



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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January 6, 2020

20-NWP-002

Brian T. Vance, Manager  
Richland Operations Office  
United States Department of Energy  
PO Box 550, MSIN: H5-20  
Richland, Washington 99352

Re: Notice of Penalty

<b>Notice of Penalty Docket #</b>	17968
<b>Site Location</b>	Hanford Site
<b>EPA/State ID #</b>	WA7890008967
<b>Penalty Amount</b>	\$1,065,000

Dear Brian T. Vance:

The Department of Ecology has issued the enclosed Notice of Penalty to the United States Department of Energy for violating provisions of:

- The Hanford Federal Facility Agreement and Consent Order

Please read the enclosed Notice of Penalty describing the violation(s) and options for responding to the penalty.

If you have questions please contact Adam Palomarez at (509) 372-7969 or [Adam.Palomarez@ecy.wa.gov](mailto:Adam.Palomarez@ecy.wa.gov).

Sincerely,

  
Alexandra K. Smith  
Program Manager  
Nuclear Waste Program

Enclosures: Notice of Penalty  
News Release

By Hand Delivery

cc: See page 2

RECEIVED

JAN 09 2020

EDMC



Brian Vance

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cc electronic w/enc:

Dave Bartus, EPA  
Sheryl Bilbrey, EPA  
Lucy Edmondson, EPA  
Dave Einarí, EPA  
Emy Laija, EPA  
Mark Macintyre, EPA  
Lisa McArthur, EPA  
Kevin Schanilec, EPA  
Cheryl Williams, EPA  
Duane Carter, USDOE  
Bill Hamel, USDOE  
Allison Wright, USDOE  
Jon Perry, MSA  
ERWM Staff, YN  
Ken Niles, ODOE  
Shawna Berven, DOH  
John Martell, DOH  
Andy Fitz, AGO  
Koa Kaulukukui-Barbee, AGO  
Randy Bradbury, Ecology  
Christy Caldwell, Ecology  
Kathy Conaway, Ecology  
Lois Dahmen, Ecology  
Jared Mathey, Ecology  
Adam Palomarez, Ecology  
John Price, Ecology  
Darin Rice, Ecology  
Environmental Portal  
Hanford Facility Operating Record  
Correspondence Control  
Penalty Desk – Fiscal Office, Ecology  
USDOE-RL Correspondence Control  
MSA Correspondence Control

cc w/enc:

Mason Murphy, CTUIR  
Jack Bell, NPT  
Rex Buck, Jr., Wanapum  
Laurene Contreras, YN  
Susan Leckband, HAB  
Administrative Record  
NWP Central File

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF PENALTY )  
ASSESSMENT AGAINST )  
THE UNITED STATES DEPARTMENT OF )  
ENERGY )

NOTICE OF PENALTY  
INCURRED AND DUE  
DOCKET # 17968

To: Brian T. Vance, Manager  
Richland Operations Office  
United States Department of Energy  
PO Box 550, MSIN: H5-20  
Richland, Washington 99352

Notice of Penalty Docket #	17968
Site Location	Hanford Site
EPA/State ID #	WA7890008967
Penalty Amount	\$1,065,000

The Department of Ecology (Ecology) has assessed a stipulated penalty against the United States Department of Energy (USDOE) in the amount of **\$1,065,000**. This penalty is assessed pursuant to the *Hanford Federal Facility Agreement and Consent Order* (HFFACO or TPA), Article IX, Stipulated Dangerous Waste Penalties.

**DESCRIPTION OF VIOLATION(S)**

The assessment of a stipulated penalty is based on the following Ecology findings:

In the early 1990s, USDOE, Ecology, and the U.S. Environmental Protection Agency (EPA) (collectively, the Tri-Parties) modified the HFFACO to require USDOE to provide meaningful access to HFFACO-related data, including direct read, retrieve, and transfer access to all relevant electronic data and databases:

HFFACO Action Plan Section 9.6.2 – Agreement Data states:

*Ecology and EPA shall be granted access to all data that is relevant to work performed, or to be performed, under the Agreement. Access to Agreement related databases will be documented in the Agreement Appendix F document "Agreement Databases, Access Mechanisms, and Procedures" (includes all databases and the method of accessing each database). This document will also describe method(s) for regulatory access to DOE communications networks and system configurations to meet electronic transfer of data.*

HFFACO Action Plan Section 9.6.5 – Electronic Data Access Requirements states:

*EPA and Ecology shall have direct read, retrieve, and transfer access to all relevant electronic data and databases. All validated data will be entered into the selected database in accordance with the Data Delivery Schedules in Section 9.6.6. Unvalidated data will be available within 7 days after receipt from the laboratories. Electronic access to Hanford data will be provided to EPA, Ecology and their respective contractor staff when:*

- *The computer network infrastructure is available to support user access (for systems that cannot support direct access data shall be provided through redundant systems or through copies of data stored in other systems), and*
- *The database system is accessible and utilized by Hanford personnel doing Agreement related work.*

To ensure USDOE's compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5 data access requirements, the Tri-Parties later added milestone M-035-09 to require USDOE to "Conduct biennial assessments of information and data access needs with EPA and Ecology. DOE will propose implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments."

Ecology and EPA are dual regulatory leads for M-035-09. From 1998 to 2016, USDOE conducted the required biennial assessments related to data access and subsequently obtained EPA and Ecology agreement that no new milestones were necessary and that the M-35-09 milestone had been met. This agreement was documented in letters signed by each of the Tri-Parties as follows:

- Letter 16-AMRP-0115, dated February 23, 2016, regarding completion of M-035-09J
- Letter 14-AMRP-0119, dated February 27, 2014, regarding completion of M-35-09I
- Letter 12-ISI-0024, dated March 20, 2012, regarding completion of M-35-09H
- Letter 10-ISI-0087, dated March 30, 2010, regarding completion of M-35-09G
- Letter 08-ISI-0012, dated March 18, 2008, regarding completion of M-35-09F
- Letter 06-BOP-0022, dated March 21, 2006, regarding completion of M-35-09E
- Letter 04-OES-0029, dated March 23, 2004, regarding completion of M-35-09D
- Letter 02-RCA-0235, dated March 21, 2002, regarding completion of M-35-09C
- Letter 00-ORL-035, dated March 6, 2000, regarding completion of M-35-09B
- Letter 98-SID-122, dated March 11, 1998, regarding completion of M-35-09A

The most recent data access assessment (M-035-09K) was originally due on March 31, 2018; however, the parties iteratively extended the deadline to March 31, 2019.

Number	Milestone	Due Date
M-035-09K	Conduct biennial assessments of information and data access needs with EPA and Ecology. DOE will propose implementation schedules (TPA milestones) for enhancements as a result of the biennial assessments.	03/31/2018*

\*Original due date extended through 03/31/2019

As part of the M-035-09K biennial assessment, Ecology identified concerns that USDOE was not meeting HFFACO Action Plan Sections 9.6.2 and 9.6.5 data access requirements. Specifically, Ecology stated the concern that Ecology does not have direct access to some HFFACO-related Hanford electronic databases, in particular, USDOE's Integrated Document Management System (IDMS).

Ecology repeatedly stated its position during HFFACO M-035 project manager meetings that new milestones are necessary for USDOE to come into compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5. For more than two years, Ecology attempted to work collaboratively with USDOE on meaningful approaches to enhance data access as required by HFFACO. Yet USDOE did not propose any milestones to address Ecology's lack of adequate direct access to an important HFFACO-related database, IDMS. Despite Ecology's Letter 19-NWP-050 notifying USDOE of Ecology's determination that USDOE was not in compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5 and that "completion of Milestone M-35-09K must include implementation schedules to bring USDOE into compliance" with those sections, and despite USDOE's failure to propose milestones as required by M-035-09K, on March 29, 2019, USDOE unilaterally announced that no new milestones were required and that it had completed M-035-09K. For the first time in ten biennial milestone cycles (20 years), USDOE failed to obtain regulator concurrence on the completion of M-035-09K. USDOE then, without notice or approval from the regulating agencies, deleted the milestone from the HFFACO Action Plan Appendix D, Work Schedule Milestones and Target Dates.

Data and Information is a critical Hanford Site resource. Direct read, retrieve, and transfer electronic access to HFFACO-relevant information, as required by the HFFACO, is critical for the regulatory agencies to provide adequate oversight of the cleanup. Transparency further helps instill public confidence in Hanford cleanup. The failure to provide data access as required by the HFFACO hampers Ecology's ability to fully and timely complete its regulatory responsibilities at Hanford. Ecology worked with USDOE in good faith for over two years to develop a process to ensure USDOE's compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5 through the biennial assessment required by M-035-09K. Rather than proposing new HFFACO milestones for enhancement of Ecology's data access, as required by M-035-09, USDOE ultimately ignored the data access concerns Ecology raised repeatedly during the biennial assessment and simply declared no new milestones were required and that M-035-09K was complete.

Because the need for new milestones to enhance Ecology's data access was identified in the biennial assessment, and USDOE did not propose any milestones, M-035-09K is not complete and USDOE missed the M-035-09K extended deadline of March 31, 2019. Moreover, USDOE is in violation of HHFACO Action Plan Sections 9.6.2 and 9.6.5 because USDOE has not granted Ecology access to all data that is relevant to work performed, or to be performed, under the HHFACO, and Ecology does not have direct read, retrieve, and transfer access to all relevant electronic data and databases.

HHFACO Article IX, Stipulated Dangerous Waste Penalties, states that in the event that USDOE fails to comply with a term or condition of Part Two of the HHFACO, Ecology may assess a stipulated penalty against USDOE in an amount up to \$5,000 for the first week (or part thereof), and up to \$10,000 for each additional week (or part thereof).

USDOE failed to complete milestone M-035-09K by the extended due date of March 31, 2019, and USDOE failed to comply with HHFACO Action Plan Sections 9.6.2 and 9.6.5. Therefore, Ecology is assessing a stipulated penalty in the amount \$1,065,000 for failure to complete HHFACO Milestone M-035-09K and for failure to comply with HHFACO Action Plan Sections 9.6.2 and 9.6.5 from March 31, 2019 through November 27, 2019. These violations are ongoing.

#### **ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT**

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations.

Ecology has determined the requirements of RCW 34.05.110 do not apply to the violation(s) described in this Notice of Penalty because you are not a small business as defined in RCW 34.05.110(9).

#### **DISPUTE AND PENALTY PAYMENT**

HHFACO Article IX, Paragraph 31, Stipulated Dangerous Waste Penalties, states:

In the event that DOE fails to submit a Primary Document pursuant to the appropriate timetable or deadline or fails to comply with a term or condition of Part Two of this Agreement or Part Three Corrective Action requirements including milestones, Ecology may assess a stipulated penalty against DOE. A stipulated penalty may be assessed in an amount up to \$5,000 for the first week (or part thereof), and up to \$10,000 for each additional week (or part thereof) for which a failure set forth in this Paragraph occurs.

If the failure in question is not already subject to Dispute Resolution at the time such assessment is received, USDOE 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.

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DOE shall not be liable for the stipulated penalty assessed by Ecology if the failure is determined, through the Dispute Resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of Dispute Resolution procedures on DOE's failure to comply.

By USDOE's letter 19-AMRP-0075, dated August 20, 2019, USDOE invoked HFFACO Article VIII, Paragraph 30, Dispute Resolution on Ecology's position that USDOE missed completion of milestone M-035-09K and that USDOE is not in compliance with HFFACO Action Plan Sections 9.6.2 and 9.6.5, as set forth in Ecology's letter 19-NWP-092, dated August 19, 2019. Ecology's Director issued a Final Determination on December 5, 2019, wherein USDOE was found to have failed to complete M-035-09K and failed to comply with HFFACO Action Plan Sections 9.6.2 and 9.6.5. Accordingly, the failures in question are already subject to Dispute Resolution and have been determined to have in fact occurred.

USDOE has a right to appeal the December 5, 2019 Final Determination pursuant to HFFACO Article VIII, Paragraph 30.D. The stipulated penalty assessed in this matter will continue to accrue but payment will be stayed pending resolution of the dispute, including any appeal, as provided by HFFACO Article IX, Paragraph 31.

Make your payment payable to the *Department of Ecology*. Please include the penalty docket number on your payment.

**Mail payment to:**

Department of Ecology  
Cashiering Unit  
PO Box 47611  
Olympia, WA 98504-7611

**CONTACT INFORMATION**

Please direct all questions about this Notice of Penalty to:

Adam Palomarez  
Department of Ecology  
Nuclear Waste Program  
3100 Port of Benton Blvd  
Richland WA 99354

(509) 372-7969

[Adam.Palomarez@ecy.wa.gov](mailto:Adam.Palomarez@ecy.wa.gov)

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January 6, 2020

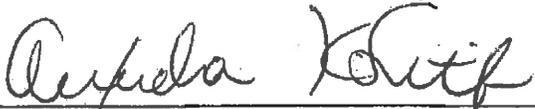
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**AMERICAN WITH DISABILITIES ACT INFORMATION**

**Accommodation Requests:**

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

**SIGNATURE**



Alexandra K. Smith  
Program Manager  
Nuclear Waste Program

1/6/2020

Date

## Washington Department of Ecology – NEWS

Jan. 6, 2020

### Contacts

- Randy Bradbury, communications, 509-372-7954, @ecyHanford

## **Ecology fines U.S. Department of Energy \$1 million for not providing access to crucial data**

Richland, WA – The Washington Department of Ecology issued a \$1.065 million penalty to the U.S. Department of Energy for restricting the state's access to critical data. The restricted data is vital to Ecology's regulatory and oversight role at the Hanford Nuclear Reservation in Eastern Washington near the Columbia River.

"Without access to this data, we can't effectively protect the land, air and water for residents in Eastern Washington and surrounding communities," said Polly Zehm, acting director of Ecology. "We've attempted to negotiate this issue with the U.S. Department of Energy for years, only to find our access to information restricted even further."

Energy is legally required to provide access to this data as part of the binding Tri-Party Agreement that was signed by Energy, Ecology, and the U.S. Environmental Protection Agency in 1989. The agreement governs cleanup of the Hanford Site.

The Hanford Site, tasked with the mission of creating plutonium for the nation's nuclear weapons program decades ago, is now one of the most radioactively and chemically contaminated sites in the world.

Some of the extensive contamination includes 177 aging underground storage tanks that contain 56 million gallons of radioactive and chemically hazardous waste. More than one million gallons have leaked from the tanks.

Energy is required to provide Ecology access to data it compiles. Vital data that details the extent of contamination in soil and groundwater, how hazardous waste is managed, the status of underground storage tanks, progress made in cleaning up contamination, and more.

With access to the appropriate data, Ecology can verify that Energy treated water and air emissions to safe levels before discharging them to the environment. When Ecology's inspectors find problems and require Energy to correct them, they cannot verify they have been corrected without access to that data. Similarly, Ecology can't confirm Energy's waste treatment meets required standards without access to its treatment data.

Energy stores and treats waste in tanks and with equipment that is 50, 60, or even 70 years old. Ecology can only ensure the safety of aging infrastructure if Energy provides transparent access to operating records.

“An agreement toward data access should have happened years ago,” Zehm said. “We negotiated for three years in good faith and granted a series of deadline extensions. We reached agreement in principle with Energy several times, but in the end, Energy chose to simply declare that it had met its obligations and walked away from the table.”

Restricting access to crucial data causes unnecessary delays in regulatory decisions and makes it nearly impossible to independently verify whether Energy has complied with requirements for managing its hazardous wastes.

“In recent months, Energy has stated its concern that regulatory delays causes it to miss cleanup milestones,” said Alex Smith, Nuclear Waste Program manager for Ecology. “This deflects from the very real issue that Energy is withholding access to data. Data that would speed up regulatory decisions while ensuring human health and the environment are protected.”

Prior to fining Energy, Ecology issued a Director’s Determination in December establishing a schedule for Energy to develop a plan that will provide electronic access to the necessary data.

It is anticipated that the \$1.065 million fine will be paid out of Energy’s \$3.6 billion budget for the Hanford Site. Ecology will aim to use the penalty funds to support Eastern Washington communities.

###

More Ecology news: [ecology.wa.gov/news](https://ecology.wa.gov/news), [Twitter](#), [Facebook](#), [Instagram](#) and [Blogger](#).

#### Related Links

- [Dec. 10, 2019 blog post on Director’s Determination](#)
- [More information about Hanford cleanup](#)