



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION 10**  
1200 Sixth Avenue  
Seattle, WA 98101

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Reply To  
Attn Of: ECL-117

Keith Klein, Manager  
Richland Operations Office  
U.S. Department of Energy  
P.O. Box 550 MSIN A7-50  
Richland, WA 99352

Subject: Stipulated Penalties for Missed Cleanup Milestone M-34-08

Dear Mr. Klein:

This letter notifies the U.S. Department of Energy (DOE) of the penalties assessed for violation of a Comprehensive Environmental Response, Compensation, and Liability Act requirement agreed to within the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement or TPA), specifically completion of milestone M-34-08 for the K Basins Project. Milestone M-34-08, which has a due date of December 31, 2002, requires the following:

Initiate full scale K East Basin sludge removal. DOE shall complete and approve K East sludge removal definitive design documents, all associated construction, and readiness assessments, and initiate removal of sludge from the Basin.

This work has not been completed, and the most recent discussions with the DOE have indicated this work will not be completed until May 2003. Under TPA Article XX, the U.S. Environmental Protection Agency (EPA) may assess a penalty of up to \$5,000 for the first week, and \$10,000 for each additional week (or part thereof) for any failure to comply with a term or condition of Part Three of the TPA. Potential stipulated penalties that have accrued for this missed milestone total \$135,000 as of April 1, 2003. After consideration of the items identified below, a total penalty of \$76,000 is levied for the period through April 1, 2003. Because the work required to complete this milestone has not been completed, additional penalties of up to \$10,000 for each additional week (or portion thereof) of noncompliance may be assessed as per TPA Article XX.

There are a number of key items which provide the basis for EPA's decision to levy a penalty of \$76,000 for the period through April 1, 2003:

- 1) The K East basin contains nearly 50 cubic meters of highly radioactive sludge. This material releases radionuclides into the shielding water, and the basin has a history of leaks to the underlying soil and groundwater. Groundwater is contaminated from these releases, and this groundwater discharges into the Columbia River. Sludge removal has

been a top priority for the EPA. Timely removal of the sludge is necessary for the K Basins project to be protective of human health and the environment. The DOE has had many years to prepare for this cleanup action. Work scope to remove the sludge from the K Basins has been in the TPA for about a decade. The initial date to begin removal of sludge from the K East Basin was November 1996. The current December 31, 2002 due date for this M-34-08 milestone has been in the TPA since May 2000.

- (2) When EPA negotiated the milestones and target dates for the K Basins project, target date M-34-12-T01 was included in the TPA. This target date required DOE to:

Complete construction of K East Basin sludge and water system to support spent nuclear fuel removal.

The due date for M-34-12-T01 was September 30, 2002. On September 18, 2002, DOE formally notified EPA via letter that the target date would not be met. In that letter, DOE stated that the target date was scheduled for completion by October 31, 2002, i.e., one month late. In fact, that work scope was not completed until March 4, 2003.

During the last months of 2002, DOE informally projected a February 13, 2003 completion date for the M-34-08 milestone. Although DOE had many years to prepare for sludge removal, DOE has failed to initiate sludge removal by December 31, 2002 or the February 13, 2003 projected initiation date. Delays, and particularly those beyond February 13, 2003, are a concern given the critical importance of initiating sludge removal to address the risks it poses to health and the environment. Therefore, EPA has assessed a higher penalty for continued non compliance beyond the February 13, 2003 date.

- (3) On December 30, 2002, DOE submitted a milestone change package to extend the completion date for milestone M-34-08 from December 31, 2002 to April 30, 2003. On January 2, 2003, EPA disapproved that milestone change package because the requested extension of time was not justified for the reasons described above. On January 6, 2003, EPA and the Washington State Department of Ecology sent you a letter advising that DOE had failed to meet TPA milestones M-34-08 and M-91-20 and was subject to the assessment of stipulated penalties for such failure. On January 13, EPA received from DOE a notice to invoke dispute resolution of EPA's disapproval of the schedule extension. The dispute ended when DOE failed to submit a written statement of dispute as required by Article XVI paragraph 59(C) of the TPA. In EPA's latest discussions with DOE on the sludge schedule, DOE now projects the completion date for the M-34-08 milestone will be in May 2003.

From January 1, 2003 through April 1, 2003, DOE is liable for 13 weeks of stipulated penalties for failure to meet M-34-08. The EPA hereby assesses stipulated penalties of \$1,000 each week for the first six weeks. The EPA assesses stipulated penalties of \$10,000 per week for the next seven weeks through April 1, 2003. The stipulated penalties assessed total \$76,000 for the period of January 1, 2003 through April 1, 2003, for failure to complete TPA milestone M-34-08.

Under paragraph 73 of the Tri-Party Agreement, DOE has fifteen days upon receipt of this letter to invoke dispute resolution. The DOE can invoke dispute resolution only on the question of whether the failure to comply did in fact occur. The amount of the penalty is not subject to dispute resolution.

If DOE does not invoke dispute resolution within fifteen days of receipt of this letter, DOE shall submit a check payable to the Hazardous Substances Superfund within sixty days of receipt of this letter, or such other time agreed to by EPA in writing, for the full amount of the stipulated penalties assessed in this letter. This check must be sent to:

Mellon Client Services Center  
U.S. Environmental Protection Agency, Region 10  
500 Ross Street  
P.O. Box 360903M, SF  
Pittsburgh, Pennsylvania 15251-6903

The letter transmitting the check should indicate that the check is for the Hanford Site and include site identification No. 10-97. A copy of the transmittal letter should be sent simultaneously to:

Nick Ceto  
U.S. Environmental Protection Agency  
712 Swift Boulevard, Suite 5  
Richland, WA 99352.

The EPA will continue to track progress toward completion of the work requirements of milestone M-34-08. Please contact me at 206-553-7151 or Nick Ceto at 509-376-9529 if you have any questions.

Sincerely,

Michael F. Gearheard, Director  
Environmental Cleanup Office

cc: Norm Boyter, Fluor Hanford  
Steve Veitenheimer, DOE  
Mike Wilson, Ecology  
Administrative Record, 100-KR-2