

ENVIRONMENTAL ATTORNEY TRAINING
September 26, 2008

ENVIRONMENTAL CONFLICT RESOLUTION
RL HYPOTHETICAL

I. Nature of Dispute

1. This dispute is raised under a Federal Facility Agreement Process. We are in the middle of the process and trying to resolve technical and management issues.
2. State disapproved DOE suggested changes to reduce volume of waste needing certification for WIPP disposal or to extend the due date for certification.
3. Current volumes and due dates are no longer realistic or achievable.

II. DOE's Position

1. Transuranic waste certification rates were established with no prior Hanford experience.
2. Rates should be re-established based on experience gained from the previous 3 years operations.
3. Key assumptions for transuranic certification changed.
 - a. Containers were in worst condition than anticipated requiring increased remediation to meet WIPP disposal requirements.
 - b. A larger percentage of drums required over-packing than anticipated.
 - c. A lesser amount of transuranic waste that is easier to certify is available.
 - d. The 2006 amount is available in storage but it requires significant more effort to certify.
 - e. DOE seeks WIPP shipping approval for transuranic waste based on volume expecting to ship the smaller and harder to certify volumes later.
 - f. Rejection of the Change Request is unreasonable for the circumstances.
 - g. The Federal Facility Agreement anticipates adjusting milestones based on changed conditions.

III. Supporting Information

1. M-91-42 milestone established in 1996 required a Project Management Plan.
2. A Project Management Plan was submitted in 2000 that led to a 3 year dispute over authority to regulate transuranic waste.
3. M-91-42 milestones were agreed to contingent on the outcome of litigation over transuranic waste authority beginning in 2003.
4. In 2006, District court held the mixed portion of transuranic waste is subject to RCRA LDR requirements while it sits in Washington State.
5. DOE appealed the 2006 decision; a 9th circuit court opinion is still pending.
6. Since winning the lawsuit the State is unwilling to adjust M-91-42 milestones.
7. Technical difficulties have delayed transuranic waste certification; consequently, the due dates of 2006 and 2007 were missed. The 2006 milestone was completed four months late. The 2007 milestone has not yet been completed.

8. 2008 and other out year milestones are in jeopardy of being missed.
9. Other commitments in the M-91 milestone series were completed ahead of schedule and progress has been made toward other milestone completions.

IV. DOE Path Forward to Resolve the Dispute

1. Update the M-91-42 Interim Milestone transuranic mixed waste certification requirements.
2. Clarify milestone text for defining completion.

V. History of Attempted Resolution

1. Changed circumstances began causing operational delays about 2005.
2. From 2005 through 2006 numerous project manager meetings were held to discuss volumes, changed conditions, and information learned from implementing the milestones.
3. Smaller near term issues were resolved but the larger, more cumbersome and potential out year delays were tabled.

VI. TPA Provisions

1. Stipulated Penalties for missed milestone due dates are set at \$10,000/week.
2. Parties agreed to disagree that Anti-Deficiency Act was a valid defense for missing a milestone.
3. Article XL, Good Cause for Extension and Article XLVII, Force Majeure, govern valid reasons for extending.

VII. Other Considerations

1. RL is considering hiring 2 experts to manage: (1) CERCLA Final Records of Decisions; and (2) CERCLA natural resource injury assessment.
2. Hanford Sitewide RCRA and Dangerous Waste Permit Renewal discussions are occurring simultaneously with the State.
3. Some Hanford Site Trustees have filed a claim for natural resource damages.