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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10 HANFORD/INL PROJECT OFFICE
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January 30, 2007

Mr. Keith Klein, Manager
Department of Energy
Richland Operations Office
P.O. Box 550
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EDMC

Subject: EPA Response to DOE's Statement of Dispute for Milestones M-034-32 and M-016-57

Dear Mr. ^{Keith} Klein:

On January 12, 2007 the U.S. Department of Energy (DOE) sent the U.S. Environmental Protection Agency (EPA) a statement of dispute for two K Basins milestone change packages (DOE letter 07-KBC-0023). DOE's statement of dispute was preceded by DOE's letter of December 20, 2006 which initiated the dispute process following EPA's letter of December 14, 2006 in which EPA notified DOE that EPA would not approve milestone extensions as requested by DOE on December 7, 2006. 0071956

There have been years of open dialogue between our respective project managers regarding the K Basins project, including before and during this dispute. We have worked closely with DOE and its contractors for nearly a decade on this project. During that time we have approved many DOE requested changes to the Tri-Party Agreement (TPA) K Basins requirements and schedules to provide DOE with the time and ability to address technical challenges or project changes.

The EPA understands DOE's position that the two milestones for which DOE is currently asking an extension cannot be met. Past planning failures and budgeting delays may well prevent DOE from meeting those milestones. However, DOE's inability at this time to complete the milestones on time does not arise from causes beyond the control of DOE.

DOE also contends that the extension should be granted because the delay was caused by the grant of K basin milestone extensions for the sludge project by TPA change control form M-34-05-04. However, the delay was not caused by the extensions. With appropriate advance planning and budgeting, sludge removal clearly could have been completed in advance of current milestone dates in order to meet the milestones for removal of the basin and for soil remediation. When EPA agreed to the limited number of milestone changes in change control form M-34-05-04, it was with the following understanding and DOE commitment, as stated in the Description/Justification for Change signed by DOE on January 10, 2006:

Failure to meet these deadlines threatens the broader objective of completing K-Area and 100-Area remediation on the schedule contained in the Tri-Party Agreement. By agreeing to a limited number of milestone changes at this time, EPA affirms its expectation and DOE affirms its commitment to work safely and aggressively to

complete work that will allow ***all*** (emphasis added) the remediation activities at K-Basins and the 100 K Area to be completed on the revised schedule ***and*** (emphasis added) consistent with completion of river corridor tasks by 2012 while acknowledging that some near term tasks will require additional time for completion.

Not long after this change package was signed it was obvious that DOE didn't expect to meet those expectations. At a regularly scheduled milestone meeting in mid-2006 Mr. David Brockman was already stating that DOE would expect to miss the milestone now under dispute, as well as those further out in the schedule. At that time I personally challenged those statements and stated that EPA expected DOE to honor its commitments to recover from schedule delays and meet overall goals for K Area.

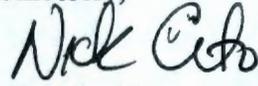
What EPA has been asking from DOE throughout the milestone discussions leading up to this dispute is the same thing we asked of DOE over a year ago, namely a schedule which better integrates the K Basins work with the rest of the cleanup work needed for the 100-K Area. In January 2007 DOE had a first meeting with EPA to discuss EPA's expectations for an integrated schedule. Based on the meeting and other recent conversations, DOE has expressed a willingness to put together such a schedule. In contrast, DOE has not agreed to a milestone to provide such a schedule and states that it is unable to develop and submit a draft integrated schedule within such an abbreviated timeframe. As indicated above, EPA has been requesting an integrated schedule for more than a year.

DOE has not demonstrated good cause for an extension. However, if DOE can provide a schedule which fulfills the commitment made in 2006, EPA will consider appropriate milestone changes that are consistent with that commitment. If DOE is unwilling to provide such a schedule then the basis for changing the milestones in 2006 is unsupported and all subsequent change requests based on the milestone package signed in 2006 are moot.

Larry Gadbois, EPA's project manager for this project has provided some background information on the unnecessary delays that have occurred in completing this work as well as the numerous extensions and changes to K Basin schedules that EPA has approved over time. This information is included as an enclosure. As this information clearly demonstrates, EPA has approved a number of extensions, and has been very flexible and accommodating in agreeing to milestone changes when appropriate. However, in this instance DOE has not met its commitment to meet the overall goals of the project on the schedule agreed to in the TPA. Therefore, until such time that a schedule, or an agreement to provide a schedule acceptable to EPA is provided, we will not agree to change the milestones in dispute.

As EPA has discussed with DOE regarding the two milestones of this dispute, the issue that must be resolved before EPA can consider extensions for which good cause does not otherwise exist is DOE's lack of an integrated schedule for timely completion of the 100-K Area remedial actions. If you have any questions, please contact me at 509-376-9529.

Sincerely,



Nicholas Ceto
Program Manager
Hanford/INL Project Office

Enclosure

Cc: Administrative Record, 100-KR-2

Mr. Keith Klein

January 30, 2007

Enclosure: Background for EPA's Response to DOE's Statement of Dispute

Time and again the EPA has been asked to approve extensions to the K Basins milestones under the guise of changes to the technical approach. The K Basins project has approached EPA repeatedly with so-called technical changes or technical challenges. Some have been in response to unforeseen technical issues which were legitimate surprises (such as reduced visibility in K East basin from discharge chute water displaced by grouting), some were unforeseen due to poor planning (such as low basin productivity due to reduced visibility caused by fine sludge particles when historical experience showed that any activity which disturbed sludge created puffs of turbid water), and some were the logistic consequences of poor planning (the decision to leave much of the debris in the basins which resulted in moving the debris out of the way many times and slowed the retrieval of sludge). These issues have added cost and created delays. Added cost without increased annual budget caused delays to work. When DOE has approached EPA for milestone changes, DOE presented its desired schedule resulting from all the contributors to delay. With this change package DOE is doing the same. EPA does not have a breakdown of the portion that would qualify as "good cause" under the TPA vs the addition delays desired by DOE.

The TPA in 1998 required that all the sludge be removed from the basins by August 2005. That provided seven years to plan and perform the work. DOE did not focus on sludge until years later and as a result had not done adequate characterization of the sludge, planned treatment options, and evaluated post-treatment sludge waste characteristics needed to proceed with the sludge removal commitments. Two years later (May 2000) DOE agreed to accelerate the sludge removed by one year. If DOE had in fact been working on the sludge in earnest it would have realized that a one year acceleration was not good planning. In the March 2001 change package DOE reaffirmed having the sludge removed from the basin by August 2004. In December 2002 DOE signed a milestone change package that again reaffirmed that all sludge from both basins would be removed by August 2004, less than two years later. This demonstrates that DOE had not used its original seven years to characterize the sludge and plan accordingly. When DOE finally started working on the sludge issue in earnest; DOE realized the entire sludge project was not a sub-two year effort.

In the last three years the DOE has approached EPA several times asking for milestone extensions. In the last months of 2005 DOE sought an extension to most of the remaining milestones for the K Basins project. In January 2006 EPA agreed to an extension of some of the more near term sludge milestones, but EPA was very clear in the milestone change package that DOE had been financially penalized several times on this project for poor performance with the implication that EPA was not seeking another penalty on this activity, and since the project was known to be way behind EPA was granting an extension. EPA was clear in the change package that we did not think there was a technical justification for the changes.

A summary of some of the schedule changes is provided below.

May 2000. EPA agrees to delay the start of the spent nuclear fuel portion of the project based on DOE's rationale that "This will allow the sludge removal in the K East Basin to be fully integrated with the spent nuclear fuel removal." [TPA change package number M-34-00-01] Note that in the end, spent nuclear fuel removal was not at all integrated with sludge removal, in fact they were separated by several years.

July 2002. EPA agrees to delete the requirement for initiation of sludge containerization. The explanation was that "The previous design basis for the milestones was in-basin containerization of sludge followed by removal of sludge from the basin. The new design, and basis for this milestone change, is that sludge will [be] loaded directly into containers external to the basin." [TPA change package number M-34-02-02] Note that in the end, the project used in-basin containers.

December 2002. EPA disapproves a delay in the sludge schedule for the K East Basin, and DOE initiates dispute. Part of DOE's justification was "Challenges in scheduling and performing activities in support of the sludge removal while concurrently installing and verifying the SNF Project Fuel Transfer System." [TPA change package number M-34-02-05] Note that the change in 2000 requested by DOE was to delay fuel so that fuel and sludge removal would begin at the same time.

April 2004. EPA agrees to a delay in sludge retrieval. The justification states "Retrieval of the sludge will be delayed, however sludge will be containerized." The response to public comments for these milestone changes states "The USDOE is committed to removing the sludge and completing the K Basin decommissioning on schedule. If T Plant or any facility is used as part of this effort, it will be funded appropriately." [TPA change package number M-034-04-01] Please note four things: (1) In-basin containerization, which had been part of the plan to isolate sludge from the environment, was deleted in July 2002 because sludge would be removed from the basins as part of the pumping action. With this 2004 change, in-basin sludge containerization is added back into the plan and used as part of the justification to delay sludge retrieval. (2) DOE states it is committed to removing the sludge on schedule, which in fact doesn't happen. (3) DOE states it is committed to completing the K Basins decommissioning on schedule. In fact, DOE is not so committed. (4) DOE states sludge facilities will be funded appropriately. In fact, insufficient funding has contributed to delays.

January 2006. EPA agrees to delays in the sludge project. [TPA change package number M-34-05-04] Note this portion of the justification: "This milestone change package is intended to reflect the current expectations for completion of several K-basin activities. It is a change required because DOE and its contractors did not adequately determine the scope of K-basin sludge and debris removal. As a consequence, inadequate planning and faulty design has resulted in significant delays on this project. While DOE believes that some of the delays may be attributed to technical difficulties and unknown conditions, EPA believes that the complexities of these difficulties and conditions could and should have been anticipated and mitigated in order to meet project milestones...EPA has been willing to work with DOE to adjust schedules on many occasions (1994, 1995, twice in 1999, 2000, 2001, twice in 2002, and 2004)."