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STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

1315 W. 4th Avenue • Kennewick, Washington 99336-6018 • (509) 735-7581

January 25, 2000

Mr. George H. Sanders, Program Manager
Office of Regulatory Liaison
U. S. Department of Energy
P. O. Box 550
Richland, Washington 99352

Dear Mr. Sanders:

Please note the following in response to the request for clarifications you provided me last week regarding Ecology's January 12, 2000 draft LDR Resolution of Dispute.

We have attempted to design our proposed Resolution of Dispute so as to be clear and unambiguous. If approved by the agencies, it is to be taken as a clarification of Ecology and EPA's April 10, 1990 Requirements for Hanford LDR Plan and of measures necessary to meet Ecology's June 3, 1999 Notice of Correction (NOC). Like any other Dispute Resolution we expect DOE to comply fully and timely, pursuant to Hanford Federal Facility Agreement and Consent Order (HFFACO) Article VIII, paragraph 30 (I). It is the position of Ecology and EPA that all elements of the Resolution of Dispute (settlement) are fully enforceable through HFFACO milestone series M-26. Further, though Ecology will continue to attempt to clarify associated regulatory requirements, I note that attempts to do so by Program staff over the past two (2) years have often been unsuccessful in that they have been rejected by DOE staff. Ecology (in coordination with EPA staff) has developed the subject Resolution of Dispute as an attempt to amicably resolve our present dispute using accepted HFFACO processes. At your request, the following clarifications have been pulled together as a rapid response in order to aid DOE in evaluating our Resolution of Dispute and in understanding more clearly the actions DOE must take in complying with hazardous waste law, and the scope of required annual mixed waste and LDR reporting.

Please feel free to call if you have additional questions in this regard.

Sincerely,

Roger Stanley
Policy and Negotiations
Nuclear Waste Program

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Attachment 15

M-026-01

cc: Dave Bartus, EPA Region 10
Andy Boyd, EPA Region 10
Doug Sherwood, EPA Region 10
Joe Shorin, WA AGO
Barbara Williamson, DOE-RL OCC

Attachments (2)

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Response to DOE Request for Clarifications
January 25, 2000

Overall Clarifications:

(1) Ecology's January 12, 2000 draft LDR "Resolution of Dispute" should be viewed, in its entirety, as a clarification of requirements initially established within Ecology and EPA's April 1990 Requirements for Hanford LDR Plan, the Parties' subsequent Hanford Federal Facility Agreement and Consent Order (HFFACO) major milestone series M-26-00, and Ecology's June 3, 1999 Notice of Correction. On approval, the terms of the Resolution of Dispute are to be implemented in accordance with HFFACO, Part Two, Article VIII, paragraph 30 (I).

(2) The HFFACO serves the purpose of a Hanford site treatment plan for the development and implementation of treatment capacities and technologies as required by the *Federal Facility Compliance Act* of 1992 (Because the HFFACO was in place as an enforceable Agreement and order prior to the FFCA, DOE was not required to submit a second, duplicative, plan). However, all substantive FFCA site treatment plan requirements other than those pertaining to plan submittal must be met. FFCA requirements such as those pertaining to mixed waste inventories and inventories of treatment capacities and technologies also continue to apply in the instance of DOE's Hanford site.[1]

Clarification #1: No. There is no difference. All mixed waste streams at Hanford must be included.

Clarification #2: Regarding scope and the meaning of the phrase "...each and all mixed waste streams..."

Information must cover all mixed waste streams, not just those prohibited from land disposal (as does the FFCA). Also note the following specifically requested clarifications.

- "mixed hazardous waste subject to the LDRs actively managed in permitted or unpermitted TSD storage >1 year that does not yet meet treatment standards" ***(Mixed hazardous waste subject to the LDRs when stored in permitted or unpermitted TSD storage >1 year: Applies)***

- "mixed hazardous waste subject to the LDRs actively managed in permitted or unpermitted TSD storage <1 year that does not yet meet treatment standards" ***(Mixed hazardous waste, subject to the LDRs, that does not yet meet treatment standards, when stored in permitted or unpermitted TSD units <1 year: Applies)***

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1 In this regard please note that on September 23, 1999, on behalf of the State of Washington, I requested "...a complete set of all correspondence, attachments, and associated reports submitted by DOE-RL, DOE's Office of River Protection, and their contractors as a follow on to passage of the *Federal Facility Compliance Act* of 1992." A second request in this regard was made in writing on December 22, 1999. No response to either of these requests has been received (See Attachment 2).

- "mixed hazardous waste subject to the LDRs actively managed in permitted or unpermitted TSD storage that meets treatment standards," ***(Mixed hazardous waste, subject to the LDRs, that meets treatment standards, when stored in permitted or unpermitted TSD units: Applies)***

- "mixed hazardous waste *not* subject to the LDRs actively managed in permitted or unpermitted TSD storage >1 year," ***(Mixed hazardous waste not subject to the LDRs, when stored in permitted or unpermitted TSD units >1 year: Applies, See also LDR Plan Section 3)***

- "mixed hazardous waste *not* subject to the LDRs actively managed in permitted or unpermitted TSD storage <1 year," ***(Mixed hazardous waste not subject to the LDRs, when stored in permitted or unpermitted TSD units <1 year: Applies)***

- "mixed hazardous waste disposed of" ***(For mixed hazardous waste that has already been land disposed, applies when wastes are removed from the land or treated in the land disposal unit; also applies to materials derived from land disposed wastes, e.g., leachate)***

- "mixed hazardous waste actively managed in satellite accumulation areas" ***(Mixed hazardous waste accumulated in satellite accumulation areas: Does not apply recognizing proviso (4) at Resolution of Dispute, pages 8-9, "Further clarifications regarding resolution of this and the following dispute elements:")***

- "mixed hazardous waste actively managed in 90-day accumulation areas" ***(Mixed hazardous waste accumulated in 90-day accumulation areas: Does not apply recognizing proviso (4) at Resolution of Dispute, pages 8-9, "Further clarifications regarding resolution of this and the following dispute elements:")***

- "mixed hazardous waste actively managed in CERCLA on-site areas" ***(CERCLA mixed hazardous waste accumulated, treated, stored or to be disposed of: Applies, as the FFCA does not provide an exclusion from site treatment plans for wastes managed pursuant to CERCLA action.)***

- "mixed hazardous waste yet to be actively managed (yet to be generated)," ***(Mixed hazardous waste yet to be generated: Applies, See also FFCA Section 3021 (a) (2) (C))***

- "mixed state-only dangerous waste subject to the state-only LDRs actively managed in permitted or unpermitted TSD storage for any period of time that does not yet meet treatment standards," ***(Mixed state-only dangerous waste, subject to the state-only LDRs, that does not yet meet treatment standards, stored for any period of time: Applies)***

- "mixed state-only dangerous waste *not* subject to the state-only LDRs actively managed in permitted or unpermitted TSD storage for any period of time," ***(Mixed state-only dangerous waste not subject to the state-only LDRs, stored in permitted or unpermitted TSD units for any period of time: Applies)***

- "mixed state-only dangerous waste subject to the LDRs actively managed in permitted or unpermitted TSD storage that meets treatment standards" ***(Mixed state-only dangerous waste subject to the LDRs that meets treatment standards, stored in permitted or unpermitted TSD units: Applies)***

- "mixed state-only waste disposed of," ***(For mixed state-only dangerous waste that has already been land disposed, applies when wastes are removed from the land or treated in the land disposal unit; also applies to materials derived from land disposed wastes, e.g., leachate)***

- "mixed state-only dangerous waste actively managed in satellite accumulation areas," ***(Mixed state-only dangerous waste accumulated in satellite accumulation areas: Does not apply recognizing proviso (4) at Resolution of Dispute, pages 8-9, "Further clarifications regarding resolution of this and the following dispute elements:")***

- "mixed state-only dangerous waste actively managed in 90-day accumulation areas" ***(Mixed state-only dangerous waste accumulated in 90-day accumulation areas: Does not apply recognizing proviso (4) at Resolution of Dispute, pages 8-9, "Further clarifications regarding resolution of this and the following dispute elements:")***

- "mixed state-only dangerous waste actively managed in CERCLA on-site areas" ***(CERCLA mixed state-only dangerous waste accumulated, treated, stored or to be disposed of: Applies, as the FFCA does not provide an exclusion from site treatment plans for wastes managed pursuant to CERCLA action.)***

- "mixed state-only dangerous waste yet to be actively managed (yet to be generated)" ***(Mixed state-only dangerous waste yet to be generated: Applies, See also FFCA Section 3021 (a) (2) (C))***

Clarifications #3&4: As noted in the above listing, state-only wastes are to be identified and included. DOE should not have to redesignate in that existing designations include, or should include state-only waste codes if they apply.

Clarification #5: This clarification specifies information to be included and is consistent with the LDR Plan and Ecology's June 3, 1999 NOC.

Clarification #6: Information requirement categories here are the same as those contained within 1999 Report Profile Sheets. Ecology will require clear, concise and value laden text within each.

Clarification #7: This paragraph does not expand on existing LDR Plan requirements. The deficiency is that current reporting is either not complete for existing waste streams or that waste streams were not identified.

Clarification #8: No. Only for the waste that requires UHC determination.

Clarification #9: As far as necessary to assign waste and applicable treatment codes. The point is to track the waste from "cradle to grave" via accurate, verifiable, documentation.

Clarification #10: Use of the word *categorize* here should be read as information necessary to "identify" to the extent possible, when the waste was placed in storage.

Clarification #11: These requirements do not change LDR Plan requirements (See also clarifications 6 and 7).

Clarification #12: Surface impoundments and waste piles (while technically land disposal units) are often utilized for storage, the HFFACO may require action at such units, and the LDR Plan specifically includes these types of units (See also response to bullets 6 and 14).

Clarification #14: Item 5 does not change the text of the LDR Plan and is not inconsistent with item g.

Clarification #15: The basic objective of the Report is to produce a "snapshot in time". Information gathering should be geared to this objective to the extent possible.

Clarification #16: See Clarification #15 above

Clarification #17: Modification from an allowance of 90 days (allowed at the time of last June's NOC) to 60 days in recognition of time lost to-date.

Clarification #18: Each TPA required schedule element (major or interim milestones and targets) must be replicated within the report. Schedules provided to date have been inappropriately rudimentary.

Clarification #19: No specific additions were intended by use of the phrase "but is not limited to".

Clarification #20: This statement clarifies Ecology's expectations for satisfying the LDR Plan and item VI, A, 1h.

Clarification #21: This statement clarifies Ecology's expectations.

Clarification #22: This statement clarifies Ecology's expectations and is consistent with HFFACO Primary Document processes.

Clarification #23: No. These simply address the need for schedules and clarify LDR Plan and Report requirements.

Clarification #24: No. See Overall Clarification (2).

Clarification #25: DOE must advise Ecology as to which waste streams have been characterized to meet LDR and which have not (i.e., identification of treatment standards and whether or not the subject waste stream meets the treatment standards). The terms acceptable knowledge and sufficient knowledge should be viewed as interchangeable, and the focus placed on whether or not the data is adequate for regulatory purposes. Documentation must show how the waste was characterized based on the waste analysis plan required by 40 CFR Part 268.7(a)(5) or based on published or documented waste analysis data or studies that are retained as part of the on-site operating record pursuant to 40 CFR Part 268.7(a)(6).

Clarification #26: Resolution language here clarifies NOC language.

Clarification #27: No. This is clarifying text designed as part of a potential resolution of dispute between the parties.

Clarification #28: The term "generated" is clear and unambiguous. Is DOE raising the issue of wastes not generated at Hanford in this request? The scope of the storage report is mixed waste streams stored or accumulated regardless of source.

Clarification #29: DOE needs to identify waste streams that have not been characterized based on sampling and analysis. Characterization must be sufficient for LDR purposes and must conform to dangerous waste designation requirements.

Clarification #30: We suggest adding a subsection to the Waste Profile Sheets, section 2.0, Characterization, documenting proposed plans and schedules.

Clarification #31: Yes.