste is imported to Hanford. Moreover, at a public meeting in Troutdale, OR, an Oregon state official characterized opposition to bringing "Greater Than Class C" (GTCC) wastes at Hanford as distinct from "not in my backyard," but rather reflecting, "no more in our backyard because it is so horribly contaminated already."²

Although waste imports to Hanford were suspended under an out of court settlement with Washington State, DOE has not removed Hanford as a potential recipient for any waste category, including GTCC wastes and Global Nuclear Energy Partnership facilities, which would bring new radioactive waste streams to Hanford. We find unconvincing Ecology's reported position that it already has the authority to prevent the storage of

¹ Hanford Advisory Board, Consensus Advice No. 216, Draft Tri-Party Agreement Change Packages, April 3, 2009, at www.hanford.gov/hanford/files/HABAdv_216.pdf.

² Annette Cary, Crowd says no to more waste at Hanford, *Tri-City Herald* (WA), August 28, 2007, electronic version at www.democraticunderground.com/discuss/duboard.php?az=view_all&address=115x110468.

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offsite waste at Hanford.³ There may be no limits to what DOE, unconstrained by the courts, will decide to import to Hanford.

We therefore urge that Washington State government pursue all available options to keep new wastes out of Hanford. These should include legislative initiatives through the Washington congressional delegation, judicial means such as through the current suit on Hanford tank wastes, and administrative options through continuing negotiations with DOE on missed TPA deadlines. DOE has consistently failed to meet TPA deadlines, and the state should not allow the Department to violate the will of the voters by bringing new wastes to Hanford in an uncontested manner.

DOE should not be allowed to prepare its own RODs to meet TPA requirements

The Agreement in Principle that is incorporated into the proposed changes notes that the TPA parties agreed to discuss and consider revising the TPA to assign responsibility for preparation of Records of Decision (RODs) to DOE. Despite the caveats included, that USEPA would still be required to approve RODs, and an oversight role for Ecology would be preserved, this seems a terrible idea. DOE has a long history of failure to meet TPA deadlines, and failure to provide funding sufficient to meet TPA requirements. RODs produced by DOE therefore will have no credibility.

The rationale for such discussions is described as Executive Order 12580⁴. However, this document was signed by Ronald Reagan in January 1987, before the Tri-Party Agreement and does not appear to explicitly contain the words "record of decision" nor "federal facility agreement". We therefore question the relevance of this document; but if it is found to apply legally to the TPA, then we recommend that DOE and EPA seek an amendment from President Obama to make clear that the Order does not apply in the case of a federal facility agreement and consent order, such as the TPA.

M-94 milestones in the 300 Area

The proposed changes would modify milestones in the 300 Area to allow longer use of Pacific Northwest National Laboratory buildings. We recommend a clear statement from the TPA agencies that those particular buildings have already been certified, or will be prior to further use, as remediated sufficiently to allow exposure scenarios consistent with occupational use. For example, in buildings where beryllium was ever used, levels of beryllium dust should be undetectable. Environmental testing should be much more stringent than in the past encompassing the most recent HAB advice on Beryllium.

³ Herald staff, Nuclear waste bill dies in committee, *Tri-City Herald* (WA), February 20, 2009, electronic version at www.tri-cityherald.com/kennewick_pasco_richland/story/484898.html.

⁴ Executive Order 12580, Superfund implementation, January 23, 1987, at www.archives.gov/federal-register/codification/executive-order/12580.html.

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Publicly available tabulation of TPA deadline status

The proposed changes include multiple new interim milestones, and it would improve transparency if the public could follow how well DOE meets these milestones. For that matter, a useful indicator of how well the TPA has worked since its inception would be a comprehensive tabulation of deadlines, and information on which have been met, missed, and/or renegotiated. Despite inquiries, we have been unable to find any such tabulation that is publicly available.⁵

The Department recently has reported its accomplishments over the 20 years since the TPA was signed.⁶ But the full story needs to include a report on which deadlines were met, and which have not been. Hanford web pages currently include a list of approved changes to the TPA, at www.hanford.gov/triparty/tpa_changes.cfm. However, there literally have been hundreds of changes over the years, and determining whether individual milestones have been met or missed becomes an almost impossible "exercise for the interested (and incredibly persistent) citizen."

We therefore recommend that DOE or the TPA regulators provide such an accounting, accessible to the public. The Agencies already provide a table listing agency managers by each milestone number and title, at www.hanford.gov/hanford/files/TPA_MPMManagerList.pdf. We envision a similar table, replacing manager names with columns listing initial deadline under the TPA (or under a subsequent formal revision that established a particular milestone, if applicable); current deadline, if revised; and when the deadline was met, if applicable. Alternatively, the managers' listing could be expanded with the additional deadline status information, and made available as a Read-Only Excel table.

We assume that milestones in the managers' list are those that have not yet been met. If the number of deadlines met is so large that including them would overwhelm the table, then we recommend a separate table for completed milestones, with summaries for each major numerical category (i.e., M-015). Both tables should be updated periodically, and any time there was a formal revision to the TPA (we understand that there have been seven formal revisions to the original agreement, the most recent issued in July 2007).

Respectfully submitted,

Steven Gilbert, Board President Cherie Eichholz, Executive Director
Washington Physicians for Social Responsibility

John Abbotts, Karen Bowman, Charles Weems
Hanford Task Force, Washington Physicians for Social Responsibility

⁵ Carrie Meyer, DOE/RL Public Affairs, exchange of email with John Abbotts, April 21-22, 2008; paper copy on file.

⁶ U.S. Department of Energy, 20 Years of Cleanup at Hanford, posted March 2, 2009, at www.hanford.gov/homepage/newsarticles/doe/20yrsofcleanup.pdf.

Wise, Barbara K

From: abbotts@myuw.net
Sent: Tuesday, May 05, 2009 7:08 PM
To: ^TPA Change Packages
Cc: Cherie Eichholz; 'Charles/Sally Weems'; 'karen bowman'; Steven Gilbert
Subject: public comments on proposed TPA changes
Attachments: tpach_WPSRcomm.doc

Dear Ms. Call:

Attached as a Word file are comments of the Hanford Task Force of Washinton Physicians for Social Responsibility. Please let us know if you have any questions.

Thank you,

John Abbotts