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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. Box 47600 - Olympia, Washington 98504-7000
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006



March 10, 1998

Mr. John D. Wagoner, Manager
U. S. Department of Energy
Richland Operations Office
P. O. Box 550
Richland Washington 99352

Dear Mr. Wagoner:

RE: Final Determination pursuant to Hanford Federal Facility Agreement and Consent Order (Agreement) in the matter of the disapproval of the Department of Energy's Change Control Form # M-41-97-02¹.

This correspondence follows our discussion of February 9, 1998, and my letter to you of February 10 regarding the Department of Energy's (DOE) noncompliance with Hanford Federal Facility Agreement and Consent Order terms governing the interim stabilization of Hanford high-level radioactive waste tanks.

As I noted to you then, I am deeply concerned that DOE's inefficient management of this program over the years and recent unilateral actions to drastically cut the program's budget and halt work have crippled the program. I am also concerned that your staff have suggested that completion of the stabilization project may be delayed by an extra 3-6 years. This is entirely unacceptable considering that we now have conclusive evidence that tank wastes have reached the aquifer beneath Hanford, and threaten the Columbia River, the most valuable waterway of our State.

As far as the Agreement's M-41-23 interim milestone is concerned, I note that DOE has raised no new issues to justify placing this requirement on indefinite hold, and I can not agree to your request. Enclosed please find my final determination in this matter pursuant to Agreement Part Two, Article VIII, Paragraph 30(D).

Sincerely,

Tom
Tom Fitzsimmons
Director

Letter 97-WND-261: George H. Sanders, Tri-Party Agreement Administrator, U. S. Department of Energy, Richland Operations Office, to Mike Wilson, Program Manager, Nuclear Waste Program, Washington Department of Ecology, December 29, 1997 (This letter transmitted DOE Change Request # M 41-97-02 dated December 22, 1997.

Mr. John D. Wagoner
March 10, 1998

cc: Tanya Barnett, Office of the Attorney General
Mary Lou Blazek, ODOE
Chuck Clarke, EPA Region 10
Hank Hatch, FDH
Linc Hall, LMHC
Jackson Kinzer, DOE-RL
Jim Owendoff, DOE-HQ
Lloyd Piper, DOE-RL
Marilyn Reeves, Hanford Advisory Board
George Sanders, DOE-RL
Administrative Record

Enclosure (1)

C:\M-41-23\letter.doc

FINAL DETERMINATION

Final Determination pursuant to Hanford Federal Facility Agreement and Consent Order (Agreement) in the matter of the disapproval of the Department of Energy's Change Control Form # M-41-97-02¹.

This determination concludes a series of Agreement dispute resolution discussions, and actions by Washington Department of Ecology (Ecology) and U. S. Department of Energy (DOE) staff (the parties) following DOE's submittal of Change Control Form #M-41-97-02. As such, the following constitutes my final determination in this matter pursuant to 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.²

Please refer to my February 10, 1998 letter³ to you for comments regarding this dispute including issue background and milestone history, principal intervening actions, publications, and documents.

Procedural History of this Dispute:

In submitting Change Control Form # M-41-97-02 (START INTERIM STABILIZATION OF EIGHT SINGLE-SHELL TANKS), DOE requested that the Agreement milestone M-41-23 due date of March 31, 1998 be deleted and replaced with the notation "to be determined". DOE stated its rationale for this proposed modification as "due to the impact of the flammable gas concerns for the Hanford tanks." Ecology disapproved this request on January 6, 1998, whereupon DOE invoked dispute resolution proceedings pursuant to Agreement Article VIII.⁴ Discussions at the project manager level were unsuccessful in resolving this dispute and DOE subsequently: (1) elevated this dispute for consideration by the parties Interagency Management Integration Team (IAMIT) representatives, and (2) submitted its STATEMENT OF DISPUTE in this matter.⁵

¹ Letter, 97-WSD-261: George H. Sanders, Tri-Party Agreement Administrator, U. S. Department of Energy, Richland Operations Office, to Mike Wilson, Program Manager, Nuclear Waste Program, Washington Department of Ecology, December 22, 1997 (This letter transmitted DOE Change Request # M-41-97-02 dated December 22, 1997.

² In addition to recent documents pertaining to DOE's interim stabilization program and Agreement interim milestone M-41-23, Ecology's Administrative Record in this matter incorporates our record covering the parties recent dispute regarding DOE Change Request #M-41-97-01.

³ Letter: Final Determination pursuant to Hanford Federal Facility Agreement and Consent Order (Agreement) in the matter of the disapproval of the Department of Energy's Change Control Form #M-41-97-01. Tom Fitzsimmons, Director, Washington Department of Ecology, to John D. Wagner, Manager, U. S. Department of Energy, Richland Operations Office, February 10, 1998.

⁴ Letter, 98-MSD-001: George H. Sanders, Tri-Party Agreement Administrator, U. S. Department of Energy, Richland Operations Office, to Mike Wilson, Program Manager, Nuclear Waste Program, Washington Department of Ecology, January 13, 1998.

⁵ Letter, 98-BAP-091: George H. Sanders, Tri-Party Agreement Administrator, U. S. Department of Energy, Richland Operations Office, to Mike Wilson, Program Manager, Nuclear Waste Program, Washington Department of Ecology, February 12, 1998.

Agreement Milestone M-41-23 Dispute March 10, 1998

This dispute was taken up by the IAMIT at its February 24, 1998 meeting. At its conclusion, Ecology noted that on consideration of the information presented DOE had not justified good cause for change and that the dispute remained unresolved. This dispute was consequently elevated for a final determination by the Director of Ecology.

This dispute has now come to me for final resolution.

DOE Proposed Resolution of the M-41-97-02 (Milestone M-41-23) Dispute

Under DOE's M-41-97-02 proposal to modify Agreement interim milestone M-41-23, the milestone's March 31, 1998 due date would be extended indefinitely by noting its completion date as "to be determined". In justifying its position DOE has cited the impact of flammable gas concerns for the Hanford tanks, and has often noted the need to finalize safety documentation (e.g., Safety Authorization, Basis for Interim Authorization, Justification for Continued Operation, etc) prior to authorizing stabilization work.

Findings and Final Determination

Ecology has never wavered from the basic tenets that cleanup work at Hanford must be conducted safely, and that Agreement requirements must be established with consideration of associated safety issues. However, DOE, and DOE contractor management failures in the instance of this M-41-23 interim stabilization project have been exceedingly disappointing. I find that DOE's proposal suffers from a number of flaws including the following:

- DOE and its contractors have been deficient in their abilities to identify and assess safety issues associated with the interim stabilization project, to develop sound and timely safety requirements, to obtain and install necessary equipment, and to move Hanford tank safety issues to resolution within a reasonable amount of time.
- DOE's consistent lack of recognition of these failures, and failure to resolve them are troubling to say the least, and threaten many other Agreement projects.
- That unless corrected, DOE's unilateral action to drastically cut interim stabilization program funding will force widespread additional delay to (and violation of) additional required Agreement interim stabilization work.
- That DOE and contractor management deficiencies in this matter, coupled with recent information documenting that DOE's high-level radioactive tank waste (HLW) has begun to impact area groundwater, adds a sense of increasing urgency to rectify management deficiencies and to reestablish an aggressive interim stabilization program without further delay.

**Agreement Milestone M-41-23 Dispute
March 10, 1998**

- That during this (M-41-23) dispute DOE has not raised new issues justifying the placement of Milestone M-41-23 on indefinite hold. In fact, as part of the Parties' September 1996 Agreement Revision (M-41-96-02 and its accompanying Recovery Plan), DOE noted that it had identified the equipment needed to allow interim stabilization to proceed:

"...For the purpose of this Recovery Plan, it is assumed all tanks will require an exhaustor for all or a portion of the time they are being pumped. Additional analysis will be done to determine when and if an exhaustor can be removed or if it will be required at all.

Therefore, approximately 10 exhaustors will be required for FY 97. This equipment to be installed will be classified as Defense in Depth per DOE Order 3009 and not Safety Class.

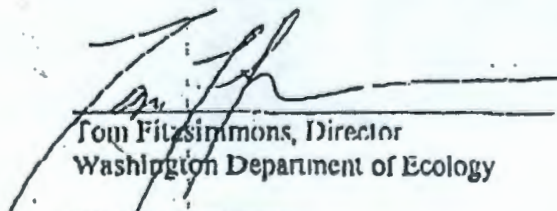
If RL elects to change the order of the tanks being interim stabilized, RL will notify Ecology of the change. The Recovery Plan is based on numbers of tanks and not specific tanks per se."

Despite this agreement, DOE failed to implement the Recovery Plan. In the course of this dispute DOE has presented no evidence that the plan could not be implemented, or that implementing the plan would threaten human health, worker safety, or the environment. Therefore, DOE could have complied with interim milestone M-41-23, and has not shown any valid reasons for not doing so.

- Good cause for indefinite delay of Agreement milestone M-41-23 does not exist.
- DOE will stand in violation of this Agreement requirement on April 1, 1998.

In light of the Administrative Record and the findings outlined above, and in an effort to ensure the safe and timely interim stabilization of DOE's Hanford site HLW tanks, my final determination in this matter is as follows:

1. DOE's proposal (Change Request Form M-41-97-02) is unacceptable and is hereby disapproved.
2. Appropriate enforcement action will follow.


Tom Fitzsimmons, Director
Washington Department of Ecology

3-10-98
Date