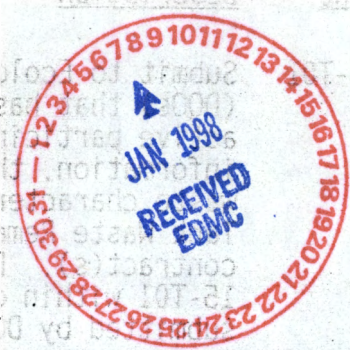




Tri-Party Agreement



Mr. Vince Panesko
Pacific Rim Enterprise Center
660 George Washington Way, Suite B
Richland, Washington 99352

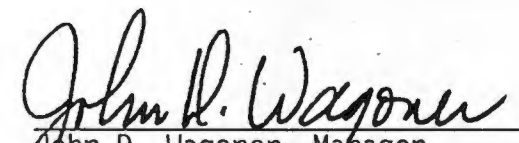
Dear Mr. Panesko:

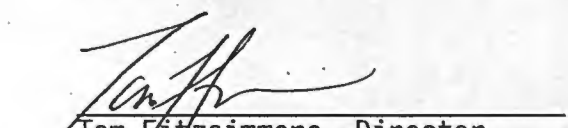
PROPOSED CHANGES TO THE HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER
(TRI-PARTY AGREEMENT)

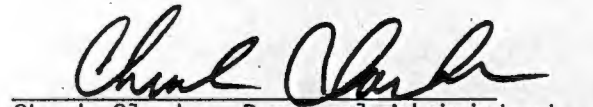
Thank you for your comments and observation on the proposed changes to the Tri-Party Agreement. The Tri-Parties have developed joint responses to your concerns and/or observations. These responses are provided as an attachment to this letter.

On behalf of the U.S. Department of Energy, the Washington State Department of Ecology, and the U.S. Environmental Protection Agency, we thank you for your interest in this important project.

Sincerely,


John D. Wagoner, Manager
U.S. Department of Energy
Richland Operations Office


Tom Fitzsimmons, Director
State of Washington
Department of Ecology


Chuck Clarke, Regional Administrator
U.S. Environmental Protection Agency
Region 10

Enclosure

Response to Comments on Milestone M-44-00 Change Package
Public Comment Period 8/15/97-10/15/97

COMMENT #1: THE PROCESS DOES NOT ENLIGHTEN THE PUBLIC.

OBSERVATION: The change package contains 7 attachments which are part of your process. Each of these attachments serves a function for your process; however, the function of providing understanding is not attained.

After studying the 7 attachments, only attachment 4 provides one sentence which provides a hint as to the justification of the change to Milestone M-44-00. Change Control Form M-44-97-03 has one sentence which states that the milestone changes will allow characterization sampling and analysis to be tailored to meet refined waste information needs. That statement is so general that it has little meaning. How will characterization be "tailored?" What are the refined waste information needs? How are these more important than the original milestones?

RECOMMENDED ACTION: I request DOE to change its practice of writing vague and general justifications. I recommend that the justification be changed to include at least one paragraph explaining the basis of the original milestone, at least one paragraph explaining the new milestone and at least a third paragraph as to why the change makes sense.

The DOE-RL staff involved in the TPA needs to adopt a new policy of informing the public of the details behind the changes to the TPA milestones. There is ample evidence that DOE-RL does not want to reveal the real issues behind TPA milestones and why changes are needed.

DOE-RL/TPA needs to model its releases to the public after the NRC Federal Register announcements which typically contain a forward containing a discussion of the different options considered by the NRC. The NRC openly describes the pros and cons of each option as a means of informing the public of the difficulty which the NRC had to go through in reaching its position. This matter-of-fact description of the issues is typically provided in the forward section of NRC public releases.

RESPONSE: In 1989 when the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) was first negotiated, the State of Washington Department of Ecology (Ecology) and the Department of Energy, Richland Operations (DOE-RL) recognized the need to characterize the waste in the tanks so that tank waste information would be available to solve operational, safety, retrieval, and disposal issues. At this time, DOE-RL and Ecology did not have detailed information regarding tank contents. Therefore, the agreement documented in Milestone M-44-00 committed the Government to characterize all 177 tanks by 1999. This commitment was made based on two assumptions:

Sampling and analysis would be required for all tanks in order to understand their contents.

Characterization of the tanks would be based upon the information needs of the Tank Waste Remediation System (TWRS) project elements (Safety, Operations, Retrieval, and Disposal). These information needs would be documented in Data Quality Objectives (DQO).

In order to meet the requirement to sample all 177 tanks by 1999, DOE-RL committed to sampling and analyzing a predetermined number of tanks each year. However, to meet this commitment DOE-RL was required to sample and analyze tanks which had no associated specific information needs. That is, there was no request for information, nor was there an information need documented in a DQO from any TWRS project element regarding the contents of that tank. Therefore, we found ourselves sampling to meet a quota instead of sampling to provide information to solve problems.

The proposed change to the Tri-Party Agreement preserves the original intent of Milestone M-44-00, which was to provide timely and cost effective tank waste information to the TWRS project elements. This was accomplished by basing sampling and analysis efforts strictly upon the information needs of the TWRS project elements, and removing the requirement to sample a predetermined number of tanks each year. However, DOE-RL is required to deliver a list of tank information requirements to Ecology for approval. This means that both DOE-RL and Ecology must agree that the characterization requirements will be met for each fiscal year.

Therefore, using this approved tank information requirements list, DOE-RL will be able to "tailor" each year's sampling and analysis schedule to meet the information needs of the TWRS project elements in the most cost effective manner.

Regarding the TPA process for involving the public, the process currently in place for change package resolution and public comment was developed by the Department of Energy, Ecology, and EPA (the Tri Parties) over a five year period, which included extensive negotiation and stakeholder review. Consequently, the process is widely accepted and considered adequate by regional regulators and stakeholders. The Department and Ecology's concern is that the process may not be getting full attention or that it may not be sufficiently followed. We agree that a better justification and explanation in lay terms would have been appropriate to provide with reference to this proposed milestone change. Therefore, we will forward to the Inter-Agency Management and Integration Team a recommendation for review and possible strengthening of the process.

The change control package is intended to clarify the significant technical details behind the negotiation and resolution process. An information fact sheet is included in the public comment package to explain the change in general terms. If a commentor feels that more detail is needed, contact names and phone numbers from each agency are provided for this purpose.

COMMENT #2: FAILURE TO SUPPORT TANK CHARACTERIZATION.

OBSERVATION: The original milestone had dates to achieve a specific number of tanks characterized. These dates were established because of the concern that DOE-RL did not have a firm commitment (evidenced by a lack of a firm budget) to characterize the tanks.

That concern is now more valid than ever. A root cause of the PRF tank explosion was a lack of knowledge of what was in the PRF tank. The lack of knowledge was created by a lack of management commitment for tank characterization. Now DOE-RL wants to expand the same practices which led to the PRF explosion to the tank farms by eliminating the firm commitment to characterize all of the tanks in the tank farms.

I understand that tank characterization budgets have been cut in recent years. With such cuts it may be impossible to meet existing TPA milestones. If that is the case, the documentation prepared by DOE-RL for public review should address the impacts of budget cuts.

RECOMMENDED ACTION: The TPA milestone list should keep a milestone to characterize all of the 177 waste tanks.

RESPONSE: Response to Budget Concern: As documented in the response to Comment 1, the sampling and analysis of a predetermined number of tanks was not cost effective, and did not provide timely tank waste information to the TWRS project elements. Recent budget cuts to the Characterization Project will require DOE-RL to spend its resources in the most cost effective manner. Characterizing tanks only when there is a specific information need is significantly more cost effective than the old way of doing business.

Response to PRF Concern: The commentor points out that the root cause of the PRF explosion was lack of knowledge about tank contents. By analogy, the commentor suggests that by elimination of a firm commitment to characterize all tanks in the tank farms we are potentially creating a similar problem. The PRF explosion did not result from a lack of knowledge about tank contents. To the contrary, the tank contents were known quite well. The cause of the explosion was a lack of adequate controls to ensure safe operations. The situation at PRF was very different than the situation in the tank farms. The tank farms are operating under a set of strict safety controls as defined by the Basis for Interim Operations (BIO). The BIO analyzed a series of bounding accidents and implements appropriate controls to prevent those accidents from taking place.

Response to Concern Over Sampling All 177 Tanks: Over the past 4 years we have sampled 120 of the 177 tanks. Additionally, we have completed detailed inventories of the contents of all 177 tanks. (See the Best Basis Inventory HNF-SD-WM-TI-740 and additional documents available via the Internet at <http://pn1113.pnl.gov/tcrrep.nsf>) The inventories were developed using historical production process records, tank grouping studies, and sampling and analysis data.

We have come to understand that sampling all tanks may, in fact, become necessary; however, the scheduling of those sampling events will be established by the timing of program information needs. Therefore, it is logical to remove this requirement in favor of a program that provides necessary information to solve problems. We have learned much about the contents of these tanks and we have successfully extrapolated that knowledge from one group of tanks to others. As a result, it may not be necessary to sample all 177 tanks in order to characterize their contents. If it is necessary to sample all tanks to solve a problem, then we will. However, we are not assuming we need to.

The proposed revised TPA milestones represent a new way of doing business that recognizes that program information needs are the true drivers for characterization. To this end, we have included in the change package 6 target dates which cover development of Data Quality Objectives (DQOs) for the tank waste retrieval and disposal activities. DQOs are the mechanism we use to establish and agree to information needs.

COMMENT #3: JUSTIFICATION TOO WEAK

Change Control Form M-44-97-03 states that "This milestone change will allow characterization sampling and analysis efforts to be tailored to meet these (waste information) needs." This statement is too general to be considered a justification for the milestone change. Another sentence states, "An additional benefit of the change is that the progress of sampling and analysis efforts will be immediately apparent and easily measurable." Why will the "progress of sampling" be more apparent than it is now? What suddenly happens which makes the sampling program more easily measurable than it is now? Without some kind of comparison to the old ways, there is no justification for the quoted sentence. The quoted sentence becomes meaningless.

RECOMMENDED ACTION: Rework the justification section to provide an explanation as to why the milestone was really changed.

RESPONSE: See the last paragraph to Comment 1 for additional detail (justification) As part of the change package, the justification section is kept at a succinct technical level. More information is easily obtained by contacting the agency representatives listed on the fact sheet that is included with the change package.

Regarding measurement of progress: We view progress not as sampling a given number of tanks within a certain time period. Just because we sampled 40 tanks in a year does not mean we made progress. If those 40 tanks proved to be of low information content vis-a-vis specific problems and issues, we would argue that we made little or no progress - even though we sampled 40 tanks and met a Tri-Party Agreement milestone.

The new milestone we have proposed makes it easier to measure real progress toward characterizing these tanks because, each year, a list of specific information needs is agreed upon by DOE-RL and Ecology instead of a vague agreement to characterize a set number of tanks. It associates progress in characterization with solving TWRS problems and issues. This, in our opinion, is a much better measure of progress.

COMMENT #4: RESOLUTION OF DISPUTE FORM DOES NOT SAY ANYTHING.

OBSERVATION: Attachment 2 of the review package contains "The Resolution of Dispute for Milestone M-44-00." This one page addresses the process but does not address the actual resolution of dispute.

SUGGESTED ACTION: Provide information concerning the dispute. Describe the issues involved in the dispute. Describe how the issues were resolved.

RESPONSE: Fundamentally, this dispute arose from a disagreement between DOE and Ecology regarding:

What the tank waste information requirements were to fulfill the TWRS mission;

- How the Department would fulfill those requirements;
- When the Department needed to fulfill those requirements; and
- How the Department would communicated this information to Ecology.

This change package addresses these issues and puts a system in place to resolve them. A characterization partnering team was established which has addressed the communication problems.

The observation that "The Resolution of Dispute for Milestone M-44-00" addresses "the process" is correct. "The Resolution of Dispute" attachment documents the completion of the dispute process for the TPA Administrative Record. The TPA Milestone M-44-00 Change Package is the intended document for description of the milestone, and the proposed changes to the milestone. Public comment was solicited on the actual changes to the TPA milestones, rather than the process documentation provided for background information.