



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

3100 Port of Benton Blvd • Richland, WA 99354 • (509) 372-7950

October 14, 2008

RECEIVED
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EDMC

Mr. David A. Brockman
Richland Operations Office
United States Department of Energy
P. O. Box 550, MSIN: A7-50
Richland, Washington 99352

Re: Change Control Form M-91-08-04 Modification of Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement M-91 Series Milestones), submitted to Ecology September 30, 2008, attached to letter 08-AMCP-0286.

Dear Mr. Brockman:

The Department of Ecology received the M-91-08-04 Class II Change Control Form extending the M-91-42 Mixed Low-Level Waste (MLLW) Milestone from December 31, 2008, to March 31, 2009. We appreciate the advance notice that the M-91-42 MLLW treatment milestone may be missed.

Ecology does not intend to change the M-91-42 MLLW treatment milestone at this time, as this milestone was already changed on August 12, 2008, via the M-91-08-02 TPA Class II Change Control Form. Furthermore, we do not agree that the United States Department of Energy (USDOE) has shown the Tri-Party Agreement Article XLVII's Force Majeure provisions are applicable in this situation.

Based on our understanding and a records review, a "continuing resolution" authorizes government agencies to fund their agencies at the current level until either the resolution expires or an appropriations bill is passed. Basically, no new work scope can be started. However, existing work scope – including on-going treatment of MLLW per the requirements of the M-91-42 Milestone – is allowed under the continuing resolution appropriation. Thus, Ecology does not consider the fact that USDOE is operating under a continuing resolution, together with the unspecified statement that USDOE received funding "later than planned," to be an "event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement."

This is underscored by the recent history of Milestone M-91-42. USDOE stated a positive cost variance of \$3,003,000 during the January 2008 TPA Quarterly Milestone Review for the M-91 Series. This variance was attributed to lower treatment costs than planned. However, USDOE also stated that the M-91-42 MLLW treatment milestone was "at risk" due to the Fiscal Year 2008 funding appropriation not being adequate to meet the milestone. In August 2008, at USDOE's

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request, Ecology approved Tri-Party Agreement M-91-08-02 Change Control Form to reduce the amount of MLLW to be treated by December 31, 2008, from 8,150 cubic meters to 7,220 cubic meters. In the time leading up to the M-91-08-02 Class II Change Control Form, USDOE justified this request in part as follows:

The M-91-42 MLLW 12/31/07 milestone was nearly missed because Fiscal Year (FY) 2007 funding was not adequate to treat enough waste to meet the milestone. This required the use of FY08 funds, which do not become available until October 2007. Due to the treatment lag time it is difficult to accomplish treatment by 12/31/07 with FY08 funds. This also resulted in a large portion of FY08 funds being used to meet the 12/31/07 milestone leaving little in the original FY08 budget for progress toward the 12/31/08 volume. Fortunately the appropriation in January provided some additional funds over the FY08 President's budget. These additional funds are what make it possible to achieve the proposed 7,200 cubic meter cumulative level of treatment.

(Draft M-91-42 MLLW FY08 Budget Shortfall Change Package Background Information table attached to email correspondence from G. Sinton to M. Mandis, dated May 13, 2008.)

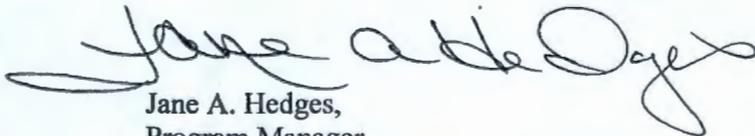
Ecology also reviewed the informal Waste Activity Reports and found that no MLLW was shipped for treatment in May and July of 2008. Small quantities (less than 60 cubic meters) were shipped in January, February, April, and June of 2008. In February, March, April, May, June, July, and August of 2008, USDOE's onsite disposal of MLLW was less than 65 cubic meters per month. Nevertheless, at the August 28, 2008 M-91 Milestone Project Manager's Meeting (following approval of the M-91-08-02 Change Control Form), USDOE stated that the M-91-42 MLLW treatment milestone was "On schedule for the revised MLLW and TRUM commitments."

Based on these circumstances, Ecology does not intend to change the M-91-42 MLLW treatment milestone at this time and is rejecting the TPA Class II Change Control Form. We encourage USDOE to:

1. Continue the efforts stated above to meet the M-91-42 MLLW treatment milestone.
2. Provide Ecology weekly treatment status notification so we may continue to monitor the milestone completion activities.

Please contact Deborah Singleton at 372-7923, if you have any questions or concerns.

Sincerely,



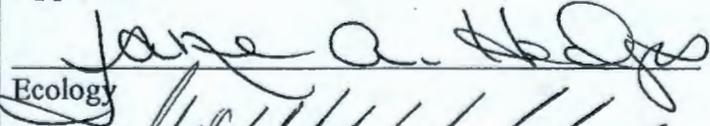
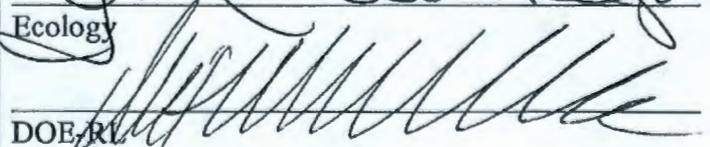
Jane A. Hedges,
Program Manager
Nuclear Waste Program

mm/lkd
Enclosure
cc: See next page

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cc w/enc:

Nick Ceto, EPA
Mike Collins, USDOE
Larry Romine, USDOE
Robert Piippo, CHPRC
Terry Noland, FH
Stuart Harris, CTUIR
Gabriel Bohnee, NPT
Russell Jim, YN
Susan Leckband, HAB
Ken Niles, ODOE
Administrative Record: M-91-42/MLLW
Environmental Portal

Change Number M-91-08-04	Federal Facility Agreement and Consent Order Change Control Form Do not use blue ink. Type or print using black ink.	Date September 22, 2008
Originator Matt McCormick		Phone (509) 373-9971
Class of Change <input type="checkbox"/> I – Signatories <input checked="" type="checkbox"/> II – Executive Manager <input type="checkbox"/> III – Project Manager		
Change Title Modification of <u>Hanford Federal Facility Agreement and Consent Order</u> (Tri-Party Agreement) M-91-42 MLLW Treatment Interim Milestone		
Description/Justification of Change This change package extends the due date of Tri-Party Agreement Interim Milestone M-91-42, item 2, E. "7,720 cubic meters (cumulative) shall be treated by 12/31/2008" to 3/31/2009. The due date is being extended per the Tri-Party Agreement Article XLVII's Force Majeure provisions. Due to the FY 2008 continuing resolution, funding was received later than planned delaying when MLLW could be shipped for treatment. This impacts the ability of RL to get the required treatment accomplished by the December 31, 2008, completion date. <p style="text-align: center;"><i>(Continued on page 2.)</i></p>		
Impact of Change Approval of this change package extends the completion date for the treatment of 7,220 cubic meters of CH-Mixed Low-Level Waste (MLLW) from December 31, 2008, to March 31, 2009.		
Affected Documents The <u>Hanford Federal Facility Agreement and Consent Order</u> , as amended and Hanford Site internal planning, management and budget documents (e.g., baseline control documents, related work authorization and directives).		
Approvals		
Ecology 	10/14/08 Date	Approved _____ Disapproved <input checked="" type="checkbox"/>
DOE/RL 	9/26/08 Date	Approved <input checked="" type="checkbox"/> Disapproved _____
N/A EPA	_____ Date	Approved _____ Disapproved _____

Description/Justification continued:

As of September 18, 2008, 7,380 cubic meters had been shipped offsite for treatment, 160 cubic meters more than required by the milestone. About 7,400 cubic meters are expected to be shipped for offsite treatment by October 1, 2008. Of the amount shipped, 6,812 cubic meters has been treated.

The State of Washington Department of Ecology (Ecology) has been kept apprised of the status of the M-91-42 milestones through the monthly M-91 project manager meetings and the quarterly Tri-Party Agreement review meetings. The milestone had been considered at risk due to 1) funding delays and 2) less MLLW being available for treatment. The latter was subject to a previous change request (M-91-08-02, approved August 12, 2008). In the August 2008 project manager meeting, it was thought that treatment could be completed by December 31, 2008 but it was also acknowledged that it would be close.

Based on when waste was shipped offsite for treatment and the contractual obligated durations it is reasonable to adjust the milestone due date for treating the 7,220 cubic meters of waste to March 31, 2009.

Modifications to existing Tri-Part Agreement milestones are denoted with ~~strikeout~~; new milestone/text are denoted with shading.

M-91-42	<p>REGARDING: (1) NEWLY GENERATED CH WASTE; AND (2) CH WASTE CURRENTLY IN ABOVE-GROUND STORAGE (NOT INCLUDING CH WASTE CURRENTLY IN ABOVE-GROUND STORAGE IN BOXES AND LARGE CONTAINERS).</p> <ol style="list-style-type: none"> 1. DOE SHALL DESIGNATE ALL NEWLY GENERATED CH WASTE AT THE POINT OF GENERATION. SUCH DESIGNATION SHALL COMPLY WITH THE REQUIREMENTS OF WAC 173-303-070 THROUGH 100. 2. THERE ARE 5,066 CUBIC METERS OF CH-MLLW IN PERMITTED STORAGE AT DOE'S CENTRAL WASTE COMPLEX (CWC) AND ELSEWHERE AT HANFORD AS OF 12/31/02 (AS IDENTIFIED IN DOE HFFACO MILESTONE M-26-01 LDR REPORT MLLW TREATABILITY GROUPS MLLW-02 THROUGH MLLW-10, EXCLUDING MLLW-07) THAT HAS NOT BEEN TREATED TO MEET LDR REQUIREMENTS. (THIS VOLUME DOES NOT INCLUDE 600 CUBIC METERS OF WASTE REQUIRING THERMAL TREATMENT, AS THAT WASTE IS REQUIRED TO BE TREATED BY 2006 UNDER HFFACO MILESTONES M-91-12 AND M-91-12A). DOE'S 2002 LDR REPORT ESTIMATES THAT IT WILL GENERATE AN ADDITIONAL ANNUAL VOLUME OF APPROXIMATELY 330 CUBIC METERS OF CH-MLLW (AS WASTE TYPES IDENTIFIED IN DOE HFFACO MILESTONE M-26-01 LDR REPORT MLLW TREATABILITY GROUPS MLLW-02 THROUGH MLLW-10, EXCLUDING MLLW-07). DOE WILL RETRIEVE APPROXIMATELY 800 CUBIC METERS OF CH-MLLW BY 2010. IN ADDITION TO MEETING THE REQUIREMENTS OF M-91-12 AND M-91-12A, DOE SHALL TREAT THE WASTE DESCRIBED ABOVE TO MEET LDR REQUIREMENTS ON A SCHEDULE MEETING, AT MINIMUM, THE FOLLOWING: <ol style="list-style-type: none"> A. 1630 CUBIC METERS (CUMULATIVE) SHALL BE TREATED BY 12/31/04, B. 3260 CUBIC METERS BY (CUMULATIVE) SHALL BE TREATED BY 12/31/05, C. 4890 CUBIC METERS (CUMULATIVE) SHALL BE TREATED BY 12/31/06, D. 6520 CUBIC METERS (CUMULATIVE) SHALL BE TREATED BY 12/31/07, E. 7220 CUBIC METERS (CUMULATIVE) SHALL BE 	DUE DATES AS INDICATED IN THE DESCRIPTIVE TEXT OF THIS MILESTONE
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TREATED BY 12/31/08, 3/31/09, AND

- F. COMPLETE TREATMENT OF ALL CH-MLLW (5066 CUBIC METERS IN STORAGE AS OF 12/31/02 AS DESCRIBED ABOVE, AND RETRIEVED CH-MLLW AND NEWLY GENERATED CH-MLLW IN THE TREATABILITY GROUPS DESCRIBED ABOVE, AS OF 6/30/09, BY 12/31/09

IF CH-MLLW IN THE TREATABILITY GROUPS SUBJECT TO THIS MILESTONE GENERATED DURING THE PERIOD FROM 12/31/02 THROUGH 6/30/09 IS TREATED TO LDR STANDARDS PRIOR TO DELIVERY TO STORAGE OR DISPOSAL, THE ORIGINAL PRE-TREATMENT VOLUME OF THAT WASTE SHALL BE COUNTED TOWARD MEETING THE VOLUME REQUIREMENTS OF THIS MILESTONE. EXCEPT FOR WASTE ALREADY IN PERMITTED STORAGE, TREATMENT OF CERCLA WASTE WILL NOT BE COUNTED TOWARD MEETING THE VOLUME REQUIREMENTS OF THIS MILESTONE. IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-MLLW COVERED BY THIS MILESTONE IS LOWER THAN THE ESTIMATED VOLUMES ANTICIPATED BY THESE MILESTONES DOE WILL ONLY BE REQUIRED TO TREAT THE VOLUME OF WASTE GENERATED, RETRIEVED AND/OR IN STORAGE. IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-MLLW COVERED BY THIS MILESTONE IS SIGNIFICANTLY MORE THAN THE ESTIMATED VOLUMES THE PARTIES' MAY AGREE TO REVISE THESE REQUIREMENTS.

3. AFTER JUNE 30, 2009, DOE SHALL TREAT TO MEET LDR TREATMENT REQUIREMENTS ALL NEWLY GENERATED CH-MLLW CONTAINING LDR CONSTITUENTS IN COMPLIANCE WITH WAC 173-303-140 AND BY REFERENCE 40 CFR 268.
4. THERE ARE APPROXIMATELY 440 CUBIC METERS OF CH-TRUM IN PERMITTED STORAGE AT DOE'S CENTRAL WASTE COMPLEX (CWC) AND ELSEWHERE AT HANFORD AS OF 12/31/02. DOE'S 2002 LDR REPORT ESTIMATES THAT IT WILL GENERATE AN ADDITIONAL ANNUAL VOLUME OF APPROXIMATELY 220 CUBIC METERS OF CH-TRUM AND DOE ESTIMATES THEY WILL RETRIEVE APPROXIMATELY 1,600 CUBIC METERS OF CH-TRUM BY 2010. CONSIDERING THESE ESTIMATES AND THE CONSIDERABLE UNCERTAINTY ASSOCIATED WITH THEM DOE SHALL TREAT THE WASTE CATEGORIES

DESCRIBED ABOVE TO MEET LDR REQUIREMENTS ON THE FOLLOWING SCHEDULE:

- 700 CUBIC METERS BY 12/31/04;
- 1,800 CUBIC METERS (CUMULATIVE) BY 12/31/05;
- 3,000 CUBIC METERS (CUMULATIVE) BY 12/31/06,
- 4,200 CUBIC METERS (CUMULATIVE BY 12/31/07
- 600 CUBIC METERS BETWEEN 10/1/2007 AND 9/30/2008
- 6,600 CUBIC METERS (CUMULATIVE) BY 12/31/09
- 7,600 CUBIC METERS (CUMULATIVE) BY 12/31/10;
- 8,600 CUBIC METERS (CUMULATIVE) BY 12/31/11.

IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-TRUM COVERED BY THIS MILESTONE IS LOWER THAN THE ESTIMATED VOLUMES ANTICIPATED BY THESE MILESTONES DOE WILL ONLY BE REQUIRED TO TREAT THE VOLUME OF WASTE GENERATED, RETRIEVED AND/OR IN STORAGE. IF THE ACTUAL VOLUME OF NEWLY GENERATED OR RETRIEVED CH-TRUM COVERED BY THIS MILESTONE IS SIGNIFICANTLY MORE THAN THE ESTIMATED VOLUMES THE PARTIES' MAY AGREE TO REVISE THESE REQUIREMENTS.

5. FOR CH TRANSURANIC WASTE NEWLY GENERATED ON OR AFTER 7/1/11 THAT IS DESIGNATED IN ACCORDANCE WITH WAC 173-303-070 THROUGH 100 AS MIXED AND AS CONTAINING LDR RESTRICTED CONSTITUENTS, DOE SHALL TREAT SUCH WASTES TO MEET LDR REQUIREMENTS PURSUANT TO WAC 173-303-140 WITHIN ONE YEAR OF GENERATION.

DOE MAY CHOOSE TO COMPLETE CERTIFICATION OF CH TRANSURANIC WASTE FOR DISPOSAL AT WIPP IN LIEU OF LDR TREATMENT, PROVIDED THAT ECOLOGY IS NOTIFIED IN WRITING OF SUCH COMPLETION OF CERTIFICATION, AND ONLY IF, AS OF THE TIME OF CERTIFICATION, SUCH WASTE IS EXEMPT FROM LDR TREATMENT REQUIREMENTS WHEN DISPOSED AT WIPP. IF DOE CHOOSES TO CERTIFY IN LIEU OF TREATMENT, IT MAY MEET THE VOLUME REQUIREMENTS SPECIFIED IN THIS MILESTONE FOR ANY GIVEN YEAR BY CERTIFYING CH TRU OR CH TRUM. , PROVIDED THAT 1) ALL CH TRUM IN PERMITTED STORAGE AS OF 12/31/02 IS TREATED TO MEET LDR REQUIREMENTS OR CERTIFIED BY 12/31/2006 AND 2) ALL CH TRUM IN PERMITTED STORAGE AS OF 7/1/11 IS TREATED TO MEET LDR REQUIREMENTS OR IS CERTIFIED BY 12/31/2011.

	<p>NOTE:-IN THE EVENT THAT ITEMS 4 OR 5 BECOME APPLICABLE, AMOUNTS OF CH TRUM CERTIFIED BETWEEN 12/31/02 AND THE DATE ON WHICH ITEMS 4 OR 5 BECOME APPLICABLE SHALL COUNT TOWARDS SATISFACTION OF THE OBLIGATIONS IN ITEMS 4 AND 5.</p> <p>EACH REQUIREMENT OF THIS MILESTONE IS CONSIDERED A DISTINCT WORK REQUIREMENT INDEPENDENTLY SUBJECT TO THE ENFORCEMENT PROVISIONS OF THE AGREEMENT.</p>	
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