



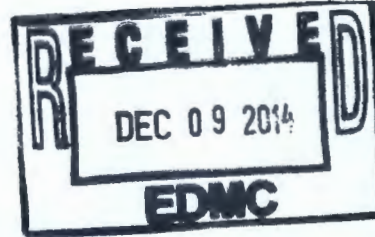
Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

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15-AMRP-0031

DEC 03 2014

Mr. D. A. Faulk, Program Manager
Office of Environmental Cleanup
Hanford Project Office
U.S. Environmental Protection Agency
309 Bradley Boulevard, Suite 115
Richland, Washington 99352



Dear Mr. Faulk:

STATEMENT OF DISPUTE REGARDING DISAPPROVAL OF HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) CHANGE CONTROL FORM M-16-14-02

This letter transmits the Statement of Dispute (Attachment 1) to the Interagency Management Integration Team (IAMIT) on Change Control Form M-16-14-02. The Statement of Dispute explains why the U.S. Department of Energy Richland Operations Office (RL) believes there is good cause to extend the subject Tri-Party Agreement Milestone, preparatory to dispute resolution discussions with the IAMIT. As agreed between you and Doug Shoop, RL's Acting Manager, resolution of the dispute by the IAMIT has been extended to the January IAMIT meeting, currently scheduled for January 9, 2015.

On June 12, 2014, RL notified EPA that Tri-Party Agreement Milestone M-016-175 would be missed, "Notification of Hanford Federal Facility and Consent Order (Tri-Party Agreement) Milestone M-016-175, "Begin Sludge Removal from 105-KW Fuel Storage Basin," September 30, 2014, Will be Missed," (Attachment 2).

On September 30, 2014, RL submitted request for the extension of Tri-Party Agreement Milestone M-016-175, "Begin Sludge Removal from 105-KW Fuel Storage Basin," due date September 30, 2014, (Attachment 3).

On October 14, 2014, the U.S. Environmental Protection Agency (EPA) disapproved the milestone extension request, "Disapproval of Proposed New Date for Milestone M-016-175, "Begin Sludge Removal from 105-KW Fuel Storage Basin," and Notice of Failure to Comply with Milestone M-016-175 and the Assessment of Stipulated Penalties," (Attachment 4).

On October 21, 2014, RL transmitted a letter to EPA initiating dispute resolution based on EPA's disapproval of the milestone extension request, "Initiation of Dispute Resolution Regarding Disapproval of Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Change Control Form M-16-14-02," (Attachment 5).

On November 7, 2014, EPA agreed to extend the dispute for change request M-16-14-02 at the Project Manager level to December 3, 2014, (Attachment 6).

M-16-14-02, M-016-175

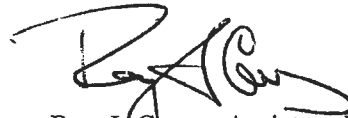
Mr. D. A. Faulk
15-AMRP-0031

-2-

DEC 03 2014

If you have any questions, please contact me, or your staff may contact Roger Quintero of my staff, at (509) 373-0421.

Sincerely,



Ray J. Corey, Assistant Manager
for the River and Plateau

AMRP:RAQ

Attachments (6)

cc w/attachs:

G. Bohnie, NPT

J. V. Borghese, CHPRC

R. Buck, Wanapum

L. J. Cusack, CHPRC

S. Harris, CTUIR

J. A. Hedges, Ecology

S. Hudson, HAB

R. Jim, YN

M. W. Johnson, CHPRC

R. A. Kaldor, MSA

R. A. Lobos, EPA

K. Niles, ODOE

R. E. Piippo, MSA

D. Rowland, YN

Administrative Record

Environmental Portal

STATEMENT OF DISPUTE

MILESTONE M-016-175

“BEGIN SLUDGE REMOVAL FROM 105-KW FUEL STORAGE BASIN”

I. NATURE OF THE DISPUTE

This dispute is raised pursuant to Article XVI, paragraph 59, of the Hanford Federal Facility Agreement and Compliance Order (HFFACO, Tri-Party Agreement or TPA). It concerns the disapproval by the U.S. Environmental Protection Agency (EPA) of Tri-Party Agreement Change Control Form M-16-14-02 (change request). Milestone M-016-175 in Appendix D of the TPA Action Plan is a commitment that the U.S. Department of Energy, Richland Operations Office (DOE-RL) would “Begin Sludge Removal From 105-KW Fuel Storage Basin” no later than September 30, 2014.

On September 30, 2014, DOE-RL submitted the change request to EPA, requesting the due date for Milestone M-016-175 be changed to “TBD” (To Be Determined). In the letter transmitting the change request, DOE-RL asserted that there is good cause for extending the milestone date due to Congressional funding levels for DOE-RL being below the compliance requests for prior years and due to the impacts of the Fiscal Year (FY) 2013 Budget Control Act (sequestration) and the FY 2014 Continuing Resolution. DOE-RL proposed to temporarily change the due date for Milestone M-016-175 to TBD until after a full year budget resolution or appropriation had been passed for FY 2015 and FY 2016-2018 budget levels were established, at which time a new milestone date could be determined. In the interim DOE-RL is continuing to make substantial progress toward meeting the milestone with completion of the K West Basin Annex and procurement of sludge transfer equipment planned for FY 2015.

On October 14, 2014, EPA disapproved change request M-16-14-02 because the request failed to provide the following as required by Action Plan Section 12.3.2:

- The request did not identify length of extension sought;
- The request did not identify any related timetable or schedule that would be affected; and
- The request did not identify any of the circumstances specified in TPA Paragraph 120 as good cause.

On October 21, 2014, DOE-RL initiated dispute resolution regarding EPA's disapproval of change request M-16-14-02 pursuant to TPA Article XVI Resolution of Disputes, Paragraph 59, and Article XL Good Cause for Extensions, Paragraph 124. On November 7, 2014, EPA and DOE-RL agreed to extend the dispute for change request M-16-14-02 to December 3, 2014.

DOE-RL believes the record clearly demonstrates that it has acted in good faith in substantially advancing the Sludge Treatment Project with the resources it has available, and in the context of the many other conditions at the Hanford site which also threaten human health and the environment, but has been prevented from completing Milestone M-016-175 by September 30, 2014 due to circumstances beyond its control, which constitute good cause for justifying an extension of the milestone.

Following in **Section II** of the Statement is **(A)** a description of the sludge project which is being addressed through this related series of milestones, **(B)** the history of sludge challenges and management efforts, and **(C)** a list of the other TPA milestones that are directly related to the completion of the work defined in the milestone currently in dispute.

Section III explains the reasons why DOE-RL believes that there is good cause for an extension of the milestone, and is therefore disputing the EPA refusal to concur with the extension of the date. **Section IV** provides detailed information in support of the explanation in Section III. **Section V** summarizes the efforts that have been made to date to resolve the dispute. Finally, **Section VI** provides DOE-RL's proposed resolution to the dispute.

II. WORK AFFECTED BY THE DISPUTE

A. Description of Hanford K-Basins Sludge

The K Basins were used to store spent nuclear fuel (SNF) from the Hanford N Reactor (beginning in 1975 for the K East Basin, and 1981 for the K West Basin) until 2004, when removal of the fuel contained in canisters was completed. Highly radioactive sludge accumulated in the basins during fuel storage operations, most notably in the K East Basin where the fuel was stored in open-topped, and in many cases, open-bottomed canisters. The K Basins sludge consists of a radioactive mix of small fuel fragments, fuel corrosion products (including fission and activation product nuclides), iron and aluminum oxides, concrete grit, sand, dirt, and operational and biological debris.

In the period of December 2000 to October 2004, spent fuel contained in fuel canisters in the K West Basin was removed to interim dry storage on the Hanford Central Plateau. During the same period, spent fuel stored in the K East Basin was transferred to the K West Basin for washing and repackaging followed by removal to interim dry storage. A total of 2,100 metric tons of fuel was removed from the basins. Fuel processing operations performed at the K West Basin produced additional sludge in the K West Basin. The SNF was washed of sludge, which was collected in the Integrated Water Treatment System (IWTS) Knock-Out Pot (KOP) vessels,

strainers, and settler tubes. In 2007, K East Basin sludge material was transferred to engineered containers located in the K West Basin. The K East Basin was subsequently demolished (2009), and subsurface contamination was remediated as much as possible without impacting the structural integrity of the K East Reactor. To the extent practicable K West Basin floor and pit sludge was collected and staged in separate engineered containers in the K West Basin alongside the previously containerized K East Basin sludge. The IWTS settler tube sludge was moved to engineered containers in 2011, and KOP material was removed from the K West Basin in 2012 and transported to the Canister Storage Building.

Approximately 27 cubic meters of sludge is safely stored in six steel engineered containers under 16 feet of water in the K West Basin. The K Basins sludge consists of particles principally ¼-inch in diameter and smaller and contains approximately 3.3 metric tons of uranium compounds including 1.9 metric tons of metallic uranium, 7.8 kg of plutonium¹, 5.8 metric tons of aluminum and iron corrosion products, 1.7 cubic meters of organic ion exchange resin beads (NRW-37) and trace amounts of polychlorinated biphenyls (PCBs).² Sludge is remote handled transuranic waste (RH-TRU) and will be packaged to meet the waste acceptance criteria for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

The sludge material stored in the K West Basin must be removed to enable removal of the K West Basin Facility, in turn enabling soil and groundwater remediation activities below the facility and to implement Interim Safe Storage of the K West reactor.

¹ 27,000 curies of radioactivity, including 1,440 curies transuranic radionuclides 10,500 curies of strontium and cesium

² Source: HNF-SD-SNF-TI-015, Volume 2 revision 25 design basis values. Radionuclides are decay corrected to 10-31-2013.

The removal of SNF, sludge, debris, and water, and the deactivation of the K Basins is a remedial action under CERCLA, as described in EPA/ROD/R10-99/059, Record of Decision for the U.S. Department of Energy Hanford Site 100 K Area K Basins Interim Remedial Action, (commonly referred to as the K Basins Interim Action Record of Decision [ROD]) and the Amendment to the Record of Decision for the U.S. Department of Energy Hanford Site 100 K Area K Basins Interim Remedial Action (EPA 2005) (commonly referred to as the K Basins Interim Action ROD amendment).

B. History of Sludge Challenges and Management Efforts

The Hanford TPA previously required that the sludge be removed from the K Basins, stabilized, and shipped to a national repository by November 2009 under the M-034 Milestones. The M-034 milestones required treatment of sludge at the 100-K Area, adjacent to the Columbia River, prior to shipping the sludge offsite for disposal. However, difficulties in developing a reliable technology for treating the sludge led to renegotiation of the schedule and plan for sludge removal and treatment. In August of 2009, in order to reduce the risk the sludge poses to the Columbia River, DOE-RL and EPA agreed that the sludge would be removed from the K Basins for storage on the Central Plateau prior to treatment, rather than being treated at the basins before transporting away from the river. Accordingly, a new M-016-00C major milestone (to complete all CERCLA response actions for the 100-K Operable Unit) and new M-016 interim milestones were established. One of the interim milestones, M-016-140, was established to require development of more detailed milestones to integrate the 100-K Decontamination and Demolition (D&D) and other remedial actions with the removal of sludge from the basins and the interim safe storage of the K East and K West nuclear reactor buildings.

M-016-140 was completed March 30, 2011 and established new milestones for 100-K area response actions, which included milestones to initiate (M-016-175) and complete (M-016-176) the removal of sludge from the K West Fuel Storage Basin. These new milestones were negotiated between DOE-RL and EPA in good faith, assuming out-year budget levels would continue to be sufficient to support the new schedule.

At the time M-016-175 was established, DOE-RL assembled a competent and experienced project management and design team to design, procure, construct, and commission a process system to remove the sludge from the K West Basin and transfer it to T Plant on the Hanford Central Plateau for safe storage. The total project cost to remove the sludge, including necessary T Plant modifications, is \$358 million. DOE-RL has made steady and tangible progress on sludge removal using a rigorous design verification and technology development approach. Some of the challenges that needed to be addressed in completing the design were transferring and handling sludge particles that are very dense and highly abrasive to pumps and other components. Additionally, uranium and other radionuclides in the sludge (e.g., plutonium, americium) present a worker safety and health hazard due to the sludge being highly radioactive and pyrophoric in air. Sampling and characterization of the sludge to identify critical characteristics, reduce design uncertainty, and develop representative sludge simulants has been completed. The Maintenance and Storage Facility (MASF) at the Hanford 400 Area was modified to serve as a test and training facility for the sludge retrieval and transfer system, including construction of a test pool to simulate the operating conditions at the K West Basin. DOE-RL conducted full-scale integrated testing of the sludge retrieval and transfer system at MASF using a bounding range of simulants to verify the design met functional and safety requirements. Using this approach, DOE-RL achieved TPA milestones to complete KOP

material processing (removing 11,050 curies away from the Columbia River) and complete sludge removal system final design in September 2012 and September 2013, respectively.

The funds available to DOE-RL to initiate sludge retrieval by the end of FY 2014, as required by the milestone in dispute, were insufficient due to Congressional funding levels for DOE-RL being below the compliance requests for prior years, due to the impacts of the FY 2013 Budget Control Act (sequestration), and the FY 2014 Continuing Resolution. However, DOE-RL is on a path to complete sludge removal from the K West Basin, subject to availability of funds. Final design for the sludge loadout facility (i.e., the K West Basin Annex) is complete and early construction was authorized in FY 2012. Construction of the Annex Building started in FY 2013 and is expected to complete in FY 2015. In FY 2014, an integrated project optimization demonstration was completed at the MASF test facility to validate final sludge removal system design and operability, and the Defense Nuclear Facilities Safety Board closed the remaining technical issues pertaining to STP in their report to the congress on DOE design and construction projects, removing a major source of uncertainty for the project. Facility modification packages for T Plant were completed in FY 2014. Procurement of sludge processing equipment started in FY 2014 and will continue in FY 2015. Starting in FY 2015, K West Basin operators and crafts will be trained at the MASF test facility on the installation, operation, and maintenance of sludge processing equipment. Cold commissioning of the sludge retrieval and transfer system at the MASF test facility is expected to occur in FY 2016 following receipt of equipment procured in FY 2015. Once tested at MASF the equipment will be installed at the K West Basin/Annex and T Plant facility in FY 2017. Sludge removal operations would then start in 2018 following completion of required nuclear facility startup readiness reviews. In parallel with the construction activities the project has continued to identify process improvements that will

reduce project risk as well result in reduced operating costs. For example, in FY 2015 a technical improvement to the sludge retrieval and transfer system design reduced the number of sludge transportation and storage containers necessary to remove sludge from the K West Basin from 24 to 18, and when implemented will result in savings of \$8 million and reduce sludge removal operations by 3 months.

In summary, DOE has acted in good faith in substantially advancing the Sludge Treatment Project within the resources it has available, and in the context of the many other conditions at the Hanford site which also threaten human health and the environment. DOE has also taken actions to reduce project risks and increase the probability that the project can be executed as currently planned.

C. Milestones Related to M-016-175

The following milestones affected by this dispute are successor activities to Milestone M-016-175. If an extension is agreed to for Milestone M-016-175, a similar extension will be needed for these milestones:

M-016-00C	Complete all response actions for the 100 K Area.	12/31/2020
M-016-173	Select K Basin sludge treatment and packaging technology and propose new interim sludge treatment and packaging milestones.	03/31/2015
M-016-176	Complete sludge removal from 105-KW Fuel Storage Basin.	12/31/2015
M-016-178	Initiate deactivation of 105-KW Fuel Storage Basin.	12/31/2015
M-016-181	Complete deactivation, demolition & removal of 105-KW Fuel Storage Basin.	09/30/2019
M-016-186	Initiate soil remediation under 105-KW Fuel Storage Basin.	12/31/2019

III. DISPUTING PARTY'S POSITION WITH RESPECT TO DISPUTE

DOE-RL disagrees with EPA's disapproval of the change request based on good cause for an extension. DOE-RL believes it is appropriate to change the due date for Milestone M-016-175 to TBD, as proposed in the change request, until DOE-RL has sufficient confidence in Hanford Site funding levels to responsibly propose a new date.

Good cause exists for an extension of a Milestone when a "force majeure" event has occurred.³ Force majeure is an "event arising from causes beyond the control of a Party that causes delay in or prevents the performances of any obligation under this Agreement⁴." Force majeure includes "insufficient availability of appropriated funds, if DOE shall have made timely request for such funds as part of the budgetary process as set forth in Article XLVIII (Cost, Schedule, Scope, Integration, Planning and Reporting) of this Agreement⁵."

The discussion of the facts of this issue, as presented in Section IV below, indicates that there was an insufficient availability of appropriated funds, and that DOE-RL worked in good faith with EPA to identify resulting impacts and establish site priorities. Ultimately, not all milestone work could be completed. Had the sludge treatment program activities been fully funded, the milestone would have been completed. Instead, the activities were not fully funded and now an extension request must be approved to establish a new milestone date for completion of the removal and transportation of the sludge.

³ Article XL. GOOD CAUSE FOR EXTENSIONS

⁴ Article XLVII. Force Majeure

⁵ *id.* at G

IV. INFORMATION THE DISPUTING PARTY IS RELYING UPON TO SUPPORT ITS POSITION

A. The Federal Budget Process and the Tri-Party Agreement

In accordance with the Hanford Federal Facility Agreement and Consent Order Article XLVIII and Executive Order 12088, Federal Compliance with Pollution Control Standards, DOE-RL prepares an annual budget request for funding needs to be fully compliant with the Agreement (compliance request) and submits the request to DOE Headquarters (HQ). The budget request is prepared 2 years in advance of the budget execution year and contains information for previous year's allocations or targets that are known at the time of the submittal (for example, the 2015 budget request was prepared in 2013, and contained information about the 2014 request known in 2013). The budget request may change after it is submitted and any impacts are captured in the following year's compliance request.

To prepare its budget request, DOE-RL meets with EPA and the State of Washington Department of Ecology (Ecology) to discuss the compliance request and obtain the regulator's comments and recommendations on site workscope priorities. This input is used to develop a site priority list. Subsequent to the budget request, DOE-RL briefs EPA and Ecology on the President's budget request to Congress, the congressional budget appropriation, and continues to obtain regulator input on site funding priorities throughout the budget process.

After the congressional budget appropriation, DOE-RL allocates funding to its various projects. When the site appropriation is less than the compliance request, projects are allocated funding based on the site priority list developed with input from EPA and Ecology. A project receiving less than compliance request funding then updates its baseline plan that was developed based on compliance level funding and revises work scope completion dates, including TPA milestones.

B. Budget Impacts to Sludge Treatment Project in FYs 2012, 2013, and 2014

Pursuant to TPA Article XLVIII, Paragraph 148, DOE took all necessary steps to obtain timely funding in order to fully meet its obligations under the TPA. In its annual budget request for FYs 2012, 2013, and 2014, DOE included estimated funding levels required to achieve full compliance with the TPA. In all three years, the annual budget appropriation was less than the compliance request. DOE worked in good faith with EPA throughout the budget process, routinely briefed EPA on budget requests and appropriations as events occurred, and sought EPA's comments and recommendations on workscope priorities.

FY 2012:

In 2010 DOE-RL submitted a compliance budget request for FY 2012 at \$1,599 Million, which included a compliance need of \$86 Million to execute the STP. At the time of the budget request, Milestone M-016-175 was expected to complete by Sept. 30, 2014.

The FY 2012 appropriation for RL was \$1,022 Million. Based on the site priorities, the allocation for STP was \$76 Million, resulting in a shortfall of \$10 Million to fully execute the STP scope.

To implement the funding shortfall, T Plant modifications were deferred into FY 2013 and delayed 12 months, and moved onto the critical path for the project. Sludge removal system procurements were also deferred into FY 2013 and delayed 5 months. Overall, the completion date for M-016-175 was delayed 6 months from January 2014 to July 2014.

FY 2013:

In 2011 DOE-RL submitted a compliance budget request for FY 2013 at \$1,224 Million, which included a compliance need of \$79 Million to execute the STP. At the time of the budget request, Milestone M-016-175 was still expected to complete by Sept. 30, 2014.

In March 2013 the President canceled \$85 Billion in budgetary resources across the Federal Government. As a result of this sequestration, funding for DOE-RL was cut by \$78 Million and was applied equally across all projects and programs. The FY 2013 appropriation (after sequestration) for RL was \$943 Million. Based on the site priorities, the allocation for STP was \$62 Million, resulting in a shortfall of \$17 Million to fully execute the STP scope. The \$17 Million shortfall occurred in two steps: \$10 Million at the start of FY 2013 (October 2012), and \$7 Million in March 2013 as a result of the budget sequestration.⁶

To implement the initial funding shortfall, T Plant modifications and sludge system procurements were both delayed an additional 12 months and deferred into FY 2014.

Completion of Milestone M-016-175 was also delayed 12 months to July 2015.

To implement sequestration, Annex construction was suspended in March 2013 with plans to restart in October 2013 (FY 2014), and thus delayed 6 months. To mitigate the schedule delay caused by sequestration, and in anticipation of FY 2014 funding, DOE-RL remobilized construction crews for Annex construction 2 months early in August 2013 using funds identified from 100K Area operations work force restructuring. Also, a constructability review was

⁶ In March 2013, FY 2013 funding levels for DOE-RL were reduced by over \$78 Million due to sequestration required by the Budget Control Act of 2011, as amended by the American Taxpayer Relief Act of 2012, and as reflected in the Continuing Resolution that passed Congress on March 27, 2013.

performed to identify strategies to accelerate the project and improve field construction execution, contract drawings and specifications, and construction direction and sequencing.

Some additional delays to Annex construction resulted from low productivity by the construction contractor and less than adequate performance regarding quality affecting work, and from subsequent corrective actions taken to improve the design contractor's performance. These changes required additional resources for construction engineering and management, quality assurance oversight, and project controls. Implementation of the revised approach resulted in a cost increase of \$30 Million and an additional schedule delay of 12 months, and placed Annex construction on the project critical path. The changes to management of the project combined with the sequestration impact resulted in a total delay of 18 months to the Annex construction schedule.

Overall, the completion date for M-016-175 was delayed 24 months from July 2014 to July 2016, initially 12 months due to funding reductions, and later an additional 12 months to address construction performance issues. However, had the project received adequate funding the M-016-175 milestone would have been met on schedule even with the delays associated with contractor performance issues.

FY 2014:

In 2012 DOE-RL submitted a compliance budget request for FY 2014 at \$1,346 Million, which included a compliance need of \$86 Million to execute the STP. At the time of the budget request, Milestone M-016-175 was still expected to complete by 9/30/2014. In October 2013 the entire federal government experienced a lapse in appropriations, causing facility shutdowns and/or work slowdowns that delayed STP work 1 month. DOE-RL operated on continuing

resolution funding until March 2014 when 2014 Omnibus funding was received. The final FY 2014 appropriation for RL was \$1,013 Million, with an allocation for STP of \$68 Million, resulting in another shortfall of \$18 Million to fully execute the STP scope.

To implement the funding shortfall, T Plant modifications were deferred into FY 2015 and delayed an additional 12 months. Sludge removal system procurements were also deferred into FY 2015 and delayed an additional 12 months, placing equipment procurements on the project critical path. Overall, the completion date for M-016-175 was delayed an additional 9 months from July 2016 to April 2017.

FY 2015:

In 2013 DOE-RL submitted a compliance budget request for FY 2015 at \$1,497 Million, which included a compliance need of \$142 Million to execute the STP. At the time of the budget request, Milestone M-016-175 was expected to be missed with a completion date in FY 2017. The President's FY 2015 budget request for DOE-RL was at \$914 Million with \$103 Million for the STP, further delaying M-016-175 to FY 2018. RL is currently operating on continuing resolution because the final FY 2015 budget has not been established.

V. DESCRIPTION OF STEPS TAKEN TO RESOLVE DISPUTE

DOE-RL has communicated to the EPA the status of the STP and issues impacting progress on a timely and regular basis as required by the TPA, including impacts resulting from insufficient availability of appropriated funds. DOE-RL has also worked with EPA and Ecology via the Hanford Senior Executive Committee (SEC) to identify site funding shortfalls and prioritize work.

A. Communication of Status of Milestone M-016-175

On October 18, 2012, DOE-RL informed EPA at the TPA Quarterly Milestone Review meeting that Milestone M-016-175 and other affected milestones were at risk due to reduced site funding and higher priority work. DOE-RL indicated their intent to work with EPA and Ecology regarding FY 2013 work scope priorities and compliance with future milestones.

On April 24, 2013, DOE-RL formally notified EPA and Ecology that four TPA milestones, including Milestone M-016-175, were in jeopardy of being missed due to the FY 2013 budget sequestration and the Continuing Resolution passed in March 2013 (RL letter 13-AMRP-0136).

On April 30, 2014, DOE-RL briefed the EPA and Ecology on the FY 2015 President's Budget request and FY 2016 estimated requirements. The briefing noted that the start of sludge removal would be delayed.

On May 8, 2014, at the 100/300 Area Unit Managers Meeting, DOE-RL informed EPA and Ecology that the milestone for starting sludge removal from the K West Basin would be missed.

On June 12, 2014 DOE-RL formally notified EPA that Milestone M-016-175 would be missed (RL letter 14-AMRP-0214).

On July 16, 2014, DOE-RL met with EPA and Ecology to discuss in detail STP progress to date, project delays caused by insufficient funding, and the projected timeline to complete sludge removal based on currently assumed site funding levels and site priorities.

On September 30, 2014, DOE-RL submitted a TPA change request to EPA, requesting the due date for Milestone M-016-175 be changed to "TBD" (RL letter 14-AMRP-0311). In the letter transmitting the change request, DOE-RL asserted that there is good cause for extending the

milestone date due to Congressional funding levels for DOE-RL being below the compliance requests for prior years, due to the impacts of the FY 2013 Budget Control Act (sequestration), and the FY 2014 Continuing Resolution. DOE-RL proposed to temporarily change the due date for Milestone M-016-175 to TBD until after a full year budget resolution or appropriation had been passed for FY 2015 and FY 2016-2018 budget levels were established, at which time a new milestone date could be determined.

On October 14, 2014, EPA disapproved change request M-16-14-02 because the request failed to provide the following as required by Action Plan Section 12.3.2: the request did not identify length of extension sought; the request did not identify any related timetable or schedule that would be affected; and the request did not identify any of the circumstances specified in TPA Paragraph 120 as good cause.

On October 21, 2014, DOE-RL initiated dispute resolution regarding EPA's disapproval of change request M-16-14-02 pursuant to TPA Article XVI Resolution of Disputes, Paragraph 59, and Article XL Good Cause for Extensions, Paragraph 124. On November 7, 2014, EPA and DOE-RL agreed to extend the dispute for change request M-16-14-02 to December 3, 2014.

B. Communication of Budget Shortfalls and Work Scope Priorities

Several Senior Executive Committee (SEC) meetings were held in 2012-2014 to discuss Hanford Site priorities and issues. The SEC membership, as defined by the TPA, includes senior managers from each of the Tri-Party agencies. At the SEC meeting on September 20, 2012, EPA, Ecology, and DOE-RL discussed expected budget shortfalls in FY 2013 and FY 2014.

At the SEC meeting on February 12, 2013, DOE-RL indicated that because of lower than expected site budgets and new work scope (e.g. highly radioactive soil contamination beneath

the 324 Building, 170 newly discovered waste sites, and deep chromium contamination near the Columbia River), some of the primary elements of the 2015 Vision (including removal of sludge from the K West Basin) would be realized later than originally planned. DOE-RL informed EPA and Ecology that Milestone M-016-175 would likely be missed. DOE-RL presented a list of 2016-2020 work priorities, developed in cooperation with EPA and Ecology. The 2016-2020 list identified completion of sludge removal from the K West Basin as the number two priority. Thus, as early as February 2013, the expectation was established that Milestone M-016-175 would be missed because of insufficient site funding.

At the SEC meeting on April 30, 2013, DOE-RL presented a briefing on site funding and priorities which indicated that sludge removal from the K West Basins would not be completed until the end of FY 2016 (September 2016).

At the SEC meeting on June 9, 2014, DOE-RL presented a briefing on the FY 2015 President's budget request and site priorities. The requested site budget was \$914 Million compared to the compliance request of approximately \$1,500 Million. DOE-RL projected construction of the K West Basin Annex Building would be completed in FY 2015, and progress toward sludge removal from the K West Basin would continue in FY 2016.

VI. RECOMMENDED RESOLUTION

DOE-RL believes that it has acted in good faith in substantially advancing the STP with the resources it has had available, in the context of the site work priorities DOE-RL has developed in cooperation with EPA and Ecology, but has been prevented from completing Milestone M-016-175 by September 30, 2014 due to circumstances beyond its control, which constitute good cause for justifying an extension of the milestone.

DOE-RL proposes EPA approve change request M-16-14-02, temporarily changing the due date for Milestone M-016-175 to TBD until after a full year budget resolution or appropriation has been passed for FY 2015 and FY 2016-2018 budget levels are established, at which time a new milestone date can be determined. In the interim DOE-RL will continue construction of the K West Basin Annex and procurement of sludge removal equipment with available funding. DOE-RL will also continue to keep EPA informed on progress toward beginning sludge removal and work with EPA prioritize work based on site funding.



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

14-AMRP-0214

JUN 12 2014

Mr. D. A. Faulk, Program Manager
Office of Environmental Cleanup
Hanford Project Office
U.S. Environmental Protection Agency
309 Bradley Boulevard, Suite 115
Richland, Washington 99352

Dear Mr. Faulk:

**NOTIFICATION OF HANFORD FEDERAL FACILITY AND CONSENT ORDER
(TRI-PARTY AGREEMENT) MILESTONE M-016-175, "BEGIN SLUDGE REMOVAL
FROM 105-KW FUEL STORAGE BASIN," SEPTEMBER 30, 2014, WILL BE MISSED**

The purpose of this letter is to notify the U.S. Environmental Protection Agency (EPA) that the subject Tri-Party Agreement Milestone will be missed for good cause due to Congressional funding levels for the U.S. Department of Energy Richland Operations Office (RL) being below the President's Budget requests for prior years, as well as the impacts of the Fiscal Year (FY) 2013 Budget Control Act (sequestration) and FY 2014 Continuing Resolution.

RL has continued to keep EPA informed of progress on the project through quarterly milestone reviews, Unit Manager Meetings, and periodic 100-K regulatory interface meetings. At the May 8, 2014, Unit Manager Meeting, RL project staff informed EPA and the State of Washington Department of Ecology that the milestone will be missed due to the impacts of the continuing resolution and sequestration.

RL is revising the schedule for removal of sludge based on the President's 2015 Budget proposal and will submit a Tri-Party Agreement change control form reflecting the revised schedule by September 30, 2014. My staff will continue to keep you informed of any changes in status for this project through regularly scheduled interface meetings.

If you have any questions, please contact me or your staff may contact Roger Quintero, Federal Project Director for the Sludge Treatment Project on (509) 373-0421.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray J. Corey", is written over a horizontal line.

Ray J. Corey, Assistant Manager
for the River and Plateau

AMRP:SNB

cc: See Page 2

Mr. D. A. Faulk
14-AMRP-0214

-2-

JUN 12 2014

cc: G. Bohnce, NPT
R. Buck, Wanapum
L. M. Dittmer, CHPRC
J. C. Fulton, CHPRC
S. Harris, CTUIR
J. A. Hedges, Ecology
R. Jim, YN
M. W. Johnson, CHPRC
R. A. Lobos, EPA
K. Niles, ODOE
R. E. Piippo, MSA
Administrative Record, H6-08



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

14-AMRP-0311

SEP 30 2014

Mr. D. A. Faulk, Program Manager
Office of Environmental Cleanup
Hanford Project Office
U.S. Environmental Protection Agency
309 Bradley Boulevard, Suite 115
Richland, Washington 99352

Dear Mr. Faulk:

PROPOSED NEW DATE FOR HANFORD FEDERAL FACILITY AND CONSENT ORDER (TRI-PARTY AGREEMENT) MILESTONE M-016-175, "BEGIN SLUDGE REMOVAL FROM 105-KW FUEL STORAGE BASIN"

In a letter dated June 12, 2014, (14-AMRP-0214) the U.S. Department of Energy Richland Operations Office (RL) notified the U.S. Environmental Protection Agency (EPA) that the subject Tri-Party Agreement Milestone would be missed for good cause due to Congressional funding levels for RL being below the President's Budget requests for prior years, due to the impacts of the Fiscal Year (FY) 2013 Budget Control Act (sequestration), and the FY 2014 Continuing Resolution. RL committed to provide EPA a Tri-Party Agreement change control form reflecting a revised schedule by September 30, 2014, the due date for the milestone.

RL is currently not in a position to responsibly propose a new date for Milestone M-016-175 due to continuing funding uncertainty in FY 2015 and beyond. As you are aware the Federal Government will start the fiscal year under a Continuing Resolution and at this time RL does not know what the RL appropriation will be. Additionally, the budget request for FY 2015 created a Congressional line item (capital) construction account for the K Basin Sludge Treatment Project (STP) Engineered Container Retrieval and Transfer System (ECRTS). However, the line item account underfunds the STP by \$20 million and RL anticipates this will cause an 18 to 24 month delay to the project beyond the current baseline completion date of September 2018. Funding for line item projects is "fenced off" and cannot be used for other purposes or be supplemented by other funding sources. RL is working with DOE-HQ to correct this funding discrepancy.

RL proposes the due date for Milestone M-016-175 be changed to TBD (to be determined). A new milestone date may be determined after a full year budget resolution or appropriation has been passed and FY 2016-2018 budget levels are established. In the interim RL is continuing work to complete construction of the K West Basin Annex and procurement of equipment needed for the ECRTS based on our currently anticipated funding levels. My staff will continue to keep you informed on progress toward beginning sludge removal through regularly scheduled interface meetings.

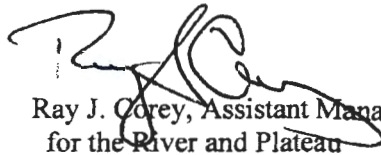
Mr. D. A. Faulk
14-AMRP-0311

-2-

SEP 30 2014

If you have any questions, please contact me or your staff may contact Roger Quintero, Federal Project Director for the Sludge Treatment Project on (509) 373-0421.

Sincerely,



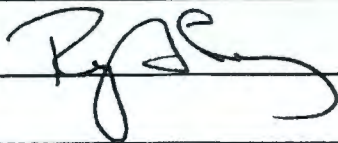
Ray J. Corey, Assistant Manager
for the River and Plateau

AMRP:RAQ

Attachment

cc w/attach:

G. Bohnce, NPT
J. V. Borghese, CHPRC
R. Buck, Wanapum
L. J. Cusack, CHPRC
S. Harris, CTUIR
J. A. Hedges, Ecology
S. Hudson, HAB
R. Jim, YN
M. W. Johnson, CHPRC
R. A. Kaldor, MSA
R. A. Lobos, EPA
K. Niles, ODOE
R. E. Piippo, MSA
D. Rowland, YN
Administrative Record
Environmental Portal

Change Number M-16-14-02	Federal Facility Agreement and Consent Order Change Control Form	Date September 26, 2014
Originator R. J. Corey		Phone (509) 376-0108
Class of Change <input type="checkbox"/> I - Signatories <input checked="" type="checkbox"/> II - Executive Manager <input type="checkbox"/> III - Project Manager		
Change Title Extend Milestone due date for interim TPA Milestone M-016-175.		
Description/Justification of Change TPA Interim Milestone M-016-175, Begin Sludge Removal from 105-KW Fuel Storage Basin, is due September 30, 2014. Activities that support initiating sludge removal have been delayed due to Congressional funding levels for RL being below the President's Budget requests, impacts of the Fiscal Year (FY) 2013 Budget Control Act (sequestration), the FY 2014 Continuing Resolution, and continuing uncertainty regarding funding in FY 2015 and beyond. Final FY 2015 funding is not expected to be known until December 2015 at the earliest. Based on these impacts, RL is not in a position to responsibly propose a new milestone date. The due date for Milestone M-16-175, "Begin sludge removal from 105-KW Fuel Storage Basin," is requested to be changed to TBD. A new milestone date may be determined after a FY 2015 budget has been passed by Congress and subsequent discussion by EPA and RL on funding impacts and Hanford site priorities. <i>Description/Justification of Change continued on next page.</i>		
Impact of Change This change will extend the due date for milestone M-016-175 to allow activities that support initiating of sludge removal from the 105-KW Fuel Storage Basin to be completed.		
Affected Documents The Hanford Federal Facility Agreement and Consent Order (HFFACO), as amended, and Hanford Site internal planning management, and budget documents.		
Approvals <div style="display: flex; justify-content: space-between;"> <div> Ray Corey DOE  </div> <div> 9/30/14 Date </div> <div> X Approved _____ Disapproved </div> </div> <div style="display: flex; justify-content: space-between;"> <div> Dennis Faulk EPA </div> <div> _____ Date </div> <div> ____ Approved _____ Disapproved </div> </div> <div style="display: flex; justify-content: space-between;"> <div> N/A Ecology </div> <div> _____ Date </div> <div> ____ Approved _____ Disapproved </div> </div>		

Description/Justification of Change (continued)

Modifications are denoted by using ~~strikeout~~ to indicate text deletions and double underline to indicate text additions.

Number	Milestone	Due Date
M-016-175 Lead Agency: EPA	Begin sludge removal from 105-KW Fuel Storage Basin	09/30/14 <u>TBD</u>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
HANFORD/INL PROJECT OFFICE
309 Bradley Boulevard, Suite 115
Richland, Washington 99352

October 14, 2014

Mr. Ray J. Corey
Assistant Manager
Roger Quintero
Project Manager
U.S. Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

Re: DISAPPROVAL OF PROPOSED NEW DATE FOR MILESTONE M-016-175, "BEGIN SLUDGE REMOVAL FROM 105-KW FUEL STORAGE BASIN," AND NOTICE OF FAILURE TO COMPLY WITH MILESTONE M-016-175 AND THE ASSESSMENT OF STIPULATED PENALTIES

Dear Mr. Corey and Quintero:

The purpose of this letter is to respond to your request to modify Hanford Federal Facility Agreement and Consent Order (the Tri-Party Agreement or TPA) milestone M-016-175. This response is provided in accordance with Section 12.3.3 of the TPA Attachment 2 (Action Plan).

EPA is disapproving your request for the following reasons, any one of which is cause for disapproval:

- The request failed to provide the following as required by Action Plan Section 12.3.2:
 - The request did not identify length of extension sought;
 - The request did not identify any related timetable or schedule that would be affected; and
 - The request did not identify any of the circumstances specified in TPA Paragraph 120 as good cause.

The Department of Energy (DOE) request letter attributes the cause for the needed extension to insufficient funding in prior years. However, the request is not timely as it was not submitted until well after the prior budget appropriations were made, and in fact it was not made until September 30, 2014, which is the date the work required by the milestone was due to have been completed.

EPA has extended milestones for this work a number of times in the past providing DOE with ample time to fund and commence sludge removal. The following KW Basin milestones, which are now part of the M-16 milestone series, have all been extended, in some cases more than once: M-34-00T08, M-34-00A, M-34-10, M-34-30, and M-34-31. The original 2002 date by which sludge removal was to be completed has been extended 13 years.

RECEIVED
OCT 14 2014
DOE-RLCC

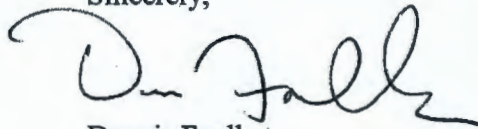
DOE has not demonstrated insufficient availability of appropriated funds. Between 2009 and 2011 DOE RL received over 1.6 billion dollars in ARRA funds and was a year ahead of schedule on Sludge Treatment Project Phase 1 Removal of Containerized Sludge, yet sludge removal has not started. Also, DOE has not attempted to reach agreement with EPA on adjustments in work scope or milestones as would be required by TPA Paragraph 149 G if appropriations differed from funding levels needed to comply with milestone M-16-175. EPA has consistently made clear to DOE EPA's expectation that sludge removal work be funded and proceed, including in letters to DOE dated April 7, 2009 and September 10, 2012. EPA has identified sludge removal as one of the highest Hanford cleanup priorities.

Pursuant to TPA Paragraph 59, DOE has 30 days to submit a written statement of dispute if DOE disputes EPA's disapproval of its change request and EPA and DOE fail to informally resolve the dispute.

In addition, EPA is notifying DOE that as of October 1, it has failed to comply with Milestone M-016-175 "BEGIN SLUDGE REMOVAL FROM 105-KW FUEL STORAGE BASIN," which is a term or condition of Part III of the TPA. DOE is therefore subject to stipulated penalties specified in TPA Paragraph 72 for each week and part thereof that DOE fails to meet the milestone. Given the significance of the violation, stipulated penalties are hereby being assessed in accordance with TPA Paragraphs 72 and 73 at the rate of \$5,000 for the first week (or part thereof) and \$10,000 for each additional week (or part thereof) beginning on October 1, 2014 and continuing until Milestone M-016-175 is met. As provided by TPA Paragraph 73, DOE has 15 days upon receipt of this notice to invoke dispute resolution on the question of whether the failure to comply with Milestone M-016-175 did in fact occur.

If you have any questions on this matter, please contact me at (509) 376-8631.

Sincerely,



Dennis Faulk
Program Manager, Hanford Project Office

Enclosure

cc:

J. A. Hedges, Ecology
K. Niles, ODOE
R. Jim, Yakama Nation
G. Bohnce, Nez Perce
S. Harris, CTUIR



Department of Energy
Richland Operations Office
P.O. Box 550
Richland, Washington 99352

15-AMRP-0014

OCT 21 2014

Mr. D. A. Faulk, Program Manager
Office of Environmental Cleanup
Hanford Project Office
U.S. Environmental Protection Agency
309 Bradley Boulevard, Suite 115
Richland, Washington 99352

Dear Mr. Faulk:

**INITIATION OF DISPUTE RESOLUTION REGARDING DISAPPROVAL OF
HANFORD FEDERAL FACILITY AGREEMENT AND CONSENT ORDER (TRI-PARTY
AGREEMENT) CHANGE CONTROL FORM M-16-14-02**

The purpose of this letter is to invoke dispute resolution pursuant to Tri-Party Agreement Article XVI Resolution of Disputes, Paragraph 59, and Article XL Good Cause for Extensions, Paragraph 124, regarding the U.S. Environmental Protection Agency's (EPA) disapproval of the subject Tri-Party Agreement Change Control Form requesting a revision to the due date for Tri-Party Agreement Milestone M-016-175, "Begin Sludge Removal From 105-KW Fuel Storage Basin."

The U.S. Department of Energy Richland Operations Office will make a good faith effort to informally resolve this dispute with EPA at the Project Manager level. If you have any questions, please contact me, or your staff may contact Roger Quintero of my staff, on (509) 373-0421.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray J. Corey".

Ray J. Corey, Assistant Manager
for the River and Plateau

AMRP:RAQ

cc: See page 2

Mr. D. A. Faulk
15-AMRP-0014

-2-

OCT 21 2014

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