



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

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03-ERD-0124

MAY 29 2003

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EDMC

Mr. Rick Bond, Transition Project Manager
State of Washington
Department of Ecology
1315 W. Fourth Avenue
Kennewick, Washington 99336

Dear Mr. Bond:

RESPONSES TO STATE OF WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY)
ON REMOVAL ACTION WORK PLAN FOR 100-N AREA ANCILLARY FACILITIES

- References:
- (1) RL ltr to J. B. Price, Ecology, from J. B. Hebdon, "Responses to State of Washington Department of Ecology (Ecology) on Accelerated Review and Approval of the Sampling and Analysis Plan for the 100/300 Area Remaining Sites (DOE/RL-99-58, Rev. 1, Draft A, and Resolution of Comments on the Remedial Design Report/Remedial Action Work Plan for the 100 Area (DOE/RLL-96-17, Rev. 4)," dtd May 19, 2003.
 - (2) Ecology ltr to D. C. Smith, RL, from R. Bond, "Removal Action Work Plan for 100-N Area Ancillary Facilities (DOE/RL-2002-70, Draft A," dtd May 9, 2003.
 - (3) Ecology ltr to J. B. Hebdon, RL, from J. Price, "Remedial Design Report/ Remedial Action Work Plan for the 100-Area (DOE/RL-96-17, Rev. 4)," dtd April 8, 2003.

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The U.S. Department of Energy, Richland Operations Office (RL) is in receipt of your letter of May 9, 2003, (Reference 2). The issues raised in this letter are similar to issues raised in a previous letter from Ecology (Reference 3) that RL responded to earlier this month (Reference 1). RL believes that the conclusion presented in our previous response is appropriate with regards to your request to develop data quality objectives (DQOs) for interim remedial actions (IRAs) that are based on the February 12, 2001, version of the Model Toxics Control Act Cleanup Regulation (WAC 173-340).

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As you know, the cleanup standards reflected in the 100-N Area Ancillary Facilities Work Plan were selected to be consistent with the requirements of the Remedial Design Report/Remedial Action Work Plan (RDR/RAWP) for the 100 Area (DOE/RL-96-17, Rev. 4). The CERCLA interim action Records of Decision (RODs) addressed by the 100 Area RDR/RAWP, as well as the CERCLA Action Memorandum for the 100-N Area ancillary facilities were signed prior to the February 2001 amendments to WAC 173-340. CERCLA regulations state that once a ROD is signed, the applicable or relevant and appropriate requirements included in the ROD are frozen unless and until a determination is made that the old standards are not protective of human health and the environment. If the lead agency determines that the old standards are not protective, then the agency must go through the process of determining whether the new standards qualify as an ARAR, and then whether an Explanation of Significant Difference (ESD) or modification to the ROD is needed.

Specifically, 40 CFR §300.430(f)(ii)(B) states: "Onsite remedial actions selected in a ROD must attain those ARARs that are identified *at the time of ROD signature*." [Emphasis added.] And 40 CFR §300.430(f)(ii)(B)(1) states: "Requirements that are promulgated or *modified after the ROD signature* must be attained. .. only when determined to be applicable or relevant and appropriate and necessary to ensure that the remedy is protective of human health and the environment." [Emphasis added.]

RL is mindful of the requirement to demonstrate protection of human health and the environment as part of the CERCLA closeout process. RL has been working with EPA and Ecology in developing methodologies for addressing this requirement. For example, the 100-B/C Risk Assessment Pilot Project is a significant effort specifically designed to address the protectiveness issue. An external peer review of this project was recently completed, and RL is currently evaluating the recommendations of the peer review team. The pilot project effort utilizes (among other things) data gathered from work completed as part of the interim remedial action ROD.

Although the 100-B/C Pilot Project is being pursued as an activity outside of the requirements of the interim remedial action ROD, RL recognizes that information collected under the interim action RODs represents data that may be beneficially utilized in post-ROD protectiveness evaluations. In this regard, RL will continue to evaluate sampling and analysis provisions (including method detection limits) associated with all of the interim action RODs to see if enhancements could be made so that the information is more useful in assessing protectiveness. Implementation of such enhancements is, however, a discretionary measure at this time, beyond the requirements of the previously signed RODs.

In summary, RL believes that imposition of new regulatory provisions into previously signed RODs can only be accomplished through the CERCLA ROD revision process. This would require a demonstration that the new standards are necessary to ensure protectiveness, followed by issuance of an Explanation of Significant Differences (ESD) or a ROD amendment. However, RL will continue to evaluate sampling and analysis provisions associated with the

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interim remedial actions and make enhancements, where RL deems appropriate, to make the data more useful during the post-ROD protectiveness assessment. RL will keep Ecology informed of any enhancements in an attempt to ensure that data collected as part of the interim action ROD is also supportive of evaluations occurring after work associated with the interim action RODs is complete.

Should you have any questions on this matter or need further information, please contact Chris Smith, ERD, on 372-1544.

Sincerely,



for
Joel Hebdon, Director
Regulatory Compliance and Analysis Division

ERD:DCS

cc: D. Faulk, EPA
J. B. Price, Ecology
Admin Record (100-N Area Ancillary
Facilities)