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OFFICE OF RIVER PROTECTION  
P.O. Box 450, MSIN H6-60  
Richland, Washington 99352

AUG 01 2016

16-TF-0085

Ms. Alexandra K. Smith, Program Manager  
Nuclear Waste Program  
Washington State  
Department of Ecology  
3100 Port of Benton Blvd.  
Richland, Washington 99354

Ms. Smith:

STATEMENT OF DISPUTE REGARDING DISAPPROVAL OF HANFORD FEDERAL  
FACILITY AGREEMENT AND CONSENT ORDER CHANGE CONTROL FORM M-62-14-  
02

This letter transmits the Statement of Dispute for Milestone M-062-45 (Attachment) to the Interagency Management Integration Team (IAMIT). The Statement of Dispute explains why the U.S. Department of Energy, Office of River Protection believes there is good cause to extend the Hanford Federal Facility Agreement and Consent Order Milestone M-062-45, preparatory to dispute resolution discussions with the IAMIT.

If you have any questions, please contact Thomas Fletcher, Assistant Manager for Tank Farm Project, at (509) 376-3434.

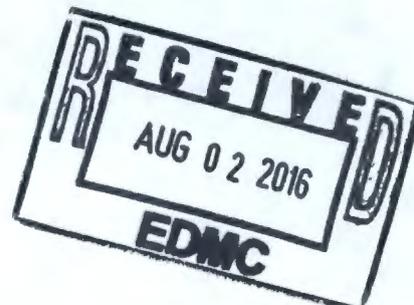
A handwritten signature in black ink that reads "Kevin W. Smith".

Kevin W. Smith  
Manager

TF:SHP

Attachment

Distribution: Page 2



Alexandra K. Smith  
16-TF-0085

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AUG 01 2016

cc w/attach:

TPA Administrative Record (M-062-45)

Environmental Portal  
WRPS Correspondence

cc w/o attach:

S. Harris, CTUIR  
J.L. Lyon, Ecology  
D. McDonald, Ecology  
J.B. Price, Ecology  
D.A. Faulk, EPA  
S.E. Hudson, HAB  
C.P. Noonan, MSA  
R.E. Piippo, MSA  
M.J. Turner, MSA  
G. Bohnee, NPT  
K. Niles, ODOE  
R. Buck, Wanapum  
J.A. Joyner, WRPS  
R. Jim, YN  
D. Rowland, YN

**Attachment  
16-TF-0085**

**STATEMENT OF DISPUTE FOR DISAPPROVAL OF  
TPA CHANGE CONTROL FORM M-62-14-02**

# STATEMENT OF DISPUTE FOR DISAPPROVAL OF TPA CHANGE CONTROL FORM M-62-14-02

## I. Nature of Dispute

This dispute is raised pursuant to Article VIII, paragraph 30, of the *Hanford Federal Facility Agreement and Compliance Order* (HFFACO, Tri-Party Agreement or TPA). It concerns the disapproval by the Washington State Department of Ecology (Ecology) of Tri-Party Agreement Change Control Form M-62-14-02. TPA Milestone M-062-45 requires that U.S. Department of Energy, Office of River Protection (DOE-ORP) and Ecology complete negotiations by April 30, 2015.

TPA Milestone M-062-45 contains seven items for negotiation:

1. Commencing as target milestones in 2015 and enforceable milestones in 2021 and each negotiation thereafter, tank waste retrieval sequencing and milestones, and milestones for installation of infrastructure to feed tank waste from the DST system to the tank waste treatment system, for the next eight years.
2. Contingency actions and milestones, if and as necessary, for providing new, compliant tanks with sufficient capacity and in sufficient time to complete retrievals under this agreement, regardless of WTP operational deficiencies or retrieval conditions.
3. Supplemental treatment selection (a one time selection to be made not later than April 30, 2015) and milestones, which must be consistent with M-062-00 as established by M-062-45 item #5. A 2<sup>nd</sup> LAW Vitrification Facility must be considered as one of the options. \*Milestones M-062-31-T01 through M-062-34-T01 are initially set as target dates and will be established (as may be modified) as interim milestones when they are converted to interim milestones in accordance with applicable HFFACO procedures at the conclusion of this negotiation.
4. The date in milestone M-045-70 for completion of the tank waste retrievals as expeditiously as possible.
5. The date in milestone M-062-00 for completion of tank waste treatment as expeditiously as possible.
6. Milestones for the provision of IHLW canister storage capacity for the six year period of WTP operation for the operating period that begins in January 2022. Additional milestones for the provision of such canister capacity will be established as needed every six years thereafter for the storage of IHLW for the subsequent six year period of WTP operations.
7. Reevaluate milestones to establish facilities to manage secondary waste streams from the WTP by the date that the WTP achieves initial plant operations.

These seven items described for negotiation under M-062-45 have broad implications on the entire DOE-ORP tank waste treatment mission. These negotiations have the potential to affect the following milestones or series of milestones, including, but not limited to:

- TPA Milestone M-042-00A for closure of all Double Shell Tank (DST) Farms.
- TPA Milestone M-045-00 for closure of all Single Shell Tank (SST) Farms.
- TPA Milestone M-045-70 for completion of waste retrieval from SSTs.
- TPA Milestone M-047-00 for work necessary to provide facilities for management of secondary waste from the WTP.
- TPA Milestone M-062-00 for pretreatment processing and vitrification of Hanford High Level (HLW) and Low Activity (LAW) Tank Wastes.
- TPA Milestone M-090-00 for facilities necessary for storage of Immobilized High Level Wastes (IHLW).

DOE-ORP submitted signed TPA change request M-62-14-02 on January 30, 2015, ninety days in advance of the milestone due date. Ecology did not respond within the two-week period allotted for consideration, which constitutes Ecology disapproval of the TPA change request M-62-14-02. DOE-ORP initiated dispute on February 20, 2015 per letter 15-TF-0014.

Ecology's basis for the disapproval of M-62-14-02 was provided to DOE-ORP in letter 15-NWP-036 on March 12, 2015. Ecology disapproved the change control form because it did not provide all of the information required by TPA Action Plan, Section 12.3.2, specifically the length of the extension sought, and any related timetable and deadline or schedule that would be affected.

## II. DOE-ORP's Position on the Dispute

The M-062-00, *Complete pretreatment processing and vitrification of Hanford High Level (HLW) and Low activity (LAW) Tank Wastes*, major milestone series was created through the TPA Dispute Resolution process that led to the March 29, 2000 Director of Ecology's *Final Determination pursuant to the Hanford Federal Facility Agreement and Consent Order (HFFACO) in the matter of Hanford site high-level radioactive tank waste treatment capacity acquisition, tank waste treatment and associated tank waste regulatory requirements*.

These milestones were then modified and added to during the negotiations that occurred from 2007-2009 and became effective under a series of TPA change control forms<sup>1</sup> in conjunction with the Consent Decree in *State of Washington v. Dept. of Energy*, Case No. 08-5085-FVS,<sup>2</sup> as entered in federal court on October 25, 2010. That Consent Decree was recently amended as a result of a dispute and litigation between the parties and many of the dates established by the 2010 Consent Decree were extended by the Court. See Amended Consent Decree (March 11, 2016) and Second Amended Consent Decree (April 12, 2016), Case No. 08-5085-RMP.

<sup>1</sup> M-36-09-01, M-42-09-01, M-46-09-01, M-45-09-01, M-047-09-09, M-50-09-01, M-51-09-01, M-61-09-01, M-62-09-01, M-90-09-01, P-09-09-01, and I-09-01.

<sup>2</sup> This Consent Decree resulted from litigation filed by the State in 2008, alleging that DOE had already missed or was certain to miss several TPA milestones, including many in the M-045-00 and M-062-00 series.

Since the milestone dates in the M-062-00 and other related TPA milestones were predicated on the milestones established in the 2010 Consent Decree, and those dates have been extended by the Court, DOE has determined that many of the existing interim milestones in the M-062-00 and other series are at risk or cannot be met. TPA milestones affected by the modified milestones in the 2016 Amended Consent Decree need to be adjusted accordingly.

While this litigation was ongoing, DOE submitted a change request (CR M-62-14-02, dated January 30, 2015) on the negotiations required under TPA milestone M-062-45, suggesting that these negotiations be deferred until after the Consent Decree litigation was resolved. After Ecology disapproved this change control form, DOE invoked the dispute resolution process under Article VIII of the TPA that has been extended at the Project Managers' level until August 1, 2016. This Statement of Dispute is being submitted to elevate this dispute to the Interagency Management Integration Team.

DOE and Ecology are now engaged in developing scenarios to be addressed in System Plan, Rev. 8, which is due to be issued in accordance with TPA milestone M-062-40 by October 31, 2017. DOE believes that the analysis of these scenarios in System Plan, Rev. 8, will provide information that is essential for the parties to adjust the Consent Decree-affected TPA milestones in an appropriate manner.

As noted above, DOE believes that, as a result of the schedules created by the Amended Consent Decree, the parties should employ the System Plan, Rev. 8, required by TPA milestone M-062-40 to adjust TPA milestones that are affected by that Amended Consent Decree. Milestone M-062-40 requires DOE to "Submit a System Plan to Ecology describing the disposition of all tank waste managed by the Office of River Protection, including the retrieval of all tanks not addressed by the Consent Decree in *Washington v. DOE*, Case No. 08-5085-FVS, and the completion of the treatment mission." The System Plan, Rev. 8, must address Tank Waste Treatment, Supplemental Treatment, Tank Waste Retrieval, and Contingency Planning. DOE will discuss this process in more detail with Ecology and make the appropriate formal submittals as are determined to be necessary to accomplish this suggestion.

It is DOE-ORP's position that M-062-45 needs to be modified because of the issuance of the Amended Consent Decree in *State of Washington v. Dept. of Energy*, Case No. 08-5085-RMP (March 11, 2016), as amended by the Second Amended Consent Decree, same case, April 12, 2016. New due dates for the milestones noted above are needed in order to address the new milestones resulting from the Amended Consent Decree.

DOE-ORP will provide System Plan Rev. 8 on October 31, 2017. DOE is proposing that negotiations should begin immediately following issuance of the System Plan, Rev. 8, and conclude by April 30, 2018 (unless extended by mutual agreement of Ecology and DOE-ORP), resulting in a signed tentative agreement, including TPA change control forms. DOE is amenable to conducting these negotiations in a sequential (one-by-one) or total basis with the proviso that no individual milestone negotiations be completed until all the affected milestone negotiations are completed so that milestone interrelationships are understood and accounted for appropriately.

DOE-ORP deems that the schedules and other terms of the Amended and Second Amended Consent Decrees are appropriate information for consideration in the

negotiations and decisions required by Milestone M-062-45 and an extension to the due date is appropriate to incorporate the parties' joint efforts and analysis in System Plan, Rev. 8.

Based on the above, it is DOE's position that System Plan, Rev. 8, will provide critical information for the M-062-45 negotiations and requests that Ecology approve TPA change control form M-62-16-01 included in Appendix A of this Statement of Dispute.

### III. Supporting Information

*Final Determination pursuant to the Hanford Federal Facility Agreement and Consent Order (HFFACO) in the matter of Hanford site high-level radioactive tank waste treatment capacity acquisition, tank waste treatment and associated tank waste regulatory requirements, March 29, 2000.*

HFFACO Change Requests Nos. M-36-09-01, M-42-09-01, M-46-09-01, M-45-09-01, M-047-09-09, M-50-09-01, M-51-09-01, M-61-09-01, M-62-09-01, M-90-09-01, P-09-09-01, and I-09-01.

Consent Decree, *State of Washington v. Dept. of Energy*, Case No. 08-5085-FVS E.D. WA October 25, 2010)

Amended Consent Decree, *State of Washington v. Dept. of Energy*, Case No. 08-5085-RMP (March 11, 2016).

Second Amended Consent Decree, *State of Washington v. Dept. of Energy*, Case No. 08-5085-RMP (April 12, 2016).

### IV. History of Attempted Resolution

- **January 30, 2015:** DOE-ORP signed and submitted TPA change control form M-62-14-02 to Ecology for their 14 day review.
- **February 13, 2015:** DOE-ORP received no response from Ecology during their 14 day review of change control form M-62-14-02. This constitutes a disapproval of M-62-14-02.
- **February 20, 2015:** DOE-ORP submitted letter 15-TF-0014 to Ecology, initiating dispute.
- **March 11, 2015:** Informal meeting between DOE-ORP and Ecology to discuss M-062-45.
- **March 12, 2015:** In letter 15-NWP-036, Ecology disapproved change request M-62-14-02.
- **March 17, 2015:** The parties agreed to extend dispute resolution at the project manager (PM) level until May 15, 2015.
- **May 11, 2015:** The parties agreed to extend dispute resolution at the PM level until June 15, 2015.

- **June 11, 2015:** The parties agreed to extend the dispute at the PM level until August 15, 2015.
- **August 7, 2015:** The parties agreed to extend the dispute at the PM level until October 15, 2105.
- **September 21, 2015:** The parties agreed to extend the dispute at the PM level until February 18, 2016.
- **February 18, 2016:** The parties agreed to extend the dispute at the PM level until March 31, 2016.
- **March 30, 2016:** The parties agreed to extend the dispute at the PM level until May 20, 2016.
- **May 19, 2016:** The parties agreed to extend the dispute at the PM level until June 30, 2016.
- **June 29, 2016:** The parties agreed to extend the dispute at the PM level until August 1, 2016.

**APPENDIX A  
M-62-16-01 CHANGE CONTROL FORM**

<b>Change Number</b> M-62-16-01	<b>Federal Facility Agreement and Consent Order Change Control Form</b> Do not use blue ink. Type or print using black ink.	<b>Date</b> <b>DRAFT</b> 07/20/2016
<b>Originator</b> Thomas W. Fletcher, DOE-ORP		<b>Phone</b> (509) 376-3434
<b>Class of Change</b> <input type="checkbox"/> I - Signatories <input checked="" type="checkbox"/> II - Executive Manager <input type="checkbox"/> III - Project Manager		
<b>Change Title</b> Modification of TPA Milestone M-062-45 for System Plan Negotiations		
<b>Description/Justification of Change</b> This change control form extends the TPA Milestone M-062-45 negotiations due date to April 30, 2018. Good cause exists because due date modifications are necessary to incorporate revised milestones resulting from the Amended Consent Decree in <i>State of Washington v. Dept. of Energy</i> , Case No. 08-5085-RMP (March 11, 2016) as well as to incorporate critical information to be included in and the analysis to be provided in Systems Plan, Rev. 8, due to be issued by October 31, 2017. Approval of this change control form resolves the dispute on M-62-14-02.		
<b>Impact of Change</b> This change control form modifies TPA Milestone M-062-45 to align with completion of System Plan, Rev. 8 issuance. This change will impact the following TPA milestones: <ul style="list-style-type: none"> <li>• M-042-00A for closure of all double-shell tank farms</li> <li>• M-045-00 for closure of all single-shell tank farms</li> <li>• M-045-70 for completion of waste retrieval from single-shell tanks</li> <li>• M-047-00 for work necessary to provide facilities for management of secondary waste from the Waste Treatment and Immobilization Plant (WTP)</li> <li>• M-062-00 for pretreatment processing and vitrification of Hanford high-level and low-activity tank wastes</li> <li>• M-062-21, for annual submission of data that demonstrate WTP operation</li> <li>• M-090-00 for facilities necessary for storage of immobilized high-level wastes</li> <li>• M-047-07 for submission of a conceptual design report package (Critical Decision-1) for the Secondary Liquid Waste Treatment Project</li> <li>• M-090-13 for submission of a conceptual design report package (Critical Decision-1) for the Interim Hanford Storage Project.</li> </ul> The System Plan, Rev. 8, may identify additional impacted milestones.		
<b>Affected Documents</b> The HFFACO as amended and Hanford Site internal planning, management, and budget documents (e.g., River Protection Project System Plan, Baseline Control documents, and related work authorizations and directives).		
<b>Approvals</b>		
_____ DOE	_____ Date	_____ Approved _____ Disapproved
_____ EPA	_____ Date	_____ Approved _____ Disapproved
_____ Ecology	_____ Date	_____ Approved _____ Disapproved

Specific changes to Tri-Party Agreement Appendix D are displayed with double underline to indicate addition of text and by ~~strikeout~~ to indicate deletion of text.

<p>M-062-45 Lead <u>Regulatory</u> Agency: Ecology</p>	<p>Every six years, within six months of the issuance of the last revision of the System Plan, the parties will negotiate the following:</p> <ol style="list-style-type: none"> <li>1. Commencing as target milestones in 2015<del>8</del>, and enforceable milestones in 2024 and each negotiation thereafter, tank waste retrieval sequencing and milestones, and milestones for installation of infrastructure to feed tank waste from the DST system to the tank waste treatment system, for the next eight years.</li> <li>2. Contingency actions and milestones, if and as necessary, for providing new, compliant tanks with sufficient capacity and in sufficient time to complete retrievals under this agreement, regardless of WTP operational deficiencies or retrieval conditions.</li> <li>3. Supplemental treatment selection (a one time selection to be made not later than April 30, 2015<del>8</del>) and milestones, which must be consistent with M-062-00 as established by M-062-45 item #5. A 2<sup>nd</sup> LAW Vitrification Facility must be considered as one of the options. *Milestones M-062-31- T01 through M-062-34-T01 are initially set as target dates and will be established (as may be modified) as interim milestones when they are converted to interim milestones in accordance with applicable HFFACO procedures at the conclusion of this negotiation.</li> <li>4. The date in milestone M-045-70 for completion of the tank waste retrievals as expeditiously as possible.</li> <li>5. The date in milestone M-062-00 for completion of tank waste treatment as expeditiously as possible.</li> <li>6. Milestones for the provision of IHLW canister storage capacity for the six year period of WTP operation for the operating period that begins in <del>in January 2022</del> <u>June 30, 2032</u>. Additional milestones for the provision of such canister capacity will be established as needed every six years thereafter for the storage of IHLW for the subsequent six year period of WTP operations.</li> <li>7. Reevaluate milestones to establish facilities to manage secondary waste streams from the WTP by the date that the WTP achieves initial plant operations.</li> </ol> <p>As used in paragraphs 4 and 5, above, the phrase 'as expeditiously as possible' means, in the case of SST retrievals, completing such retrievals as quickly as is technically feasible but not later than the date established in milestone M-045-70, and in the case of tank waste treatment, completing such treatment as quickly as is technically feasible but not later than the date established in milestone M-062-00, and in each case without excessive difficulty or expense within the context of such activities, and in consideration of</p>	<p><u>April 30, 2015<del>8</del>, And Every Six Years Thereafter</u></p>
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	<p>any impact on the overall cleanup mission.</p> <p>By the milestone due date, the parties will complete negotiations on the above matters. Although multiple scenarios may be considered in the course of the negotiations, and none may be considered wholly appropriate, the final decisions in items 1 through 7 above will be consistent with a single scenario, including any agreed-upon supplemental sensitivity analyses. The parties agree that the chosen scenario alone need not dictate matters in the negotiations and that other information may be considered as the parties deem appropriate. In the event Ecology and DOE do not reach agreement for the matters in M-062-45 paragraphs 1, 2, 3, 6, and 7 the dispute between Ecology and DOE will be resolved pursuant to the HFFACO Article VIII.</p> <p>The dispute resolution process in HFFACO, Article VIII, does not apply to the determinations in M-062-45 paragraphs 4 and 5. Rather, these disputes shall be governed by the Consent Decree in <i>Washington v. DOE, Case No. 08-5085-FVS, as amended in 2016</i>. No later than December 31, 2021, the United States and Ecology shall complete negotiations to establish a mechanism that will apply to resolve future disputes regarding the determinations in M-062-45 paragraphs 4 and 5. The United States and Ecology have reserved their rights regarding the mechanism that should apply to such future disputes, in the event that they cannot reach agreement.</p>	
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