



U.S. Department of Energy Hanford Site

21-TF-000593

Mr. Jeffrey J. Lyon, Tank Systems Operations
and Closure Project Manager
Nuclear Waste Program
Washington State
Department of Ecology
3100 Port of Benton Boulevard
Richland, Washington 99354

Dear Mr. Lyon:

RECEIPT OF WASHINGTON STATE DEPARTMENT OF ECOLOGY LETTER
20-NWP-184 EXTENDING THEIR REVIEW OF RPP-ENV-62206 AND RPP-ENV-61497

- References:
1. Ecology letter from J. J. Lyon to B. A. Harkins, ORP, "Response to Letter 20-TF-0091, Waste Management Area A-AX Performance Assessment, and Attached Documents RPP-ENV-62206 and RPP-ENV-61497," 20-NWP-184, dated November 13, 2020.
 2. RPP-ENV-62206, 2020, *Analysis of Post-Closure Groundwater Impacts from Hazardous Chemicals in Residual Wastes in Tanks and Ancillary Equipment at Waste Management Area A-AX at the Hanford Site, Southeast Washington*, Rev. 0, U.S. Department of Energy, Richland, Washington, September.
 3. RPP-ENV-61497, 2020, *Preliminary Performance Assessment of Waste Management Area A-AX, Hanford Site, Washington*, Rev. 0, U.S. Department of Energy, Richland, Washington, September.
 4. RPP-56527, *Meeting Minutes Waste Management Area C Performance Assessment Modeling Analysis Kickoff Meeting*, Rev. 0, April 1, 2014, U.S. Department of Energy, Richland, Washington.
 5. Ecology letter from J. J. Lyon to J. Bovier, ORP, "Structure of the Appendix I Performance Assessment (IPA) for Waste Management Area (WMA) A/AX," 18-NWP-176, dated November 8, 2018.

6. ORP letter from B. T. Vance to J. J. Lyon, Ecology, “Receipt of Washington State Department of Ecology’s Comments on the Performance Assessment of Waste Management Area C, Hanford Site, Washington (DOE O 435.1 PA), RPP-ENV-58782, REVISION 00,” 18-TPD-0022, dated January 17, 2019.

The U.S. Department of Energy (DOE), Office of River Protection acknowledges receipt of letter 20-NWP-184, dated November 13, 2020 (Reference 1). Please note that while the Washington State Department of Ecology (Ecology) refers to Figure 9-1, “Review and Comment on Primary Documents,” of the *Hanford Federal Facility Agreement and Consent Order* (HFFACO; also referred to as the Tri-Party Agreement [TPA]) Action Plan in 20-NWP-184, Figure 9-1 does not apply to Ecology’s review of RPP-ENV-62206 or RPP-ENV-61497 (References 2 and 3, respectively).

Neither RPP-ENV-62206 nor RPP-ENV-61497 are HFFACO primary documents. The process depicted on Figure 9-1 applies only to HFFACO primary documents. As set forth in Section 9.1 of the HFFACO Action Plan, primary documents are identified in Table 9-1 and are “those which represent the final documentation of key data and reflect decisions on how to proceed.” Since neither RPP-ENV-62206 nor RPP-ENV-61497 represent final documentation of key data or reflect decisions on how to proceed, characterizing either as a TPA primary document is inconsistent with Section 9.1 of the HFFACO Action Plan. Instead, both RPP-ENV-62206 and RPP-ENV-61497 are clearly TPA secondary documents. Please refer to Figure 9-3, “Review and Comment on Secondary Documents,” which sets forth the applicable review process for RPP-ENV-62206 and RPP-ENV-61497.

Whether Ecology is reviewing a primary document or, as in this case, reviewing a secondary document, the 45-day review period set forth in HFFACO Action Plan Section 9.2.1 applies. Please note that both Figure 9-1 and Figure 9-3 specify the 45-day review period within which the lead regulatory agency must provide DOE with comments.

Section 9.2.1 of the HFFACO Action Plan, which applies to primary and secondary document reviews (see HFFACO Action Plan Section 9.2.3), states, “[t]he lead regulatory agency may extend the comment period for a specified period by written notice to the DOE prior to the end of the initial comment period.” Ecology has not specified the revised review period in Reference 1. Reference 1 states Ecology’s intent “... to provide [Ecology’s] comments on these documents by March 15, 2021, with the possible exception of comments from our subcontractor.” The specified period of extension must include all comments to be received from Ecology.

Suggesting that additional comments from an Ecology subcontractor may be transmitted later does not meet this requirement. Please specify the period of extension so that DOE may plan for consideration of Ecology's comments.

DOE is concerned with Ecology's assertion that it must review "... more than 15 supporting documents," in order to complete its review of RPP-ENV-62206 and RPP-ENV-61497, as claimed in Reference 1. Given the preliminary nature of these secondary documents, an Ecology review that includes its review of the supporting documents as suggested is unnecessary and premature at this time. Please see Section 9.2.3 of the HFFACO Action Plan, which clarifies that a lead regulatory agency has the option to provide comments or take no action; therefore, a review by Ecology is not mandatory for secondary documents.

To clarify, DOE will consider the substantive comments that Ecology provided in the body of Reference 1 during the Performance Assessment document development process. As set forth in Section 9.1.1, comments provided in conjunction with secondary document reviews "*shall* refer to any pertinent sources of authority or references upon which the comments are based..." To the extent that any of the comments that Ecology provided in Reference 1 do not refer to either a pertinent source of authority or references upon which the comments are based, Ecology has not met this requirement. DOE expects that when Ecology provides their comments, those comments will meet the requirements of HFFACO Action Plan Section 9.2.1.

Please specify whether Ecology intends to provide DOE with comments from the U.S. Environmental Protection Agency (EPA). Reference 1 is unclear whether comments from the EPA will be provided to DOE and, if so, it is unclear within what timeframe such comments will be provided. Ecology is required to involve EPA in the review of performance assessments and single-shell tank closure plans to "...evaluate whether closure is proceeding in a manner not inconsistent with what EPA expects would be required if the work was being conducted under CERCLA remedial authority." This requirement is set forth in Section 3.1 of Appendix I of the HFFACO Action Plan. DOE requests clarification from Ecology as to when such comments will be provided (if at all) so that DOE may plan accordingly.

DOE and Ecology agree that Section 2.5 of Appendix I of the HFFACO Action Plan requires one performance assessment for each waste management area (WMA). This requirement was discussed and addressed during the 2009 to 2011 working sessions and again in 2013 as shown in RPP-56527, *Meeting Minutes Waste Management Area C Performance Assessment Modeling Analysis Kickoff Meeting* (Reference 4). The four volume performance assessment has been discussed with Ecology, EPA, U.S. Nuclear Regulatory Commission, Tribal Nations, state of Oregon, Hanford Advisory Board, and stakeholders during the 2009 through 2011 and 2013.

working sessions. Sessions included agreements to perform a number of specific calculations resulting in publication of 10 reports on approaches to various aspects of the four-volume performance assessment. One of the guiding principles communicated to the participants was that agreements made during the working sessions would be honored. It is unclear if Ecology is suggesting that DOE should disregard the historical commitments, workshops, and input received from the EPA, U.S. Nuclear Regulatory Commission, Tribal Nations, and stakeholders. As such, DOE requests that Ecology clarify whether it seeks a departure from the existing approach, as DOE is not aware of any recent workshops or meetings with the historically included entities, which provided input to the current configuration. DOE has met the performance assessment requirement when it completed the WMA C performance assessment. As such, DOE will meet this requirement when it completes the WMA A-AX Tank Farm performance assessment.

Section 2.5 of Appendix I of the HFFACO Action Plan states that, “PAs will be approved by Ecology and DOE pursuant to their respective authorities.” It appears that Ecology takes exception to the long-standing performance assurance format, which also separates sections in order to facilitate both Ecology’s review and DOE’s review of the same, pursuant to each agency’s respective authority. DOE notes that formatting the performance assessments in this way is required so that Ecology’s review and approval does not exceed its regulatory authority. Dividing the performance assessments into sections based on regulatory authority is consistent with Section 2.5 of the HFFACO Action Plan. As such, it is neither necessary nor beneficial to revise Appendix I for this purpose.

DOE’s response to letter 18-NWP-176 (Reference 5) was provided in 18-TPD-0022 (Reference 6). Reference 5 reiterates what has already been well established, stating that Ecology lacks any regulatory authority over the radionuclides regulated pursuant to the *Atomic Energy Act of 1954*. Although Ecology is the lead regulatory agency in this case, such a role does not and may not grant Ecology any authority to regulate *Atomic Energy Act of 1954* radionuclides. Article V of the HFFACO provides the definition of “Lead regulatory agency” and goes on to specify that “[t]he designation of a lead regulatory agency shall not change the jurisdictional authorities of the Parties.”

DOE will consider comments received from Ecology on RPP-ENV-61497 and RPP-ENV-62206 when those comments are provided. DOE declines to delay its ongoing work on the performance assessment documents for WMA A-AX, and continues to make progress on this important work without unnecessary delay. DOE looks forward to Ecology’s clarification as to the date by which Ecology review will be complete and comments (including comments from EPA, if applicable) will be provided. However, as noted in Section 9.2.3 of the HFFACO Action Plan, no such review by Ecology or EPA is required.

Mr. Jeffrey J. Lyon
21-TF-000593

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If you have any questions, please contact me, on (509) 376-3567.

Sincerely,

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