



December 4, 1998

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Subject: Tank Waste Treatment Contract, TPA Milestones, Financing and Funding

Dear Messrs. Owendoff, Wagoner, and Fitzsimmons:

The Hanford Advisory Board (HAB) submits the following advice relating to progress on the BNFL contract for the technical design of a tank waste treatment facility.

The health, environmental, and economic consequences of a failure of the tank waste treatment and disposal program are extreme. The Board has been consistently correct in its warnings of tank waste program pitfalls. The current lack of leadership on the parts of DOE and Ecology in the implementation of this program is alarming. Without real leadership and action in the near-term, this program will fail. Management of this vital program through inaction is totally unacceptable. It is critical that DOE-HQ identify the decision-maker for this program and direct that person "to get on with it."

The objective of these immediate actions must be an executable contract to construct and operate a tank waste treatment facility. This includes not only the technical design work, but also resolving all cost, contract, and finance issues so that the contract is awarded on schedule.

In the very near term, the Hanford Advisory Board (Board) sees the following items as essential indicators of leadership action: (1) DOE must have a clear, sound and nimble decision-making process, and (2) Ecology must have enforceable near-term TPA milestones to hold DOE accountable for progress during the design phase. Less time critical, but equally important are the following issues: (3) DOE should also establish decision points and criteria for considering alternative financing mechanisms, (4) DOE should present its funding plan for the entire program, and (5) public involvement is critical to the success of

this project. The following advice is aimed at meeting these five needs.

"Go/ no go" decision point

DOE currently has an internal decision point in February 1999 on whether to proceed with the BNFL Phase B-1 contract. This "go/ no go" decision is based on criteria yet to be finalized. Many of the negotiations on pricing issues are to be done by February. Also, DOE will have many of the technical deliverables in hand for evaluation. Presumably, the criteria will be based on the success of the negotiations as well as the soundness of the technical documentation and represent clear decision-making processes for all future decision points. This information should be provided to interested stakeholders sufficiently in advance of the decision points to permit meaningful feedback. It is the Board's expectation and understanding that decision criteria for the "go/ no go" decision will be available for review by the first week of January 1999.

Near term TPA milestones

The Agreement-in-Principle for TPA negotiations and a schedule for near-term milestones should have been developed months ago. This Agreement-in-Principle and schedule should be finalized within two weeks. The Board finds totally unacceptable the lack of enforceable near-term TPA milestones related to tank waste treatment and disposal. Not only does this increase skepticism of DOE's ability to carry the contract to success, but also increases Board concern over the ability of the Washington Department of Ecology (Ecology) to effectively support and regulate the program.

Given the paramount importance of the design phase, the agencies must expeditiously negotiate comprehensive near-term TPA milestones to ensure progress during the design phase. This should include milestones requiring DOE decisions on all major contract deliverables. These milestones need not be difficult to craft nor overly burdensome. For example, simply entering into the TPA those dates to which DOE is already contractually committed would provide a simple but productive start.

In addition, milestones are essential for Ecology, DOE and the Board to identify "showstoppers" during the design phase. Without milestones, the program has no mechanism by which to assess program success. The program has been criticized by the Board, General Accounting Office (GAO), Ecology and others for not having a contingency plan. The lack of milestones against which to track progress will make it difficult to determine the need for implementing a contingency plan to obtain timely tank waste treatment and disposal capability.

The Board sees near term milestones governing the design phase as only the first - and most time critical - step in rebuilding the tank waste treatment portion of the TPA. The Board recognizes agency differences in opinion on longer term milestones and urges that these be resolved. However, those differences should not stand in the way of development of near term milestones. Without milestones today, this program may not have a tomorrow.*

Alternative Financing

In conjunction with recent Congressional testimony, DOE committed to consider alternative financing mechanisms. Clear and defined decision points and criteria must be established by

DOE now in order to effectively evaluate these alternatives in a timely manner. In addition, these criteria and decision points should be made available to the Board and public on which to provide comment. In addition, these decision points and criteria must be clear prior to conclusion of price negotiations. The process for alternative financing review must include proactive public involvement.

Long Term Program Funding

The GAO, the Board and others have pointed out a potentially severe shortage of funds for the program based on current estimates of outyear funding for Hanford. The bow-wave of deferred work is building rapidly. Flat funding will not fix this major looming crisis. It is critical that DOE address this issue. The Board requests that DOE present its long term funding plan for the program to Board committee(s) and evaluate the potential impacts on other Hanford cleanup programs. The Board also requests that DOE-RL and DOE-HQ demonstrate their commitment to the tank waste treatment program by requesting adequate funding in the FY01 budget, as required by the TPA.

PUBLIC INVOLVEMENT

Timely public involvement and responsiveness to public concerns are necessary for the DOE contract criteria and TPA negotiations to have public credibility. Substantive public involvement for essential public policy and resource decisions must not be sacrificed under the cloak of a "privatization" contract negotiation. To be credible, the contract must have decision points and criteria for a strong proactive public involvement and comment process, including review of alternative financing mechanisms before decisions are reached on final program cost.

We look forward to your timely response and progress updates on this matter.

Very truly yours,

Marilyn B. Reeves, Chair
Hanford Advisory Board

Notes:

1. While there was no consensus, a minority of the HAB membership requested that the following additional language be included in this advice: Public involvement for the TPA negotiations must address additional generation of new high-level liquid nuclear wastes to a tank system with insufficient capacity for storage and treatment for the next 20 years.
2. One HAB member, Tom Carpenter, Government Accountability Project, concurred with the advice contained in this letter but registered dissent with sending it without the admonition in the enclosed statement ([Enclosure 1](#)).

cc: Alice Murphy, Designated Federal Official
Chuck Clarke, Regional Administrator, U.S. EPA
The Oregon and Washington Congressional Delegations
Michael Gearheard, Environmental Protection Agency

Dan Silver, Washington Department of Ecology

This advice represents HAB consensus for this specific topic. It should not be taken out of context to extrapolate Board agreement on other subject matters.

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For questions or comments, please send [email](mailto:Hanford_Advisory_Board@rl.gov) to Hanford_Advisory_Board@rl.gov

HAB Consensus Advice #90

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