



Tri-Party Agreement

PROPOSED CHANGES TO HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER MILESTONES M-14-00 AND M-24-00

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FOR
PUBLIC COMMENT



ATTACHMENT 1

SEC AGREEMENT ON RESOLUTION OF
MILESTONE M-14-00 CHANGE REQUEST DISPUTE

Milestone M-14-00 of the Hanford Federal Facility Agreement and Consent Order (TPA) requires the U.S. Department of Energy (DOE) to complete construction and initiate operations of a low level mixed waste laboratory on or before January 31, 1992. DOE has not begun construction of the Milestone M-14-00 laboratory.

The Milestone was included in the Agreement to ensure that analysis of Hanford samples would not be unduly delayed. The Agreement allows a seventy-five (75) day annual average for laboratory turnaround times for low level and mixed wastes (up to 10mr/hour), not to exceed 90 days. For the first eleven (11) months of 1991, DOE has repeatedly exceeded the 90-day limit.

On October 31, 1991, DOE submitted a request to change Milestone M-14-00. This request was denied by the Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) on November 8, 1991. DOE initiated the dispute resolution procedures of the Agreement on November 15, 1991. The parties have engaged in extensive discussions, and agreed on a proposal to resolve this issue.

DOE acknowledges that it did not follow TPA procedures for seeking modification to the TPA or otherwise obtain approval from the regulators before placing the construction hold and taking steps to obtain commercially available laboratory services. DOE also acknowledges that without formal approval by the regulators, DOE is obligated under the Agreement to continue working on (remain in compliance with) the milestones. It is recognized, however, that there was informal communication by DOE to the regulators on alternative approaches being considered.

DOE agrees to the assessment of a penalty consistent with the terms of the Agreement, and will be given one (1) year to demonstrate that TPA turnaround times can be met without building the laboratory required by Milestone M-14-00. In exchange EPA and Ecology in accordance with the following terms will not seek additional penalties for DOE's violations of Milestone M-14-00, as well as the current violations of the TPA's analytical turnaround times.

DOE, EPA, and Ecology agree to the following specific terms and conditions:

(1) DOE may provide the bulk of its TPA laboratory analyses through new and existing contracts with commercial off-site laboratories for a one (1) year trial period.

(2) The one (1) year period begins on the date this dispute is resolved.

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MILESTONE M-14-00 CHANGE REQUEST DISPUTE

(3) DOE will have to demonstrate that its combination of on-site laboratory capability and commercial off-site laboratory contracts can consistently meet the specified analytical turnaround times of the TPA. Turnaround times begin to run on the day the sample is taken and end when the data package is received from the laboratory by DOE or its contractors.

(4) At the end of the one (1) year trial period, EPA and Ecology will evaluate whether DOE's approach for providing laboratory services to support the TPA is working satisfactorily. To demonstrate satisfactory performance during the trial period, DOE will have to meet the 75-day average turnaround time for low level and mixed waste.

(5) If EPA or Ecology determine that DOE's approach for providing laboratory services to support the TPA is not satisfactory, DOE shall immediately, and without dispute or other challenge, implement contingency plans to provide additional laboratory facilities dedicated to support the TPA.

(6) DOE will develop contingency plans now for the construction of an on-site laboratory owned and operated by DOE, or issuance of a request for proposal for construction of an on-site or off-site laboratory, to be operated by a private laboratory firm in the Tri-Cities area (to the extent allowed by law). The laboratory will be constructed and operational by a date acceptable to EPA and Ecology.

(7) DOE remains bound by the laboratory turnaround times specified in the Agreement before, during and after the trial period, unless they are modified in accordance with the Agreement modification provisions.

(8) DOE will brief the Office of Management and Budget, and DOE, Ecology, and EPA will brief the Congress, informing them that DOE may be required to fund a new laboratory at the close of the one (1) year trial period. Additionally, DOE will go to the Secretary of Energy now and obtain his commitment to seek budget authority in FY93 and FY94 as necessary to support the development of additional laboratory capacity.

(9) If EPA or Ecology determine that a contingency plan must be implemented after the one (1) year trial period, DOE agrees to comply with established milestones in the Agreement, reflecting the required course of action.

ATTACHMENT 1

SEC AGREEMENT ON RESOLUTION OF
MILESTONE M-14-00 CHANGE REQUEST DISPUTE

(10) DOE acknowledges that it violated Milestone M-14-00 of the Agreement, and agrees to the assessment of a \$100,000 penalty for this violation pursuant to Article XIX of the Agreement. DOE will request \$100,000 in accordance with Article XIX of the TPA to cover the penalty, and will deposit that amount into the Hazardous Substances Response Trust Fund to the extent such funds are authorized and appropriated for that specific purpose.

(11) DOE will commit to new expedited response actions (ERAs) at the Hanford site and will seek sufficient funding in FY94 and in subsequent years to complete new and existing actions. Any such ERAs must be in addition to those currently funded or planned. DOE's ERA program will be established and funded in a manner such that it will not detract from TPA compliance.

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CHUCK CLARKE
Director
State of Washington
Department of Ecology

Date

DANA A. RASMUSSEN
Regional Administrator
U.S. Environmental Protection Agency
Region 10

Date

JOHN D. WAGONER
Manager
U.S. Department of Energy
Richland Operations Office

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON STATE DEPARTMENT OF ECOLOGY

AND

UNITED STATES DEPARTMENT OF ENERGY

NOTICE OF INTENT TO CHANGE MILESTONE M-14-00
OF THE HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER

In executing this Notice of Intent, the U.S. Environmental Protection Agency (EPA), the State of Washington Department of Ecology (Ecology), and the U.S. Department of Energy (DOE) declare their intent to execute the attached Senior Executive Committee (SEC) Agreement on Resolution of Milestone M-14-00 Change Request Dispute (Attachment 1), and the Change Control Form numbered M-14-92-01 (Attachment 2).

Milestone M-14-00 of the Hanford Federal Facility Agreement and Consent Order (Agreement) requires the U.S. Department of Energy (DOE) to complete construction and initiate operations of a low level mixed waste laboratory on or before January 31, 1992. DOE has not begun construction of the laboratory required by M-14-00.

On October 31, 1991, DOE submitted a request to change the Milestone, which was denied by the Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) on November 8, 1991. DOE initiated the dispute resolution procedures of the Agreement on their change request on November 15, 1991.

After protracted negotiations, the parties have come to an agreement which is embodied in the attached SEC Agreement on Resolution of Milestone M-14-00 Change Request Dispute. It requires, among other things, that DOE seek funding for new expedited response actions at Hanford, and construct and operate an onsite laboratory that is smaller than the original laboratory required to be built under M-14-00. In addition, DOE agrees to the assessment of a \$100,000 penalty consistent with the terms of the Agreement. Finally, the agreement would allow DOE one year to demonstrate that the low level mixed waste laboratory needs can be satisfied using a combination of existing commercial laboratory capacity and the downsized onsite laboratory currently under construction, without the original laboratory required by M-14-00.

The proposed settlement was reached after intense negotiations on a number of difficult issues. Negotiations were concluded only recently when agreement was reached on a DOE penalty. Many settlement options were explored and rejected, and it appears that settlement under terms other than those described herein may not be possible. However, the parties still feel it

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is appropriate to seek and consider public comment on those aspects of the settlement which provide for changes to the existing milestones.

Therefore, EPA and Ecology reserve the right to decline to execute the attached settlement documents by written notice to DOE if comments received from the public disclose facts which indicate that the proposed change to the milestone is inappropriate, improper or inadequate. The parties agree that in the event that EPA or Ecology choose not to execute the attached settlement, DOE shall have seven days under paragraph 50(G) of the Agreement to issue a written notice elevating the dispute to the Administrator of EPA.

EPA and Ecology will make the attached Milestone Change request form available for public comment for thirty (30) days. Public notice of the opportunity to comment on the proposed change to the milestone will be provided in accordance with the public involvement provisions of the Agreement.

92125 51565

U.S. DEPARTMENT OF ENERGY

By:

John D. Wayner
JOHN D. WAYNER, Manager
Richland Operations Office

4/3/92
Date

U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

Dana A. Rasmussen
Dana A. Rasmussen, Regional Administrator
Region 10

4/3/92
Date

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

By:

Chuck Clarke
Chuck Clarke, Director

4/3/92
Date

ATTACHMENT 2

Change Number M-14-92-01	Federal Facility Agreement and Consent Order Change Control Form <small>Do not use blue ink. Type or print using black ink.</small>	Date April 2, 1992
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Originator D. M. Wanek	Phone 376-5778
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Class of Change <input checked="" type="checkbox"/> I - Signatories <input type="checkbox"/> II - Project Manager <input type="checkbox"/> III - Unit Manager
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Change Title Provide Low-Level Mixed Waste Laboratory Services

Description/Justification of Change The Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) milestone M-14-00 currently calls for completion of construction and initiation of operations of a low-level mixed waste laboratory by January 1992. The current milestone will be deleted and the following will be added:												
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%; padding: 5px;">M-14-00</td> <td style="width:60%; padding: 5px;">Implement Senior Executive Committee (SEC) Agreement on Resolution of Milestone M-14-00 Change Request Dispute</td> <td style="width:25%; padding: 5px; text-align: right;">4/92</td> </tr> <tr> <td style="padding: 5px;">M-14-01</td> <td style="padding: 5px;">Complete definitive design (completed)</td> <td style="padding: 5px; text-align: right;">11/90</td> </tr> <tr> <td style="padding: 5px;">M-14-02</td> <td style="padding: 5px;">Submit demonstration of laboratory turnaround times for hazardous and low-level mixed waste analyses to EPA and Ecology for final evaluation</td> <td style="padding: 5px; text-align: right;">4/93</td> </tr> <tr> <td style="padding: 5px;">M-14-03</td> <td style="padding: 5px;">Complete construction of 27 module Waste Sampling and Characterization Facility (WSCF)</td> <td style="padding: 5px; text-align: right;">10/93</td> </tr> </table>	M-14-00	Implement Senior Executive Committee (SEC) Agreement on Resolution of Milestone M-14-00 Change Request Dispute	4/92	M-14-01	Complete definitive design (completed)	11/90	M-14-02	Submit demonstration of laboratory turnaround times for hazardous and low-level mixed waste analyses to EPA and Ecology for final evaluation	4/93	M-14-03	Complete construction of 27 module Waste Sampling and Characterization Facility (WSCF)	10/93
M-14-00	Implement Senior Executive Committee (SEC) Agreement on Resolution of Milestone M-14-00 Change Request Dispute	4/92										
M-14-01	Complete definitive design (completed)	11/90										
M-14-02	Submit demonstration of laboratory turnaround times for hazardous and low-level mixed waste analyses to EPA and Ecology for final evaluation	4/93										
M-14-03	Complete construction of 27 module Waste Sampling and Characterization Facility (WSCF)	10/93										
Continued on Page 2.												

Impact of Change See Page 2 for Impact of Change.
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Affected Documents Hanford Federal Facility Agreement and Consent Order Action Plan, Appendix D, Table D-2 and Figure D-1.

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April 2, 1992

- M-14-04 Operate the 27 module WSCF 4/94
- M-14-05 If, within thirty (30) days after submittal of the demonstration, M-14-02 results are unacceptable to EPA or Ecology, additional capacity will be provided by construction of additional modules to WSCF or by securing additional commercial laboratory capacity
- M-14-05 (a.1) Complete construction of additional 18 modules to the WSCF laboratory, and 4/95
- M-14-05 (a.2) Operate the additional 18 modules to the WSCF laboratory; or 10/95
- M-14-05 (b) Initiate operations of a commercial laboratory in the Tri-Cities area with capacity at least equivalent to the additional 18 modules of the WSCF facility 10/95

The attached SEC agreement provides the description and justification of the change.

Impact of Change

s milestone provides for additional necessary analytical services to support the Tri-Party Agreement Milestones. Delays in laboratory turnaround times are likely to delay cleanup of the Hanford Site. Approval of this change request and the attached SEC Agreement on Resolution will provide DOE an opportunity to demonstrate that it can meet its requirement to provide laboratory services through contract mechanisms at an overall lower cost than through a government owned, on-site laboratory. If DOE can not make a successful demonstration to EPA and Ecology, the revised milestones in this change request provide for the earliest reasonable construction of additional laboratory capability.

Approvals

Approved

Disapproved

OE

Date

EPA

Date

Ecology

Date

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Change Number
M-24-91-6

FEDERAL FACILITY AGREEMENT AND CONSENT ORDER
CHANGE CONTROL FORM

Date
Feb. 12, 1992

Do not use blue ink. Type or print using black ink.

Originator
R. R. Thompson

Phone
6-9988

Class of Change
 I - Signatories (Section 13.0) II - Project Manager III - Unit Manager

Change Title
Change Total Number of RCRA Wells to be Installed in Calendar Year 1992

Description/Justification of Change

Existing Milestone M-24-00 reads as follows:

M-24-00 Install RCRA groundwater monitoring wells at the rate of 29 in Annually
CY 1989, 30 in CY 1990, and 50 per year thereafter until all land Beginning
disposal units and single-shell tanks are determined to have RCRA CY 1989
compliant monitoring systems.

USDOE will install groundwater monitoring wells around RCRA land disposal units and the single-shell tanks at the rate described above until Ecology determines that all such groundwater monitoring systems meet the requirements of WAC 173-303-645.

Installation of groundwater wells shall mean that wells have been drilled, adequately sealed, and screened over no more than 15 feet of the aquifer unless otherwise approved by Ecology, that all pumps and associated sampling equipment have been installed, and that such wells have been developed sufficiently to provide satisfactory samples for all parameters to be analyzed.

Specific units to receive groundwater wells and the number of wells to be installed at each unit will be identified in Appendix D in two-year intervals (i.e., CY 1989 and CY 1990, now CY 1990 and CY 1991 at the next annual update, etc.). Such milestones will be enforceable as interim milestones.

(Continued on following page)

Impact of Change None.

Affected Documents

Hanford Federal Facility Agreement and Consent Order Action Plan, Appendix D, Work Schedule and Table D-3.

Approvals Approved Disapproved

John R. Wagoner 3/5/92
DDE Date

EPA Date

Ecology Date

9212551509

Description/Justification of Change (Continued)

change the first and second paragraphs only of the milestone to read as follows:

M-24-00	Install RCRA groundwater monitoring wells at the rate of 29 in CY 1989, 30 in CY 1990, and up to 50 per year thereafter as specified by agreed interim milestones until all land disposal units and single-shell tanks are determined to have RCRA compliant monitoring systems.	Annually Beginning CY 1989
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USDOE will install groundwater monitoring wells around RCRA land disposal units and the single-shell tanks at the rate described above until Ecology agrees that all such groundwater monitoring systems meet the requirements of WAC 173-303-645.

This change concerns setting the well installation rate at 30 in CY 1992 and requires the state to propose locations for four wells beyond those proposed in earlier change requests if these four wells are to be finished in CY 1992.

Add the following interim milestone:

M-24-29	Ecology may identify locations for 4 additional RCRA wells to be installed by December 1992 or within nine months of the date the locations are identified.	Mar. 1992
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The locations for 26 wells to be drilled in CY 1992 have been identified in M-24-19 through M-24-28 and there is technical agreement to these locations. Ecology may identify as many as four more wells. Technical discussions of well locations are in progress. The RCRA monitoring wells installed at the specified land disposal units and single-shell tanks are approaching the numbers specified in the groundwater monitoring plans. The changed rate of installation of wells will allow time for technical interpretation of additional analytical data from wells already installed and establish a sound technical basis for the location of additional wells. This is not intended to exclude an early start of drilling for the CY 1993 wells; neither will it change plans for CY 1993 as specified in Milestone M-24-00.

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