

**Responsiveness Summary on
Proposed Consent Decree and Tri-Party Agreement
Settlement Package for
State of Washington v. Chu
U.S.D.C. E.D. WA CV-08-5085-FVS**

October 4, 2010

Introduction to the Final Settlement Responsiveness Summary

On August 11, 2009, Governor Christine Gregoire, and Attorney General Robert McKenna, joined by U.S. Department of Energy (USDOE) Secretary of Energy Steven Chu, U.S. Acting Assistant Attorney General John Cruden, EPA Region X Acting Deputy Regional Administrator Dan Opalski, Senators Maria Cantwell and Patty Murray, Oregon Governor Ted Kulongowski, USDOE Assistant Secretary for Environmental Management Ines Triay, and Department of Energy Office of River Protection Manager Shirley Olinger, announced a new, proposed agreement for the safe and expeditious construction and commissioning of the Waste Treatment and Immobilization Plant (WTP), the retrieval of wastes from single-shell tanks, and the development of a Lifecycle Report. The proposed settlement is comprised of two parts – (1) a judicial Consent Decree that covers certain near term (2010-2022) tank waste retrieval and WTP construction and operation requirements; and (2) a package of amendments to the Tri-Party Agreement (TPA) that cover a number of new and modified requirements related to tank waste retrieval and treatment requirements and the development of a Lifecycle Report. The proposed settlement came after three years of negotiation and a pending State of Washington (State) lawsuit against the USDOE. New groundwater requirements developed by the Tri-Parties (USDOE, EPA, and Washington State Department of Ecology) are being implemented under the TPA separately from this settlement.

The Tri-Parties announced a 45-day public comment period starting October 1, 2009, to involve the public in the proposed settlement. Following the announcement, the Hanford Advisory Board officially requested and was granted an extension to the comment period making it 72 days, ending December 11, 2009.

During the comment period, there was a one day public workshop in Richland, Washington, on October 6, 2009, during which the Tri-Parties made presentations on the proposed TPA milestone changes and Consent Decree. The workshop was open to the public and members of the Hanford Advisory Board attended. Five public meetings were held in: Hood River, Oregon on October 26; Portland, Oregon on October 27; Richland, Washington on October 29; Spokane, Washington on November 9; and Seattle, Washington on November 12. Open houses were held at each location, providing opportunities for members of the public to ask questions of the Tri-Parties. During each meeting, the Tri-Parties presented the proposed settlement. Members of key stakeholder groups provided their perspective on the proposed settlement during the meeting. There were opportunities for questions and answers and public comment. A court reporter took official public comment during the meeting. Transcripts of public comments received are available at the TPA Public Information Repositories.

One hundred and forty-six commenters provided both oral and written comments during the comment period. Comments were made in the public meetings, by email, and through the U.S. mail. In total, there were about 400 individual comments made on the key proposed milestone changes and the Consent Decree.

The Tri-Parties reviewed and considered each and every comment and discussed potential changes raised by the public comments received. The parties were unable to reach agreement regarding any changes and decided to go forward with the settlement in the form presented to the public.

The following represents a summary of the key public comments received during the comment period and the responses to these summary comments. The Tri-Parties note that in a number of situations, it was appropriate for only one party to respond to a particular comment; these situations are identified by the context in the text below as they occur. For purposes of this document, "Parties" means the State of Washington, Department of Ecology (Ecology), and the United States Department of Energy (USDOE), and "Tri-Parties" means USDOE, Ecology, and the United States Environmental Protection Agency, Region X (USEPA or EPA). Copies of the individual comments were distributed to the TPA Information Repositories. Both positive and negative comments were received for consideration on this proposed settlement action. The Tri-Parties thank all the members of the public, the Hanford Advisory Board, and Tribal Nations for participating and providing comments on the proposed settlement.

COMMENTS SPECIFIC TO THE PROPOSED SETTLEMENT

Single-Shell Tank Retrievals

A number of comments focused on the aspects of the proposed settlement that address USDOE obligations to retrieve waste from single-shell tanks (SST Retrievals). The settlement addresses SST Retrievals in several ways. The proposed Consent Decree requires USDOE to complete retrieval of 10 tanks from Waste Management Area C by September 30, 2014, and 9 additional tanks by December 31, 2022. The revised TPA provisions require completion of retrieval from all remaining tanks by December 31, 2040, or earlier as established through the System Plan process and negotiation. The System Plan process will periodically evaluate scenarios and identify actions that could optimize retrievals in order to improve upon the December 31, 2040, deadline and a contingency plan is required to address risks documented in SST integrity evaluations.

Comments on these aspects of the settlement included: (1) supportive comments that characterized the SST retrieval provisions as an excellent step forward, and also included: (2) objection to changing the TPA milestone for completing all retrievals from 2018 to 2040; (3) contention that a retrieval completion deadline of 2040 is too long given the risks presented by the tank waste; (4) request that more near-term retrievals be required (e.g., instead of the 19 tanks required to be retrieved between now and 2022, one commenter urged that 40 tanks be retrieved by 2022); (5) suggestion that if USDOE implements certain new technologies (e.g., wiped film evaporators) more near-term retrievals can be completed; (6) suggestion that settlement should require USDOE to build more DSTs now to create more capacity for additional SST retrievals; (7) suggestion that USDOE should be required to employ other mitigation in exchange for receiving the schedule extension; (8) suggestion that stimulus money should be directed toward retrievals; (9) suggestion that USDOE should be “penalized” for savings realized by not retrieving tanks under the existing schedule by being required to spend an equal or greater amount on near-term retrievals; and (10) objection to basing the retrieval schedule on the assumption that certain tanks will be reclassified as holding transuranic waste.

Summary Comments:

Why extend the milestone dates so far—can’t retrieval be done faster?

Why move the SST retrieval deadline from 2018 to 2040?

Response:

The Parties agreed to move the SST retrieval deadline from 2018 to 2040 because the Parties believed that was an aggressive yet realistic timeframe for completing the retrieval mission in light of the current information available. In addition, the settlement includes provisions for: (1) court oversight for the first 19 tanks; (2) a System Plan opportunity to accelerate the 2040 date; and (3) a contingency plan to address risks documented in SST integrity evaluations.

Judicial oversight of specified settlement requirements is accomplished by including such requirements as terms of a Consent Decree to be filed in United States District Court for the Eastern District of Washington. This means that once the judge overseeing this case approves entry of the decree, these requirements become court-ordered obligations. The State can bring any non-compliance with these terms by USDOE directly and promptly to the judge's attention. The judge can use a variety of means to respond to any such non-compliance. The State may file a motion for potential sanctions that could include issuing orders, penalties, and holding responsible parties in contempt. The benefits to the State of creating court-ordered obligations include: (1) creating a strong incentive for USDOE to meet the obligations (in order to avoid court sanctions) and, (2) giving the State the ability to swiftly and strongly respond if, in the future, USDOE does not meet the obligations. The System Plan is further discussed below.

Summary Comments:

Why not require retrieval of more than 19 SSTs between now and 2022, especially in light of the risks associated with the possibility of tank leakage or other types of tank failure?

Why not require construction of new DSTs now to speed up the pace of near-term retrievals?

Why not require the use of new technologies like wiped film evaporators to create new capacity and speed up the pace of near-term retrievals?

How will the risks associated with possible tank failure be managed in light of moving the SST retrieval deadline from 2018 to 2040?

Response:

In creating this settlement the Parties attempted to balance the need to address the risks posed by the tanks with the complexity and worker safety considerations of carrying out the cleanup. The approach

to the timelines for the near-term (defined as between now and 2022) SST retrievals was based on projected project capabilities. Considerations for longer-term (defined as between 2022 and 2040) SST retrievals included projections regarding WTP operational capacity and pace.

Recognizing that getting the WTP constructed and operational is an integral part of the entire tank waste mission, the Parties selected a settlement approach that maintained the connection between WTP construction and operation and SST retrievals and requires: (1) that USDOE remains on schedule to meet the new SST retrieval schedule; (2) that USDOE remains on schedule to meet the new WTP construction and operation schedule; and (3) contingency measures to address various risks including tank integrity.

The State determined that it could agree to the schedule and pace of SST retrievals given its expectations that USDOE will remain on track to meet the SST retrieval and WTP construction and operation schedule and there will be no new or increased risk of tank failure.

A contingency plan (see draft milestone change package M-062-09-01) is required to address, among other things: (1) risks documented in results from SST integrity evaluations, (2) risks that the SST retrieval schedule might not be met, and (3) risks that the WTP construction or operational schedule might not be met. The contingency measures that will be looked at in the contingency plan will include the possibility of building new DSTs. In addition, outside of the settlement documents, the State retains various authorities to address other environmental risks such as those that would be posed by a new spill or leak from an existing tank.

The settlement also includes the opportunity to accelerate the timeframe for tank retrieval. As part of the new TPA System Plan (draft milestone change package M-062-09-01 and milestone M-062-45) options for creating more space for tank retrievals will be evaluated. Options that may be evaluated under these provisions include: new technologies like wiped film evaporators, better utilization of DST space, and infrastructure needed for WTP that might offer more space for tank retrieval waste. Thus, although the Parties don't have enough information today to show that any of these options can be relied upon to create new capacity to support faster retrievals, the Parties created a process that provides an opportunity to speed up retrievals based on WTP performance and new information, such as new technologies.

Finally, a comment was submitted suggesting that Governor Gregoire's remarks in November 2008 suggested that timeframes for SST retrievals like those contained in the settlement agreement would

not be acceptable to Washington. The State notes the Governor stated on November 25, 2008, “We now face—not years, not decades—but more than a century of delay. The most recent budget proposed by President Bush puts us on pace to empty one tank per year. At that rate, it will take 140 years to empty the worst of the remaining tanks. That’s not only absurd. It’s unconscionable. The people of Washington cannot stand for that, and will not stand for that.” Governor’s press release available at <http://www.governor.wa.gov/news/news-view.asp?pressRelease=1057&newsType=1> (last visited Aug. 20, 2010).

The Governor was referring to her expectation that without the settlement, at a pace of 1 tank per year, tank retrievals might not be completed until 2130. The settlement agreement requires that retrievals be completed no later than 2040 and contemplates that the pace of retrievals will reach about 6-7 tanks per year by the early 2020s. Thus, the SST retrieval provisions in the settlement framework are far more aggressive than what the State expected might have occurred without the settlement which was to what the Governor was referring in her November 2008 remarks.

Summary Comment:

Is the retrieval schedule premised on certain tank waste being reclassified as transuranic waste?

Response:

The retrieval schedule is not based on the premise that certain tank waste will be reclassified as transuranic (TRU) waste. Although USDOE has indicated that certain tank wastes may contain TRU waste rather than High-Level Waste (HLW), Washington and the State of New Mexico have concerns about this potential waste classification. Although USDOE’s planning scenarios include the possibility of sending this waste to the Waste Isolation Pilot Plant (WIPP), the negotiated schedule does not assume USDOE will be able to do this. USDOE will be required to meet the new TPA milestones and Consent Decree requirements regardless of any such decisions regarding this waste. Any proposal from USDOE to treat and ship any tank waste as TRU will have to go through an appropriate regulatory review process that is not a part of this settlement.

Summary Comment:

Does the settlement address clean closure of the single-shell tanks?

Response:

There are two milestones in the TPA package that address this issue. The M-045-80 and -81 milestones refer to completion of the C-200 Closure Demonstration Plan. The C-200 Demonstration Project Plan developed by USDOE states:

The purpose of the C-200 Demonstration Project is to create a forum for the Washington State Department of Ecology, the U.S. Environmental Protection Agency, the U.S. Department of Energy Office of River Protection, and the tank farm contractor . . . to gather engineering, cost and other information on various technologies that might be used to close single-shell tank systems (SSTs), identify and begin to gather information needed for specific regulatory decisions associated with closure of the SSTs (including determining if clean closure is practicable for the SSTs as described in WAC 173-303-640(8)(b)), and develop a common understanding of the relevant regulatory processes before closure permitting is complete to facilitate permitting.

One of these identified efforts is to do a tank removal engineering study. The milestones require all activities in the Plan to be completed by September 30, 2014. That information will be used by Ecology in making final decisions on the proposals by USDOE on how to close WMA C (M-045-83). Those proposals are due to Ecology in 2015.

Summary Comment:

A schedule extension should be allowed only if USDOE is required to provide some form of mitigation, such as including an off-site waste ban in the Consent Decree or groundwater milestones in the Consent Decree.

Response:

Ultimately, a settlement package embodies compromises made by parties to a dispute with some provisions providing benefit to one side and other provisions providing benefit to the other side. A settlement represents both parties' conclusion that the entire package provides a better approach to addressing the current situation than the alternative of completing litigation is likely to provide. As explained above, the settlement package includes many provisions in addition to the extension of the SST retrieval schedule. These include the oversight of a federal court between now and 2022 and the System Plan which provides the opportunity to accelerate the timeframe for SST retrievals and the

inclusion of a contingency plan to address certain types of risks. One benefit of the settlement to USDOE was the schedule extension. Provisions like court oversight and the opportunity to accelerate the end date provide benefits to the State. In addition, there was a set of TPA change packages finalized in August 2009 which require specific actions by USDOE to address groundwater contamination and protection of the Columbia River at the site. These new requirements were pursued by the State and EPA as a form of “mitigation” for the delays in the retrieval and treatment missions.

Summary Comments:

Why isn't stimulus money directed toward retrievals?

Shouldn't the USDOE be penalized for savings realized by not retrieving the waste from tanks under the existing schedule by being required to spend an equal or greater amount [of money?] on near-term retrievals?

Response:

American Reinvestment and Recovery Act (ARRA) funds were appropriated by Congress for near-term job generation activities and have been used to fund tank farm projects that will support future tank retrieval activities.

Although not part of this settlement, USDOE is devoting additional resources to near-term accelerated efforts to protect the Columbia River, including groundwater characterization and remediation activities. Moreover, as expressed herein, the Parties have agreed to an aggressive yet realistic schedule to retrieve tank wastes. Finally, tank waste retrieval and treatment system planning will provide the regular re-evaluation and flexibility needed to improve technical performance and facilitate earlier success. The system plan, three-year review, and new Lifecycle Report are important planning documents that provide a level of cooperation that has not been provided formally in previous agreements between the Parties.

USDOE Statements Regarding Off-Site Waste

Many comments focused on the issue of off-site waste. The settlement (Consent Decree and TPA Amendments) does not include any provisions addressing off-site waste. However, the topic was discussed and the Parties confirmed their approach to this issue in an exchange of letters dated August 10, 2009.

Accordingly, USDOE published its Draft Tank Closure and Waste Management Environmental Impact Statement (TC & WM EIS) in October 2009. The document includes as its preferred alternative a decision not to bring certain off-site waste streams to Hanford until the WTP becomes operational. In addition, USDOE clarified that the waste streams subject to this statement are: Low Level Waste (LLW), Mixed LLW, Transuranic, Mixed Transuranic Waste, and Greater Than Class C Waste.

In general, the comments on the off-site waste topic included: (1) urging the Parties to make USDOE's off-site waste decision an enforceable part of the settlement; (2) urging the Parties to require USDOE to extend its off-site waste decision beyond 2022; and (3) urging the Parties to make sure USDOE's off-site waste decision covers Greater Than Class C Waste and mercury.

Summary Comment:

Why not make USDOE's decision regarding off-site waste an enforceable part of the settlement (i.e., incorporate it as a term into either the Consent Decree or the TPA amendments)?

Response:

Because of its desire to keep USDOE focused on what the State sees as Hanford's biggest challenge (completing tank waste retrieval and treatment), the State filed its lawsuit in November 2008. The lawsuit focused on the tank waste retrieval and treatment missions and the State's reason for bringing the case was to secure a new schedule that would be aggressive but realistic and also legally enforceable, so that the State would have confidence that the schedule would be met, and we wouldn't again face the kind of delays we face today.

Although the State does not want to see USDOE distracted by other challenges, such as managing off-site waste, securing a legally enforceable ban on off-site waste was not a core goal of its tank waste lawsuit. Nonetheless, the State is committed to getting Hanford cleanup well underway before considering taking on new waste from elsewhere. Ultimately, the State determined that the way USDOE anticipated addressing the topic in the pending NEPA process provided the State sufficient assurances that no new off-site waste would be brought to the Hanford Site before the WTP is operational.

Although the statement by USDOE in its draft TC & WM EIS that its preferred alternative is to not bring certain off-site waste streams to Hanford in the near-term (defined as until the WTP becomes operational) is not legally enforceable, the State has confidence that this statement reflects USDOE's current approach to this issue and that it is unlikely that USDOE will change course on this issue in the

near future. Based on this confidence, the State concluded that it was not critical for the State to secure a legally enforceable commitment on this issue at this time. Additional factors informing the State's approach included the State's belief that: (1) any future change of course by USDOE would require additional NEPA process and further environmental analyses (in light of the fact that the analyses in the draft TC & WM EIS shows significant future groundwater impacts); and (2) if USDOE does change course on this issue in the future (i.e., if USDOE announced a new decision to import certain waste streams to Hanford), the State believes it could likely pursue a legal action to challenge any such future decision(s) that the State did not believe to be based on sufficient analysis.

Summary Comment:

Why not extend USDOE's off-site waste decision beyond 2022?

Response:

In addition to the comment response above, the State also believes that USDOE's preferred alternative to not bring specific off-site waste streams to Hanford until at least the point in time when the WTP is operational is significant. A settlement package represents a compromise with benefits to each party. The State views this commitment, which would cover at least the next 12 years, to be of significant value and ultimately did not insist on a longer timeframe.

It is important to clarify that USDOE's preferred alternative, not to import certain waste to Hanford until at least the point in time when the WTP is operational, does not represent a decision by the USDOE or an agreement by the State that the USDOE will begin importing waste starting at that time (i.e., when the WTP is operational). It merely prescribes the minimum timeframe under the preferred alternative under which the USDOE would not bring off-site waste to Hanford. It is the State's belief that if the USDOE decides it wants to import waste to Hanford after the WTP becomes operational, the USDOE would be required to undertake a formal decision-making process at that time, including reviewing the risks associated with such action under NEPA.

Summary Comment:

Does USDOE's draft preferred alternative regarding off-site waste cover Greater Than Class C Waste or mercury?

Response:

USDOE clarified, by announcement published in the Federal Register, that the preferred alternative to not bring off-site waste to Hanford included Greater Than Class C waste. This clarification was published at 74 FR 242, page 67189 (Dec. 12, 2009).

The draft TC & WM EIS does not address mercury. In a separate NEPA process, however, USDOE recently completed a draft EIS for a mercury storage facility. The Hanford Site was not selected as a preferred alternative site within that draft document. A site in Texas was identified as the preferred site. Ecology will continue to monitor and be closely involved with the completion of the final EIS.

System Plan

A number of comments focused on aspects of the proposed settlement that require USDOE to develop a System Plan once every three years and require that the State and USDOE negotiate certain issues once every six years.

The System Plan requirements are part of the proposed TPA amendments. Once finalized, these amendments will require USDOE to prepare a System Plan once every three years, with the first System Plan to be submitted to Ecology in October 2011, and to participate in negotiations once every six years starting in 2015.

The System Plan will describe various scenarios for disposing of all tank waste managed by USDOE Office of River Protection (ORP). The purposes of the System Plan include evaluating whether the pace of tank retrievals and/or the pace of tank waste treatment can be accelerated. The System Plan will also include a Contingency Plan to respond to certain specified risks, including the risk of delay to the retrieval and/or treatment schedules and risks associated with tank integrity.

While development of the system plan process was considered favorable, comments on the System Plan aspect of the settlement included: (1) urging that the Parties agree to negotiate more frequently than every 6 years; and (2) urging that the first negotiation should occur sooner than 2015.

Summary Comments:

System Plan negotiations should occur more frequently than every six years.

The first System Plan negotiation should be held earlier than the year 2015.

Response:

After reviewing the public comments on this matter and discussing the issues raised in the comments, the Parties agreed to retain the System Plan language as originally negotiated. An important accomplishment of the System Plan provisions is that they establish a new system that integrates programs and evaluates ways to optimize and accelerate tank waste retrievals and tank waste treatment, as well as planning for contingencies related to delay of tank waste retrieval and treatment schedules and tank integrity risks. The System Plan addresses a number of important aspects of tank retrievals that are not covered by the proposed Consent Decree: Tank Waste Treatment; Supplemental Treatment; Tank Waste Retrieval; and Contingency Planning. Moreover, there is also nothing to prohibit the Parties from reaching agreement when appropriate to accelerate work as it's identified, whether on a three-year cycle or even in between. A number of comments saw the System Plan provisions as an important step forward.

Supplemental Treatment

A number of comments focused on the aspects of the proposed settlement that require USDOE to design and construct WTP enhancement features and/or a supplemental treatment facility so that there is sufficient treatment capacity to treat all Hanford tank waste according to the specifications and timeframes required by the TPA.

The Supplemental Treatment requirements are part of the proposed TPA amendments. Once finalized, these amendments will require: (1) USDOE and Ecology within one year of finalizing this settlement to complete negotiations for milestones related to near-term actions (2011-2016) necessary to select an approach to supplemental treatment; (2) USDOE and Ecology to select a supplemental treatment approach by 2015; and (3) USDOE to implement (design and construct) such selected WTP enhancement features and/or treatment facility according to a schedule specified in the TPA amendments.

Comments on the Supplemental Treatment aspect of the settlement included: (1) urging that the Parties eliminate the reference in the settlement agreement to bulk vitrification as an option to be considered for supplemental treatment; and (2) urging that the Supplemental Treatment decision be made sooner than 2015.

Summary Comment:**Eliminate Bulk Vitrification from consideration in the final Settlement.**

Response:

The Parties understand that objections to the inclusion of the reference to bulk vitrification as a possible method of supplemental treatment are based on concerns about an appearance that bulk vitrification is the preferred approach and concerns that bulk vitrification may not prove to be as feasible or effective at treating the tank waste as other methods like a second low activity facility. The Parties included the reference to bulk vitrification because USDOE continues to want to have the opportunity to show that bulk vitrification would be a feasible and effective approach to treating tank waste. Reference to bulk vitrification is not intended to signal a preference for such technology. Under proposed milestone M-62-40, the Hanford Tank Waste Treatment Technologies Report is to evaluate options for supplemental treatment. The report must compare all waste form performance data against the performance of borosilicate glass and must apply the same selection criteria to all options (and include a second low-activity waste vitrification facility as an option). The report will inform supplemental treatment selection under proposed milestone M-62-45, which will be implemented through the proposed supplemental treatment vitrification facility milestones M-62-31 T01 through M-62-34 T01.

Summary Comment:

Make a decision on Supplemental Treatment before the proposed 2015 date.

Response:

After receiving public comment on this topic, the Parties discussed a possible change to this provision but were unable to reach agreement and decided to move forward with an agreement that retained the timeframe originally negotiated. However, the State intends to continue to encourage USDOE to address Supplemental Treatment as early as possible to avoid any risk to the requirement that all tank waste be treated by 2047 and to maximize the possibility that such date can be accelerated as contemplated by the System Plan.

Lifecycle Scope, Schedule and Cost Report

A number of comments supported the aspect of the proposed settlement that involves adding a new provision to the TPA that will annually require USDOE to prepare a Hanford Lifecycle Scope, Schedule and Cost Report. The purpose of this Report is to have USDOE identify in one location the timeframe and costs for completing all tasks required to complete all required aspects of Hanford cleanup. The Report will show how USDOE will complete each task according to the deadlines specified in all

applicable legal instruments (e.g., the new Consent Decree, the TPA, and the Hanford site-wide permit). The Report will be required to document the scope of both USDOE's plans and the expected associated costs for achieving compliance with all environmental requirements, including those with deadlines several decades out. This will allow the State and EPA to provide input into USDOE's planning assumptions on an annual basis and facilitate discussion regarding the timely completion of all requirements. With respect to cost projections, the Report will require USDOE to project [estimate] what it will cost to timely complete all requirements, without assuming any budget limitations. This will allow the State, EPA, and members of the public to see what is required (actions and funds) to complete the entire Hanford Site cleanup mission.

Comments on this aspect of the settlement include: (1) What is the purpose of the Report; (2) How does the Report relate to the potential acceleration of deadlines for completing tank retrievals and tank waste treatment; (3) Why doesn't the Report require a greater level of detail; and (4) Can the Report be subject to public review and input?

Summary Comments:

What is the purpose of the Lifecycle Scope, Schedule and Cost Report?

How does the Lifecycle Scope, Schedule and Cost Report relate to potential acceleration of end dates?

Response:

The Lifecycle Report is a key provision of the Settlement that provides a substantial amount of public information and interagency cooperation. The purpose of the Report is to allow the State and EPA to provide input into USDOE's planning assumptions on an annual basis to facilitate discussion regarding timely completion of all requirements. With respect to cost projections, the Report will require USDOE to project what it will cost to timely complete all requirements, without assuming any budget limitations. This will allow the State, EPA, and members of the public to see what is required (both in terms of near term and long term actions and funds for both) to complete the entire Hanford cleanup mission.

Because the Lifecycle Report will describe the actions and costs associated with meeting requirements (including deadlines) specified in the Consent Decree, TPA, and other legal instruments, the Report itself does not directly examine the possible acceleration of end dates. However, the Report will provide information relevant to the System Plan evaluation and future negotiations focused on the possible

acceleration of end dates. As described earlier, under the System Plan, the Parties will develop scenarios that might show how end dates could be accelerated. System Plan evaluation will facilitate costs comparisons of selected scenarios. Because the Lifecycle Report will specify the costs associated with current deadlines (i.e., will start with the assumption that the deadlines to be met are the ones specified in the Decree and TPA), it will provide baseline cost assumptions. Projected costs (both short-term and long-term) of scenarios that might accelerate end dates can be compared with these baseline assumptions. Thus, this cost information will be one piece (but not the only piece) of information that can be considered by the Parties when they negotiate the possible acceleration of end dates under the System Plan milestones.

Summary Comment:

Why doesn't the new milestone for the Lifecycle Scope, Schedule and Cost Report require a greater level of detail?

Is the Lifecycle Scope, Schedule and Cost Report subject to public review?

Response:

The level of detail expected to be included in the Lifecycle Report is described in the second paragraph of the M-36-01A TPA milestone on this topic. That detail is specified as being tied to "individual cleanup projects." Further, the milestone states that EPA and Ecology project managers may request that USDOE provide additional detail. Finally, the milestone requires annual revision of the Report.

In making assumptions for the initial Report, USDOE is required to take into account the views of EPA and Ecology and values expressed by the affected tribal governments and Hanford Stakeholders regarding the workscope, priorities and schedule. Thereafter, a Report will be prepared annually. Each year after the Report is submitted, USDOE is required to revise the Report based on timely comments from EPA and Ecology. The annual Lifecycle Report will be available to the public through the TPA Administrative Record and public repositories. While there is no official public comment period contemplated, the Tri-Parties will consider timely input provided from the tribal governments, Hanford Stakeholders, and the public on the published Reports as the next Report is prepared each year.

Waste Treatment and Immobilization Plant

A number of comments focused on the aspects of the proposed settlement that address USDOE obligations to treat tank waste by building and operating the Waste Treatment Plant (WTP).

In general, the settlement addresses the WTP in several ways. The Consent Decree requires USDOE to complete construction of the WTP by 2019 and achieve initial plant operation by 2022. The Consent Decree also includes a number of interim milestones aimed at ensuring that USDOE is on track to meet the 2019 and 2022 deadlines. The revised TPA provisions require completion of all waste treatment by December 31, 2047, or earlier as established through the System Plan process and negotiation. The System Plan process will periodically evaluate scenarios and identify actions that could optimize treatment in order to improve upon the December 2047 deadline. The System Plan also includes a contingency plan that will address risks that the deadline for completing waste treatment will not be met.

Comments on these aspects of the settlement included: (1) urging the Parties not to move the deadline to start the WTP from 2011 to 2019; (2) urging the Parties to move forward with early Low-Activity Waste (LAW) treatment; and (3) urging the Parties to develop a contingency plan to address the possibility that the WTP does not work. The Tri-Parties also received positive comments that the WTP construction commitments are excellent steps forward.

Summary Comment:

Why not require that the Waste Treatment Plant be started sooner than 2019?

Response:

The Parties agreed to move the deadline for hot start of the WTP from 2011 to 2019 because the Parties believed that was an aggressive yet realistic timeframe for achieving WTP hot start in light of the current information available. The State agreed to extend the deadline in exchange for other provisions in the settlement package that gave the State confidence that the new settlement requirements would be achieved. The settlement includes provisions for: (1) court oversight of WTP construction and initial operations requirements, including court oversight of 17 interim milestones (included to ensure DOE stays on pace to achieve hot start and initial operations on time); (2) a System Plan opportunity to accelerate the 2047 date for completing all waste treatment; and (3) a contingency plan that will address risk that the deadline for completing waste treatment will not be met.

Summary Comment:

Why not move forward with the start of early Low-Activity Waste?

Response:

The Parties have evaluated early low-activity waste (LAW), determined that there are substantial cost, safety, and environmental impacts as well as technical difficulties to early LAW treatment, and concluded at this time that the potential schedule benefits are far outweighed by these impacts. Should these issues be resolved, this settlement does not prohibit starting the LAW facility in advance of the completed WTP.

Summary Comment:

Why not develop a contingency plan to address retrievals and waste treatment if the WTP doesn't work?

Response:

The State was obviously concerned with progress on the WTP, which was one of the reasons why the State initiated litigation on the tank waste retrieval and waste treatment milestones. The Tri-Parties agree with the comment that the WTP should be completed as soon as possible and various requirements in the proposed settlement are focused on ensuring the construction, hot start, and initial plant operations also happen as soon as possible. Once the WTP achieves initial plant operations, the settlement requires USDOE to provide to Ecology annual certification that the WTP, and any supplemental treatment if needed, will treat tank waste at the rate necessary to accomplish treatment of all waste by the final completion milestone date. In addition, the settlement establishes a contingency plan if the WTP is delayed. This plan includes considering new double shell tanks. The State is conducting a comprehensive evaluation of the WTP through the dangerous waste permitting process. The schedule in the Consent Decree has both a cold and a hot start deadline to ensure that the plant will be able to start up and operate effectively.

High-Level Waste (HLW) Disposal

Summary Comment:

HLW should not be finally disposed of at Hanford.

Response:

The State appreciates this input and notes that this topic is not directly implicated by the proposed settlement because the settlement does not address the ultimate destination for disposal of the HLW vitrified product of the WTP. Nonetheless, it is correct that the WTP was selected and developed with the intent that the finally vitrified HLW would be disposed of at an appropriate HLW repository. The State believes that Congress has selected Yucca Mountain as the site for such a facility and is presently engaged in litigation in federal court and before the Nuclear Regulatory Commission (NRC) urging that USDOE not be allowed to abandon pursuit of the NRC license for Yucca.

Soil and Groundwater Contamination From Tank Farms

Summary Comment:

How does the proposed settlement address further remediation once the tank farms are removed?

Response:

Any remediation once tank waste is retrieved will be addressed by the TPA and other applicable regulatory requirements. For example, the groundwater protection milestones in TPA change packages approved in August 2009 address protection of groundwater in the tank farm areas. The settlement includes TPA schedules (M-45 series milestones) to investigate soil contamination and evaluate corrective action measures. In addition, by an Agreement in Principle under the recent Central Plateau Tentative Agreement, the Parties are scheduled to begin discussions on vadose zone contamination in and around the tanks upon entering the Consent Decree into court.

Consent Decree and Tri-Party Agreement

As explained at the outset of this document, the settlement package is comprised of a judicial Consent Decree and amendments to the TPA. A number of comments addressed specific terms of these documents, including: (1) suggestion that the Consent Decree language should be clearer to be more enforceable; (2) suggestion that the Consent Decree/TPA changes be renegotiated so they could be informed by additional information (e.g., TC & WM EIS, Lifecycle Report); and (3) suggestion that the Consent Decree provisions addressing USDOE's obligation to fund are not strong enough and that concerns about USDOE funding shortfalls should go straight to the judge, not dispute resolution.

Summary Comment:

The Consent Decree language should be clearer to be more enforceable.

Response:

Negotiating a legal instrument such as a Consent Decree is a lengthy process that involves attorneys representing each party proposing specific language to embody commitments. In developing the Consent Decree, the State attorneys reviewed a number of tools, including applicable legal principles and agreements used to resolve other disputes. Ultimately, the State attorneys believe the finished product—the Consent Decree—is a legally enforceable document that includes significant incentives designed to ensure that USDOE meets the requirements.

Summary Comment:

The Consent Decree/TPA changes should be renegotiated due to additional information such as the TC & WM EIS and the Lifecycle Scope, Schedule and Cost Report.

Response:

The Parties recognize that there will always be new information in the works that, once available, might provide the basis for the Parties to change assumptions on which the requirements in the settlement were based. However, the Parties believe it important to finalize the settlement terms based on the information considered about what is possible so that USDOE is under a set of new binding legal obligations. As explained in more detail above, the Parties included the System Plan provisions of the agreement in order to create an opportunity for the Parties, at regular intervals in the future, to take advantage of new information with the goal of improving upon key requirements if new information shows that improvement is possible.

Summary Comment:

The Consent Decree is weak on its obligation to fund Hanford cleanup; failure to meet Consent Decree obligations due to funding shortfalls should go straight to a judge, not dispute resolution.

Response:

The State does not view the Consent Decree as weak in the obligations it creates. The State expects USDOE will seek all necessary funds to implement the requirements of this settlement.

It is not unusual for a judicial Consent Decree to include a dispute resolution process as a step that is used before a dispute is presented to the judge for resolution. The dispute resolution provision in the Consent Decree is expected to take no longer than 40 days. If a dispute is not resolved in 40 days, either party may seek relief from the Court.

Tank Closure and Waste Management Environmental Impact Statement

Summary Comment:

A number of comments addressed the draft TC & WM EIS, which was released during the public comment period on the proposed settlement agreement, but which is the subject of a separate comment period and process.

Response:

As the Parties stated during the public meetings, there is a separate public comment response process for the draft TC & WM EIS. Public comments on that draft TC & WM EIS will therefore be addressed as part of that ongoing NEPA process. As a cooperating agency, Ecology is reviewing and providing input on the draft TC & WM EIS. In developing its comments, Ecology is considering the comments it received as part of the comment period on the proposed settlement agreement. During the public meetings, Ecology and USDOE communicated to meeting participants that there was a separate public comment process for the TC & WM EIS.

GENERAL COMMENTS

Protection of the Columbia River

Summary Comment:

The Columbia River and the environment surrounding the river should be protected.

Response:

The Tri-Parties consistently identify protecting the Columbia River as among our highest priorities. The public has clearly identified protection of the Columbia River as one of their most important values. We believe this settlement package supports the priority of protecting the Columbia River by: (1) allowing us to move forward with Consent Decree milestones for tank retrieval, and tank waste treatment, and (2) providing TPA milestones for a lifecycle cost estimate that will inform decision making on

remediation of all sites at Hanford and for tank closure. The TPA amendments addressing soil and groundwater cleanup that were finalized in August 2009 also advance this important priority.

Transport of Waste

Summary Comment:

Concerns were expressed about the possibility of risks associated with transportation of waste through populated areas.

Response:

Transport of waste was not the subject of the proposed settlement.

Effects from Waste on the Environment/Health and Safety of Employees and the Public

Summary Comment:

Protect the workers at Hanford and especially do not delay the cleanup so there are long-term effects of radiation on the workers as there have been in the past.

Response:

The Tri-Parties are constantly mindful of the need to protect workers during cleanup. Worker safety is the responsibility of the USDOE and the Tri-Parties share the commitment to make protection of workers a very high priority.

Companies and Agencies Responsible for Waste Cleanup/Getting the Cleanup Accomplished

Summary Comment:

There is a mistrust of those agencies making decisions on the Hanford cleanup and the companies who are actually doing the work.

Response:

The agencies and companies involved in Hanford cleanup need to be and are accountable for their work. The Tri-Parties will continue to explain our plans and decisions in the many forums for public participation in Hanford cleanup. The Tri-Parties recognize that the long duration of Hanford cleanup is a fundamental concern to many members of the public. The Tri-Parties share the public's concern about

how long Hanford cleanup will take and we will continue to look for opportunities to speed it up. The Tri-Parties support providing public involvement in decisions prior to remediation and/or closure decisions and will continue to provide public involvement opportunities as provided in the Hanford Site Tri-Party Agreement Public Involvement Community Relations Plan.

Public Involvement

Summary Comment:

Members of the Tri-Parties should take comment on all of the proposed agreement, especially any agreement that deals with off-site waste. Additionally, the Tri-Parties need to consider all the public comments on the proposed settlement before making final decisions.

Response:

Management of off-site waste includes a process involving the AEA and NEPA and permitting of disposal units receiving hazardous waste involves the State Hazardous Waste Management Act and State Environmental Policy Act. Public comments on off-site waste are considered in these processes. Off-site waste comments made during the settlement comment period were shared with the ongoing NEPA review of the TC&WM-EIS. The Tri-Parties provided opportunities for members of the public to comment on the proposed settlement, including areas that dealt with offsite waste. In the daylong public workshop and the public meetings, the issue of offsite waste was discussed in the presentations, and members of the public had an opportunity to provide verbal and written comments on the issue.

The Tri-Parties reviewed and considered each and every comment before going back to the negotiating table to discuss potential changes as a result of the public comments received. The Parties concluded that in light of all the benefits of the settlement package they should finalize the settlement as originally developed.

Summary Comment:

The response to comment document should be provided to the public for review and public input before the parties finalize the agreement in order to provide an opportunity for dialogue between the Hanford Advisory Board and the public on the responses before a final decision is reached.

Response:

The responsiveness summary is available to the public both electronically and hard copy. However, the Tri-Parties do not distribute responsiveness summaries for public comment. The public comment period was scheduled from October 1 through December 11, 2009. There were five public meetings held around the region. During the comment period, there were many opportunities for members of the public to comment on the settlement, both in verbal and written form. Additionally, the agencies discussed the proposed settlement with the Hanford Advisory Board on several occasions prior to and during the comment period. The agencies reviewed all the comments carefully and reached their final decisions after considering those comments. The Parties do not believe that an additional round of public discussion on the proposed settlement package would yield significant new information that would allow the settlement package to be improved upon. On the other hand, it is important to finalize the terms of the settlement agreement so that the USDOE can officially begin working under the new legally enforceable requirements and the State can monitor USDOE's compliance with the requirements.

Summary Comment:

During the public meetings, the agencies should have had the question and answer session recorded by the Court Reporter. The Seattle meeting location and room was not acceptable and did not provide a good venue for encouraging public comment.

Response:

In the public meetings, some members of the public requested that the question and answer session be recorded by the Court Reporter. The Tri-Parties wanted an accurate record of all the verbal comments made during the public meetings, so a Court Reporter took comments at each location. The purpose of the question and answer session was to provide the public with the opportunity to clarify the issues discussed earlier in the evening by the Tri-Parties in order to help the public formulate comments. The facilitator indicated during the public meeting when the official comment period began during the meeting so members of the public understood when his or her comment was being recorded.

There were issues with the meeting room used in Seattle. The Tri-Party Agencies agree that this room was not the best location for that meeting. An agency representative tried to secure one of the alternate locations that a local stakeholder group recommended. One alternative did not meet the

Parties public facility expectations. The other was too expensive. In the future, the Parties will work with the stakeholders to improve the meeting locations for the Seattle public meetings.

Summary Comment:

Regarding the public notice for the public meetings, the Tri-Parties should have provided clear information so the public understands what the proposed decisions and issues are being discussed at the meetings.

Response:

The Tri-Parties are always trying to improve on the public notices for meetings. We will review the notices for the proposed settlement to determine what could be improved in the future, especially how the information was presented in the notice.

Regarding the publicity and the media, the Tri-Parties made extensive efforts to involve the public. This included postings on the Hanford.gov web pages, notifications mailed to those on the public list serve of interested individuals and organizations, and advertisements placed in local newspapers. In addition, the Tri-Parties contacted members of the press across the northwest region prior to public meetings, including the Spokesman Review, Northwest Public Radio, the Oregonian, and the Tri-City Herald. Press releases were distributed and information was posted during the public meetings on USDOE's Twitter page. The media may not have identified the public meetings as "newsworthy" and did not attend. However, the agencies will review the public information and outreach efforts to determine what could be improved in the future.

Ecology liked the idea of the one page fact sheet that illustrates all the Hanford Site cleanup efforts together and will look into developing one for future public meetings.

Proposed Settlement

Summary Comment:

Members of the public are concerned about the massive contamination on the Hanford Site, especially the groundwater contamination. Additionally, there is concern that the proposed settlement does not include enforceable requirements to remove the large quantities of highly radioactive or long-lived radioactive wastes, such as Plutonium, or other transuranic wastes. Another concern is with regard to characterization. The Consent Decree does not appear to address these

needs effectively. Members of the public would like to see more focus on characterization in the proposed settlement.

Response:

The Tri-Parties are also concerned about contamination on the Hanford Site. Consequently, cleanup is addressed through the TPA and Hanford Site Dangerous Waste Permit. Characterization of hazardous waste releases to the soil from the tank farms is included in this change package under the “M-45” series of milestones which require characterization of the soil contaminated by releases from SSTs. The CD addresses tank waste retrieval and construction of the WTP while groundwater and soil waste site contamination are addressed by TPA milestones and Hanford Site RCRA Closure.

Sharing Cleanup Information with Other Countries

Summary Comment:

The Tri-Parties need to gather and share information with other countries to understand how to deal with our problems with nuclear waste cleanup and to learn new nuclear technologies.

Response:

Although gathering and sharing information with other countries is not a requirement of the Tri-Party Agreement, USDOE and their contractors do participate in forums where international information is exchanged. These are typically professional conferences with international attendance when held in the United States, or even conferences held in other countries. Additionally, some of USDOE’s contractors work on cleanup projects in other countries. Ecology has no specific relationship with other countries, but does maintain technical exchanges with other states and Tribal Nations throughout the country.

Comments from the Tribal Nations

Summary Comment:

Members of the Tribal Nations believe the Hanford Site needs to be restored according to the original agreements made between the individual tribes and the United States government prior to the issuance of the proposed settlement.

Response:

USDOE recognizes its federal obligations under the 1855 treaties with Tribal Nations and implements policies and programs consistent with these treaties. The Tri-Parties appreciate the important influence of Tribal Nations on values for Hanford cleanup. We will be consulting the tribes in regards to closure and final remediation decisions prior to those decisions.

The Parties' decision to finalize this settlement package was informed by input from various tribes including meetings held in August 2008 with the Confederated Tribes of the Umatilla Indian Reservation, the Yakama Nation, and the Nez Perce, and in September 2009 with the Yakama Nation. The Parties also note that this settlement does not constitute a final cleanup or restoration decision.

General Comments and Inquiries for More Information

Summary Comment:

Several members of the public requested more information regarding the proposed settlement.

Response:

Each request for more information was responded to individually during the public comment period, and the requests were included in the record since they were made in a public comment.