



Heart of America Northwest

The Public's Voice for Hanford Cleanup

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Comments on the Proposed Tri-Party Agreement Changes for Mixed Low-Level Waste & Transuranic Mixed Waste and Central Plateau Cleanup Work

Joint Comments of Heart of America Northwest and
Heart of America Northwest Research Center

Submitted to U.S. Department of Energy (USDOE)

30 June 2010

Heart of America Northwest (HoANW) appreciates the opportunity to provide input on the proposed changes to the Tri-Party Agreement. This letter is meant to transmit our specific comments and identify general areas of concern in the proposed changes.

Geographic Approach to Central Plateau Cleanup

Hanford's Central Plateau contains waste in unlined ditches, trenches/ponds, high-level waste tanks, and in landfills. In addition the Central Plateau also has facilities, large Plutonium and Uranium extraction facilities called "canyon" buildings, which is surrounded by an "outer area" which includes waste discharge sites. Heart of America Northwest supports the new geographical approach to the Central Plateau Cleanup. USDOE's previous plan was to only have three general decision units for all the diverse types of cleanup, and Heart of America Northwest found that plan insufficient.

The new approach has geographically-based decision units that include: two groundwater decision units, a unit for the deep soil contamination. However, HoANW supports a cleanup plan that integrates cleanup of soils, facilities and groundwater.

Incorporated in the Central Plateau cleanup changes is a huge exception to the 2024 milestone to complete cleanup of all "non-tank farms" waste sites in the Central Plateau. The proposal delays completion of cleanup and demolition of the massive contaminated "canyon" facilities (PUREX Plant, Plutonium Finishing Plant, REDOX) by removing them from the 2024 milestone. The 2024 milestone remains an important driver for Central Plateau cleanup. Additionally, HoANW

does not support the 5 year delay to the milestones to complete investigation and propose cleanup plans for the soil sites.

- Heart of America Northwest supports the new geographical approach to Central Plateau Cleanup;
- Cleanup plans should integrate cleanup of soils, facilities and groundwater;
- Do not delay the completion of the investigations and proposal of work plans for contaminated soil sites in the Central Plateau;
- Maintain the 2024 milestone for completion of all non-tank farm operable units and do not exempt the canyon facilities - this milestone is the major driver for cleanup on the Central Plateau and should not be compromised.

New Deep Vadose Zone Operable Unit

The Tri-Party Agencies' recognition of the importance of deep vadose zone contamination, as manifest in the new operable unit in this change package, is a promising first step towards cleaning up this important aspect of Hanford's contamination. However, the milestones laid out in the Tri-Party Agreement lack specific goals and schedules for remediating the contamination. Deep vadose zone contamination on site at Hanford should be addressed in concert with tank farm leaks and other contamination investigations. Heart of America Northwest supports a comprehensive cleanup approach to contamination throughout the entire soil column and integration of the cleanup of soils, facilities and groundwater.

Currently, all 44 of the waste units included in the 200-DV-1 OU are non-tank farm units and are subject to the 2024 completion date as outlined in M-016-00. The few milestones laid out in the TPA for the new 200-DV-1 OU do not appear to put the OU on track for completion by 2024. M-015-110A requires a work plan that "shall include technology screening that identifies technologies applicable for characterization, treatment, and monitoring of deep vadose zone contaminants" by September 30, 2012. The proposed Field Research Center for deep vadose zone contamination is still theoretical, yet the Department of Energy has to have identified technologies within two years of the proposed launch (October 2010), and characterize the contamination and determine a workplan for cleanup three years after that. Then, the Department of Energy has just nine years to complete cleanup of 44 unique waste sites with deep vadose zone contamination, but there are no milestones included in this change package outlining an aggressive schedule to complete this work.

Heart of America Northwest is deeply concerned that the deep vadose zone waste units' remedial actions will not be complete by 2024 as legally required. Again, milestones outlining the entire cleanup process need to be identified now with enforceable due dates, so that the Department of Energy is held accountable to complete the remediation of the deep vadose zone and all other non-tank farm units by September 30, 2024. The Department of Energy must demonstrate real commitment, procure real funding and complete the remedial actions on schedule.

Previously, decisions for these waste units would have covered only the shallow vadose zone below the surface of the waste sites or facilities. At the workshop in Portland on June 23, 2010,

the public was told that the new deep vadose zone operable unit's waste sites are integrated from the surface through the deep vadose zone; Heart of America Northwest applauds this intent to integrate. However, this is not apparent in the TPA change package documents that were presented to the public for comment, and Heart of America Northwest wants assurance that the remedies for the proposed waste sites in the 200-DV-1 OU will be considered from top to bottom.¹

The Tri-Party Agencies did an insufficient job presenting the new 200-DV-1 OU to the public, giving the impression that the Single Shell Tank waste units were currently proposed to be included in the operable unit. Interestingly, those units are the only ones not subject to the 2024 deadline, and, they are the poster child for deep vadose zone contamination. In the future, Heart of America Northwest requests that the agencies more thoroughly present significant changes to the TPA, making explicit what waste units are affected.

- The agencies should develop a comprehensive cleanup approach to contamination throughout the entire soil column and integrate the cleanup of soils, facilities and groundwater;
- Heart of America Northwest is concerned that the 44 waste units that comprise 200-DV-1 OU are extremely dissimilar; and, that creating one workplan for all 44 units will result in compromised cleanup;
 - The BC-1 (BC Cribs and trenches) unit should not be delayed from its current TPA RI/FS and work schedules by inclusion in the DV-1 Operable Unit. USDOE has dragged its feet on investigating and characterizing cribs and trenches, and should not be receiving a delay for this work. This unit is an example of why work plans and work should be required for specific similar units within this grouping of 44 units, rather than deferring all to one work plan and set of dates.
 - As has been done with other units, within the unit all similar geographic and types of sites should be grouped and have schedules. This would avoid the most difficult sites from setting the schedule for all 44 units.
- To complete 200-DV-1 OU's remedial actions by 2024 as legally required through TPA M-016-00, the Department of Energy will need to be held accountable to a set of aggressive, comprehensive & enforceable milestones. The milestones for completion of the cleanup of the deep vadose zone operable unit waste sites should be laid out now to ensure compliance with the September 30, 2024 deadline;
- The Department of Energy must demonstrate real commitment to complete the deep vadose zone remediation for all non-tank farm sites by 2024 by procuring real and sufficient funding – this means that there should be a clear requirement to identify the funding needed and request it in annual budget submissions starting with FY 2011;
- Heart of America Northwest requests a written description of the 200-DV-1 Operable Unit that describes the claims that the waste units included in the operable unit will be considered and remediated as one unit from the surface to the groundwater;

¹ E.g., the setting of cleanup action or remedial action levels must consider the results of actual field investigations of deep contamination as well as near surface contamination in order to be protective of groundwater (and surface waters, since the groundwater flows to the River). The combined releases have to be considered in setting protective cleanup levels.

- The Tri-Party Agencies did not do a sufficient job of describing the new 200-DV-1 OU to the public, which led to confusion and misconceptions that the scope of the work for the new OU included the Single Shell Tank farm units.

Delays to retrieval and treatment of Plutonium and other Transuranic wastes buried at Hanford

After 1970, USDOE was required to “retrievably store” Transuranic waste (TRU), instead of disposing of it in unlined trenches as it had been doing for decades. After being retrieved from storage, the TRU is to be sent to the Waste Isolation Pilot Plant (WIPP) in New Mexico for permanent disposal. Hanford workers are currently retrieving waste drums from storage ditches, preparing them for shipping, and sending shipments to the WIPP facility.

Heart of America Northwest is deeply concerned because the TPA change package allows USDOE to delay retrieval and treatment of highly toxic TRU waste. Instead of proposing legally enforceable milestones for cleanup of TRU waste, the TPA agencies propose non-binding “target dates” that will allow the agencies to delay cleanup indefinitely. Since USDOE has no obligation to set aside funding for cleanup with “target dates,” the likelihood of further delays is great. Legally enforceable milestones are essential because storage barrels are corroding, waste is spreading, and any delay in retrieval increases the risk to cleanup workers and cost of eventual retrieval. Hanford is the most contaminated area in the western hemisphere and any delay in cleanup will further compromise the overall success of the cleanup effort and endanger the health of communities throughout the Northwest.

Unless TPA milestones are stable and reliable, TPA agencies will be unable to develop adequate on-site treatment capacity. TPA agencies must recognize that without legally binding milestones requiring cleanup, private investors will be discouraged from investing in treatment and disposal capabilities and will be further discouraged by insufficient time to acquire investments and permits. A clear and enforceable cleanup schedule is critical to protecting the health of Hanford workers and the communities nearby.

We are also concerned that shipments of TRU waste from Hanford are projected to be extended to 2035 even though the Waste Isolation Treatment Plant (WIPP) is legally bound to close by 2030 and could much close sooner. The TPA change package milestones should, at minimum, align with the WIPP closure schedule to ensure that all WIPP eligible waste is disposed of at WIPP. Since WIPP is the *only* repository authorized to receive and dispose of TRU waste, once it closes any remaining TRU waste at Hanford would be stranded in violation state and federal law. To prevent this, HoANW urges the agencies to require early shipment of TRU waste to minimize the risk of WIPP closing prior to all shipments being sent from Hanford.

Failure to include requirement to retrieve Transuranic wastes (TRU) buried at Hanford before 1970:

The TPA should include a specific commitment to retrieve TRU waste buried at Hanford before 1970. Though the term “transuranic waste” was not defined as such until 1970, as much as 1,033 kilograms of Plutonium were dumped into the soil before 1970 – enough to fuel 172 Nagasaki-

size atomic bombs. From the early 1940s to the early 1970s Plutonium was dumped into at least 55 sites, and at least 16 of these sites contain TRU waste that exceeds USDOE's own standard requiring geological disposal. The pre-1970 TRU waste poses an enormous risk to human health and the environment and the TPA agencies should require characterization, retrieval, treatment, and disposal milestone schedules be established.

Additionally, TPA agencies should require USDOE to request funding for the cleanup of pre-1970 TRU to ensure that there is a capability to handle and process the pre-70 TRU. Cleanup efforts will be seriously hindered or delayed if USDOE does not have adequate funding for TRU cleanup.

- The agencies should establish legally enforceable milestones for cleanup of all TRU waste including all pre-1970 TRU waste;
- The agencies should require USDOE to request funding for TRU waste cleanup;
- The agencies should ensure that enforceable agreements are in place to guarantee a permanent disposal site for TRU waste;
- The agencies must reconcile the 2035 milestone with WIPP's 2030 closure date to ensure that all of Hanford's WIPP eligible waste actually goes to WIPP and none of it is stranded at Hanford.

Record of Decision Authorship

The proposed TPA changes would allow DOE, instead of EPA, to draft Records of Decision (RODs) for cleanup actions under CERCLA. While EPA would still have to sign off on the final ROD, DOE would review the record and effectively choose a corrective action and write the ROD. Not only is this shift of responsibility illegal, it runs directly counter to public interest. Because it makes little sense to have DOE (the polluter) essentially regulate itself, Heart of America does not support this change.

The basis of our concern regarding this change is that, in preparing a draft for EPA approval, DOE can choose which part of the record to rely upon and which to disregard. The authority to make this kind of judgment has been properly delegated to the expert agency, the EPA, and cannot be given to DOE. If DOE effectively writes the RODs, there is little oversight of DOE action. As the polluter and the source of cleanup funds, DOE has a clear incentive to choose remedies that expedite cleanup and minimize costs. And while DOE professes to be dedicated to protection of health and the environment, the reality is that DOE has a number of interests to balance. EPA, on the other hand, is tasked only with protection of the environment. Rather than allowing DOE to essentially choose the cleanup path itself, EPA should retain its authority to pick remedies based on its own mission, not that of DOE.

In addition to our practical concerns, allowing DOE to draft the RODs is not permitted under CERCLA. EPA is the final decision-maker with respect to the selection of remedial actions at Hanford. CERCLA §120 requires that the EPA and the DOE jointly select a remedial action, but in the event that the two agencies are "unable to reach agreement on selection," the EPA is

vested with ultimate decision-making power.² Moreover, the DOE concedes that this is the case. The TPA requires RODs to be signed by the EPA,³ and the Agreement in Principle specifies that, “in any event, EPA approval of Records of Decision would still be required in accordance with CERCLA §120.”

EPA’s authority to select remedial actions may not be delegated. Under CERCLA §120, “no authority vested in the EPA under this section may be transferred, by executive order of the President or otherwise, to any other officer or employee of the United States or to any other person.”⁴ Thus no modification of the TPA that purports to reassign this responsibility will be valid.

In addition to CERCLA’s clear directive that EPA write RODs, the Administrative Procedure Act also prohibits EPA from delegating authority to DOE. Agencies charged with rulemaking authority under the APA must assure that final decisions must be based on reliable facts, and the decision-maker must evaluate the facts in the record for reliability.⁵ Facts cannot be excluded from the record because an agency deems them unreliable; all information must be admitted and then evaluated for reliability at the decision-making stage.

As the final decision-maker in the remedy selection process at Hanford, EPA is the rulemaking agency. As such, EPA is required to base its decision on a complete and reliable record. The theory of rulemaking requires that all relevant information appear in the record *at the decision-making stage*, so DOE is not permitted to manipulate that record prior to the EPA’s evaluation. Even information that is deemed unreliable by the DOE must be included for evaluation of reliability by the EPA, the rulemaking agency.

While a ROD provides a description of technical parameters and a consolidated summary of the rationale behind the choice of remedy, in no way does it represent a complete record. EPA is not permitted to simply sign-off on a ROD prepared solely by DOE. To fulfill its obligations as the rulemaking agency, EPA must evaluate a complete record, determine the reliability of facts, and consider alternative remedies. As mentioned above, there would be a clear conflict of interest for DOE to perform this duty because DOE would in effect be evaluating its own clean-up efforts at Hanford without any oversight. This self-policing would lead to a biased selection of a remedial action.

The agencies support the proposed change of ROD authorship by asserting that it will make the ROD drafting process more efficient. Because DOE is already involved in choosing a remedy and because DOE can dedicate more resources to the process, both EPA and DOE claim that handing over drafting responsibilities will increase efficiency. EPA’s Dennis Faulk admitted at a June 24th workshop that he did not wish to expend the resources required to write initial ROD drafts as CERCLA. He further noted that “this is how it works” at many other sites around the country. However, in response to a question regarding EPA’s review of DOE’s drafts, Faulk stated that EPA does conduct a detailed review of DOE’s work and has sufficient personnel to

² 42 USC § 9620(e)(4)(A)

³ TPA §7.3.8

⁴ 42 USC § 9620(g)

⁵ *Kennecott v. U.S. EPA*, 780 Fed.2d 445, 458 (4th Cir. 1985)

write the drafts themselves. If EPA does in fact have the ability to review the record and draft the ROD itself, it should do so. Alternatively, if EPA does not have the manpower to fulfill its obligations, the illegal delegation of power to DOE (the agency EPA is supposed to be regulating) is clearly improper.

Heart of America strongly urges the parties to retain the current structure in which EPA is responsible for drafting RODs. However, if DOE does assume some authority in the drafting process, we agree with the Hanford Advisory Board that the concerns of the public would be somewhat quelled if DOE drafts were subjected to public review and comment. Making drafts available for comment would add transparency to the process and provide some oversight for DOE actions.

RCRA & CERCLA

Corrective Action changes will result in less stringent cleanup standards

An additional concern about the proposed TPA changes involves the administering of corrective actions. This change involves the replacement of RCRA corrective actions for past practice units with CERCLA corrective actions, a shift that HoANW does not support. A primary purpose of corrective actions is to ensure full characterization of releases to the environment; as such characterization is necessary to define the nature and extent of contamination. We do not believe that corrective actions performed under CERCLA actions will be as complete and have cleanup levels as stringent as under RCRA corrective actions (i.e., particularly the characterization of the vadose zone beneath units subject to cleanup under the TPA).

The existing language in the TPA ensures compliance with WAC 173-303 regulations by requiring the Hanford Site (as the permitted facility) to incorporate and specify corrective actions within the Permit at the time of permit issuance. The proposed modifications, however, seem to run contrary to the purpose and intent of the TPA's instruction on RCRA/CERCLA integration:

*“EPA and Ecology agree that when permits are issued to DOE for hazardous waste management activities ... requirements relating to remedial action for hazardous waste management units under Part Three of this Agreement **shall be the RCRA corrective action requirements** for those units, whether that permit is administered by EPA or Ecology.*

Further, the proposed changes to corrective action implementation on the Hanford site are not supported by HoANW or the Hanford Advisory Board. The HAB articulated its displeasure with the move to CERCLA corrective action on June 4th by stating:

All corrective action requirements should be incorporated into the Hanford Facility Permit according to the requirements of the Washington Administrative Code 173-303-6462 (3) and -64630(3). These state rules ensure compliance with the Resource Conservation and Recovery Act (RCRA) and the Model Toxics Control Act, and guarantee the public certain rights (including under the State Environmental Policy Act

and appeals). Joint decisions compliant with both RCRA and CERCLA processes should both be issued for those units regulated under both laws.

Proposed changes will negatively impact public involvement

In addition to the changes regarding corrective actions, we are concerned that proposed changes will impact the public involvement process of WAC 173-303-830/840 and limit public opportunities to challenge or seek modification of corrective action decisions in the future. Ecology's reservation of authority to review and impose corrective actions after completion of CERCLA actions will not afford the public the same opportunities for involvement as provided through the Dangerous Waste Regulations for RCRA modifications.

Public Involvement Comments

The Tri-Party Agencies demonstrated exemplary willingness to work with stakeholders to schedule and design the public workshops in Portland and Seattle on this change package. Participants at the workshops gave feedback indicating that this type of meeting was useful and informative for them, and Heart of America Northwest found the workshops to be ideal considering the scope of changes under comment and the recent conclusion of an extended comment period on the draft *Tank Closure and Waste Management Environmental Impact Statement*. Heart of America Northwest recognizes the value of having senior officials from DOE, EPA and Ecology interfacing with the public and hearing the public's concerns firsthand, and we have repeatedly submitted comments to that effect.

Tri-Party Agreement change packages are not accessible to the public for them to prepare comment on their own. The TPA should include maps and guides to individual waste units so that anyone can easily look up a waste unit (currently designated by numbers, letters and dashes unintelligible to the public), see where it is located and a description of what is in it. There was a major flaw in the presentation of the new deep vadose zone operable unit, which Heart of America Northwest did not catch until two days before the close of comment, as a result of the inaccessibility of the change package document.

Perhaps the major imperfection of the workshop format is that it is not as effective of a format for capturing public comments. At the workshops in Portland and Seattle, notes on the discussion were taken on flip-charts and by a designated note-taker. We expect that all of the notes from both of the meetings will be treated as formal comments and will be responded to in the responsiveness summary.

- The Tri-Party Agreement should include maps and guides to the operable units and waste units for the public;
 - Additionally, Tri-Party Agencies should rename the groundwater operable units to “200 East” and “200 West” to avoid confusion and increase transparency;
- The notes and flip charts from the public workshops in Portland on June 23 and Seattle on June 24 should be responded to as formal comments in the responsiveness summary;
- Senior officials from the Tri-Party Agencies should always be present at public meetings and workshops to interact with the public and hear their concerns firsthand.

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*Resources for citizens seeking to comment and be engaged on Hanford cleanup issues
are available at www.hoanw.org*