



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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January 22, 2009

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Ms. Merle L. Sykes  
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Ms. Shirley J. Olinger  
Manager  
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Mr. David A. Brockman  
Manager  
Richland Operations Office  
United States Department of Energy  
P.O. Box 550, MSIN: A7-50  
Richland, Washington 99352

Re: "2009 Funding and Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) Milestones" (Letter AMCP-0007, dated November 5, 2008, from USDOE-RL)

Dear Ms. Triay, Ms. Sykes, Ms. Olinger, and Mr. Brockman:

This letter is in response to the United States Department of Energy's letter and the 2009 funding plan associated with Congress's Continuing Resolution. This letter also identifies the need for further budget integration and improvements as we move into the Federal Fiscal Year (FFY) 2010 and 2011 budget development process.

**TPA Mandates in Article XLVIII, Paragraphs 148 and 149**

Tri-Party Agreement (TPA) Article XLVIII, Paragraphs 148 and 149 outline a budget preparation process that provides for timely interaction among the three parties. The desired outcome of budget development is submission of a budget that satisfies Hanford's compliance requirements. If the Congressional appropriation falls short of the level required for compliance, the desired outcome is for the parties to timely review and comment on funding allocation decisions before such decisions are made (subject to reservations) so that available funding can be best prioritized. By providing input in this post-appropriation phase, the state of Washington does not relieve the United States of any of its obligations to comply with TPA and other legal requirements.



The TPA mandates in Article XLVIII, Paragraph 148 that:

DOE shall take all necessary steps to integrate Hanford programs and to obtain timely funding in order to fully meet its obligations under this Agreement. . . . In determining the workscope, priorities, and schedules, the [three] Parties shall consider the values expressed by the Hanford stakeholders [and Tribal Governments].

To this end, TPA Article XLVIII, Paragraph 149 establishes a process providing for:

. . . communication and consultation on work scope, priorities, schedules/milestones, and cost/funding matters . . . [as well as] . . . early identification of problems which could jeopardize [TPA] compliance.

Specifically, Paragraph 149.F requires that “Within 30 days after congressional budget appropriation,” DOE shall “brief Ecology and EPA on the budget appropriation and subsequent funding allocations for the new fiscal year.” If there is a delay in appropriation after the start of the fiscal year, DOE “shall inform Ecology and EPA of any congressional continuing resolution action, and the potential impacts” on milestones. Furthermore, Ecology and EPA “will be given timely opportunity to review and comment on the budget appropriation and make recommendations for reallocation of available funds.”

#### **Inadequate Level of Funding in FFY 2009**

With respect to the current FFY 2009 budget situation, Ecology appreciates DOE-RL’s November 5 notification of the Continuing Resolution circumstance and its anticipated inability to meet compliance requirements. Ecology notes that, in contrast, DOE-ORP failed to provide the same required notification and information.

Ecology is concerned about the inadequacy of funding for FFY 2009 and the inability of DOE-RL to meet the milestones as outlined in the November 5, 2008 letter. We are also concerned about the potential for both DOE-RL and DOE-ORP to miss other milestones and to recover timely cleanup in the future. This underscores the need for both DOE-RL and DOE-ORP to follow the communication and consultation steps required by the TPA throughout the annual federal budget cycle to give Ecology and EPA the opportunity to provide timely and collaborative input to DOE on Hanford budget priorities, contractor work execution priorities, and contract incentives.

DOE-RL’s recent willingness to communicate budget information to stakeholders and the public is essential and commendable. However, Ecology requests that in the future DOE-RL and DOE-ORP consult with Ecology and EPA on budgetary matters before communicating with stakeholders and members of the public.

### **Ecology's priorities for FFY 2009 cleanup on the Hanford site**

Ecology maintains that DOE-RL and DOE-ORP remain legally obligated to comply with all TPA milestones. Without waiving this position, and without excusing DOE from any non-compliance, Ecology offers the following lists of top priority activities for DOE-RL and DOE-ORP consideration to the extent that available appropriated funds are inadequate to fund all required milestone activities.

#### **Richland Operations**

- Finishing cleanup of the contaminated buildings, soil, and groundwater in the river corridor (including K Basins) to reduce the risk to the river and to users of the Hanford Reach National Monument.
- Completing Plutonium Finishing Plant remediation to reduce environmental and worker risk and to conclude the attendant safeguards and security costs.
- Continuing ongoing soil remediation projects in the Central Plateau. Completing regulatory documents on the near-term TPA schedule to enable work to proceed if funds become available.
- Finishing transuranic waste and mixed waste backlog retrieval as soon as funding is available.

#### **Office of River Protection**

- Constructing the Waste Treatment Plant (WTP). Identifying, communicating, and addressing technical and scheduling problems early.
- Maintaining safe tank farm storage and driving down the cost of base operations at the tank farms.
- Retrieving single-shell tanks and making fully utilizing the 242-A evaporator to make maximum progress prior to readiness of the WTP.
- Completing upgrades to systems and facilities required to support timely retrieval and WTP operations (e.g., early building and transferring of tank waste to waste receiver facilities to provide for additional double-shell tank storage capacity).
- Completing studies required to size supplemental tank waste treatment capacity and select technology.

### **Budget Process Integration and FFY 2010 Expectations**

At the DOE Headquarters level, Ecology encourages DOE to modify the existing project baseline summary budget requirements and structure to give needed flexibility to the DOE field offices, so they may shift funds between cleanup activities to respond to changing field conditions and opportunities.

At both the DOE Headquarters and Hanford Site level, Ecology reiterates its position that DOE is legally obligated to meet all TPA milestones and is responsible for submitting a budget sufficient to attain these milestones. DOE should fully integrate and reconcile its project baselines and the new prime contracts for 2009 for the next five years, at a minimum, with these legal milestones and requirements. For those matters addressed by current TPA milestones that are now unachievable due to DOE's delays (namely, tank waste retrieval and treatment), DOE should develop project baselines that allow for such work to move forward as quickly as possible. In this way, DOE's delays beyond the milestone dates will be minimized to the maximum extent possible.

It is critical that Ecology (and EPA) be involved right now in current DOE and contractor efforts to update Hanford's cleanup project baselines (work plans) to make sure there is opportunity for input on key assumptions and agreement on what the actual cleanup work should be.

It is important that DOE utilize annual prime contract incentives that not only align with legal milestones, but also drive efficiencies and work practices that will reduce hotel and base operations costs. The prime contracts' unique incentive clauses are an essential part of Hanford's work scope planning and project execution. They need to be vetted among the three parties and with the public in conjunction with the annual budget priorities.

DOE needs to work with regulators and the Hanford Advisory Board to develop and finalize the integrated priority lists for DOE-ORP and DOE-RL. The three parties need to reach agreement on the integrated priority lists so that "shovel ready" cleanup projects can proceed as additional funding becomes available.

Ecology has the following near-term expectations of DOE-RL and DOE-ORP in the upcoming budget development process for FFY 2010 and FFY 2011:

1. Spring of 2009 – Develop budget priorities and baselines for FFY 2011 budget submission, meet with regulators, and share project budget and baseline information openly.
2. Spring of 2009 – Adjust FFY 2010 and FFY 2009 budget priorities to reflect Congressional and/or DOE-HQ direction, while meeting legal requirements.
3. August 2009 – Consult regulators regarding planned FFY 2010 budget alignment with TPA milestones, work plans, and contract incentives to reflect regulator and stakeholder priorities.

These expectations supplement, and do not replace, the obligations outlined in TPA Article XLVIII, Paragraphs 148 and 149.

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We look forward to working with DOE to help it meet its legal obligations and ultimately succeed in the Hanford cleanup. Please contact Ron Skinnarland at 509-372-7924 concerning budget and TPA issues or ideas.

Sincerely,

*Jane A. Hedges  
by R Skinnarland*

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cc: Richard Campbell, EPA  
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