



# THE HANFORD SITE

## Tri-Party Agreement Overview

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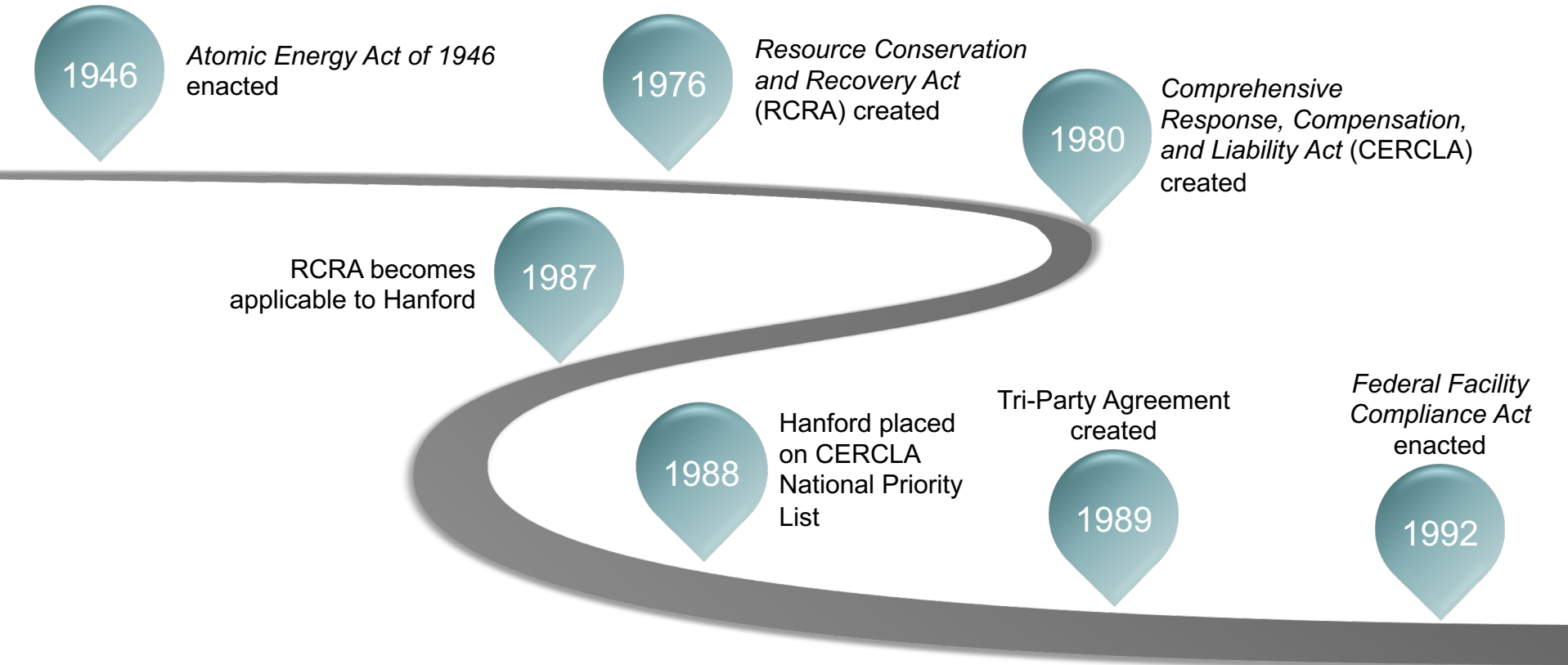
*February 7, 2024*

- Purpose:
  - Provide the Hanford Advisory Board an overview of the Tri-Party Agreement (TPA) and how is it structured
  - Describe what enforcement authorities the U.S. Environmental Protection Agency (EPA) and Washington State Department of Ecology (Ecology) have under the TPA
  - Explain TPA milestones, how they are structured, and how are they managed
  - Show how the TPA agencies conduct negotiations and resolve disputes
  - Show what guides TPA public involvement activities
  - Provide an overview of the consent decree and how it relates to the TPA

- Legal name is the *Hanford Federal Facility Agreement and Consent Order*
- Commonly known as the Tri-Party Agreement or TPA
- TPA parties:
  - U.S. Department of Energy (DOE)
  - Washington State Department of Ecology
  - U.S. Environmental Protection Agency



# Origins of the Tri-Party Agreement



- Is a legal agreement for achieving compliance with CERCLA and RCRA
- Establishes responsibilities for reporting, change management and public involvement
- Serves as the interagency agreement required by CERCLA subsection 120(e)
- Serves as the RCRA consent order providing a pathway to RCRA permitting and closure
- Contains dispute resolution processes that secure certain rights and protections for DOE
- Must be interpreted using principles of contract interpretation
- Must not be interpreted in a way that is inconsistent with federal law

- [Legal Agreement](#)
  - Describes the purpose of the TPA
  - Explains the TPA parties' jurisdictions
  - Defines agency roles and responsibilities
  - Outlines dispute resolution processes
- [Attachment 1, Letter from the U.S. Department of Justice](#)
- [Attachment 2, Action Plan](#)
  - Contains 14 sections and 10 appendices
  - Is an integral and enforceable part of the agreement
  - Contains plans, procedures and implementing schedules (milestones)
  - Prescribes TPA change control processes



- Legal Agreement

- Part One Introduction
- Part Two Permitting/Closure of TSD Units/Groups
- Part Three Remedial and Corrective Actions
- Part Four Integration of EPA and Ecology Responsibilities
- Part Five Common Provisions

1. Introduction
2. Milestones
3. Unit Identification, Classification, and Prioritization
4. Agreement Management
5. Interface of Regulatory Authorities
6. Treatment, Storage, and Disposal Units
7. Past Practices Processes
8. Facility Disposition Process
9. Documentation and Records
10. Community Relations/Public Involvement
11. Work Schedule, Work Plans, and Associated Reports
12. Changes to the Agreement
13. Liquid Effluent Treatment and Disposal
14. Signature

- A. Definition of Terms and Acronyms
- B. Listing of Treatment, Storage, and Disposal Groups/Units
- C. Listing by Operable Unit
- D. Work Schedule Milestones and Target Dates Including Designation of Lead Regulatory Agency**
- E. Key Individuals
- F. Supporting Technical Plans and Procedures
- G. Data Management Initiatives
- H. Single Shell Tank Waste Retrieval Criteria Procedure
- I. Single Shell Tank System Waste Retrieval and Closure Process
- J. Central Plateau and 400 Area Facilities and 100 Area Production Reactors

- Legal authority for regulatory oversight of DOE's actions may rest with either Ecology, EPA or a combination of Ecology and EPA (i.e., dual lead)
- The decision as to which regulatory agency will assume the lead role is a joint determination by Ecology and EPA
- The lead regulatory agency involves the non-lead regulatory agency when necessary
- An [August 1996 Memorandum of Understanding between EPA and Ecology](#) explains roles/interactions between lead and non-lead regulatory agencies
- The designation of a lead regulatory agency shall not change the jurisdictional authorities of the Parties

- Because the TPA is a legally binding agreement, each of the TPA parties has the right to enforce the terms of the agreement
- Ecology and EPA have the right to bring enforcement actions against DOE's contractors, subcontractors and operators if DOE fails to comply with terms and conditions of the TPA

- Statutory Administrative/Civil Penalties
  - CERCLA - \$25,000 per day per violation or subsequent violation
  - RCRA - \$25,000 per day per violation
  - TPA - \$10,000 per day per violation
  - *Washington Hazardous Waste Management Act* – \$10,000 per day per violation
- EPA TPA Stipulated Penalties, Article XX
  - Amount: \$5,000 first week, \$10,000 each additional week
- Ecology TPA Stipulated Penalties, Article IX
  - Amount: \$5,000 first week, \$10,000 each additional week

- [TPA Action Plan, Appendix D](#) provides the definitive work schedule and due dates for cleanup milestones
- Schedule milestones include major milestones, interim milestones and target dates
- Current milestone status (as of January 22, 2024):
  - 2,055 total milestones and target dates; 1,795 completed, 260 remaining
    - 1,433 enforceable milestones completed, 239 remaining
    - 362 target dates completed, 21 remaining

Contractor	Enforceable Milestones	Target Dates	Total
BNI	9	0	9
CPCCo	113	14	127
HMIS	24	0	24
PNNL	1	0	1
WRPS	92	7	99
<b>Total</b>	<b>239</b>	<b>21</b>	<b>260</b>

- A **major milestone** is an **enforceable** milestone that represents a long-term (generally more than 5 years) major scope of work that, when completed, demonstrates progress towards full compliance
  - Major milestones usually form the basis for a series of interim milestones and/or target dates, and most end with “00” (e.g., M-016-00)
- An **interim milestone** is an **enforceable** milestone that represents an intermediate-term (less than 5 years) significant scope of work that, when completed, supports the ultimate completion of a major milestone (e.g., M-016-85)
- A **target date** is **not enforceable** and represents a shorter, near-term (6–18 months) scope of work or work with a high degree of uncertainty in support of interim and major milestones
  - Target dates are generally used to track progress toward the completion of interim and major milestones, and include a “T” designator in the milestone number (e.g., M-016-119-T01)

- **Richland Operations Office**

- **M-015-00:** Complete RI/FS (or RFI/CMS) for all non-tank farm operable units
- **M-016-00:** Complete remedial actions for all non-tank farm and non-canyon OUs
- **M-024-000:** Complete installation of RCRA and CERCLA groundwater monitoring wells
- **M-035-00:** Complete data management enhancements
- **M-083-00A:** Complete PFP transition and selected disposition activities – **Completed**
- **M-085-00:** Complete response actions for canyon facilities/associated past practice waste sites
- **M-089-00:** Complete closure of 324 bldg non-permitted mixed waste units
- **M-091-00:** Complete treatment to LDR standards for all RCRA MLLW and RCRA TRUM waste
- **M-092-00:** Complete TSD facilities for cesium, strontium, and bulk sodium
- **M-093-00:** Complete final disposition of all 100 Area surplus reactor buildings
- **M-094-00:** Complete final disposition of all 300 Area surplus facilities – **Completed**

- **Office of River Protection**

- **M-042-00:** Complete closure of all Double Shell Tank Farms
- **M-045-00:** Complete closure of all Single Shell Tank Farms
- **M-047-00:** Complete work to provide facilities for management of WTP secondary waste
- **M-062-00:** Complete pretreatment processing and vitrification of HLW and LAW Tank Wastes
- **M-090-00:** Complete storage facilities for first two years of IHLW from WTP

**M** – TPA milestones and target dates begin with an “M”

**045** – Indicates this is a requirement in the M-045 milestone series

**02** – Indicates this is an interim milestone in the M-045-00 milestone series

**A** – Indicates this is a recurring requirement, or it could be a portion of interim milestone M-045-02 separated for tracking purposes

**T01** – The “T” is the indicator of a target date. In this example, this is the first target date under the interim milestone M-045-02A

**B** – Indicates this is a recurring target date or it could be a portion of a target date separated for tracking purposes

**M-045-02A-T01B**

- **Ahead of schedule:** Start and/or finish of this milestone has or will occur before the scheduled date
- **At risk:** High probability the scheduled date will be missed
- **Completed:** The milestone is complete, including all DOE action
- **Deleted:** Milestone removed from Appendix D of the TPA by an approved TPA change request
- **Dispute resolution:** A change request was submitted because the date will be missed to change the milestone scope and/or scheduled date and is currently in the TPA dispute resolution process
- **In abeyance:** TPA parties have agreed to suspend the milestone for some reason

- **In litigation:** Milestone scope and/or scheduled date in litigation
- **In program planning:** Milestone due date has not yet been established (TBD)
- **Missed:** Past the scheduled date for the milestone
- **On schedule:** Work on the milestone has started and completion will be as scheduled
- **Recoverable:** Behind schedule but a plan has been established to meet the scheduled date
- **To be missed:** Milestone will not be completed as scheduled

- All changes to the TPA are processed using a change control form
- The process for completing change control forms is outlined in TPA Action Plan [Section 12](#), “Changes to the Agreement”
- Changes to the agreement are categorized into 3 classes:
  - **Class I:** A change to a major milestone or a change to the Legal Agreement portion of the TPA
    - A Class I change requires approval of the TPA signatories
    - Public review/comment may be required based on significance of change at the discretion of the parties
  - **Class II:** A change to an interim milestone or the TPA Action Plan, including the TPA appendices
    - A Class II change requires the approval of DOE and the lead regulatory agency executive manager (Interagency Management Integration Team [IAMIT] representative)
    - Public review/comment may be required

- Changes to the agreement (cont.)
  - **Class III:** Changes a target date in the TPA work schedule (Appendix D) or a supporting schedule that does not affect an interim or major milestone
    - A Class III change requires the approval of DOE and lead regulatory agency project managers
- Approved TPA change control forms are posted online via the [List of Approved Changes](#)

# TPA Change Authorities

	DOE	EPA	Ecology	Change Authority
Tri-Party Agreement Signatories	B. Vance	C. Sixkiller	L. Watson	Class I Legal Agreement and Major Milestones
Executive Managers (IAMIT Representatives)	H. Dale D. Noyes	D. Einan	D. Bowen	Class II Action Plan and Interim Milestones
Project Managers	Responsible Project Managers			Class III Target Dates

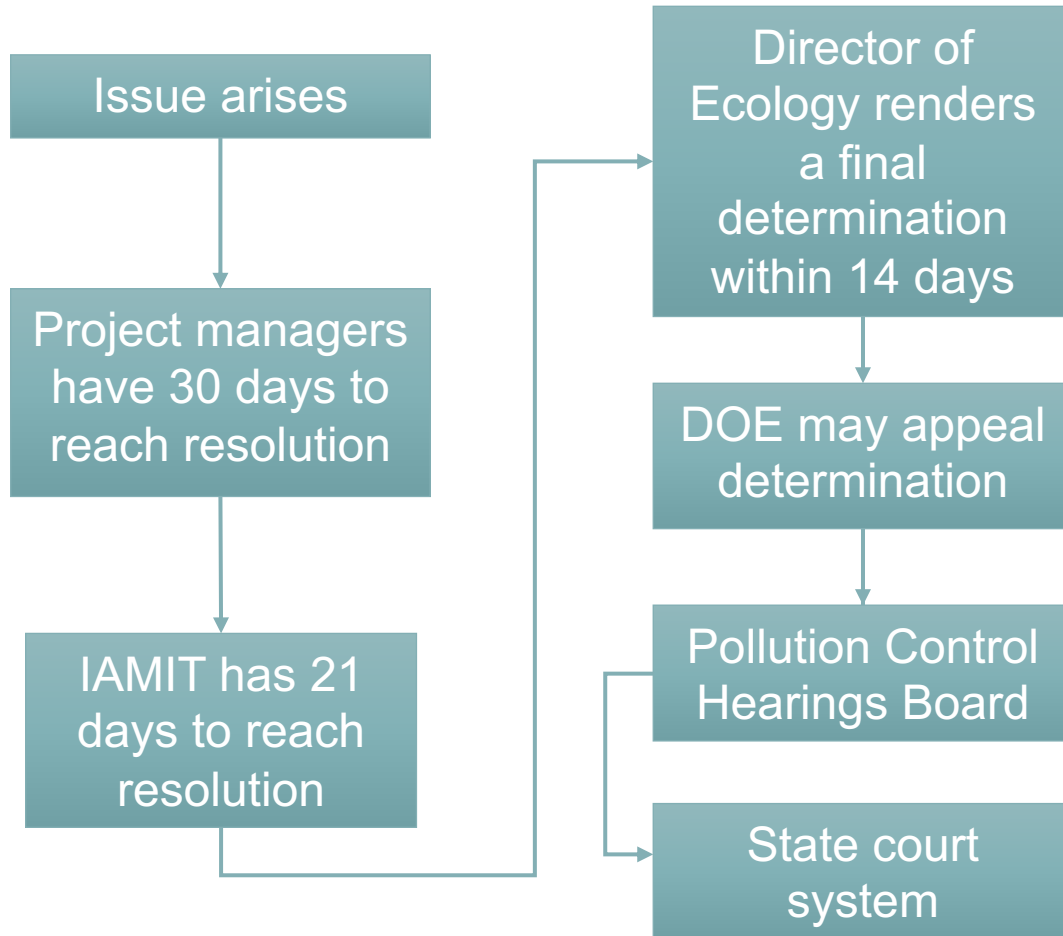
- The parties collectively set or change milestones in a collaborative, sometimes lengthy, process
- Before negotiating, the parties will often issue an [Agreement in Principle](#), which defines the scope of the negotiations
- Upon the conclusion of negotiations, the parties enter into a [Tentative Agreement](#) outlining proposed changes
- Public involvement prior to finalization is usually required
- Following public involvement activities, the parties document their agreed-upon changes in a [Final Approval Package](#) with signed TPA change control forms

# Notification Requirements for Milestone Changes

- DOE provides regulators with milestone statuses in accordance with the TPA DOE endeavors to make timely notification if a milestone is at risk of being missed
- DOE must do the following:
  - Submit a signed change control form to EPA for CERCLA-related milestones at least **107 days** before milestone due date
  - Submit a signed change control form to Ecology for RCRA-related milestones at least **90 days** before milestone due date
- Regulators have 14 days to approve/disapprove a signed change control form (no action by the regulators = disapproved)
- If the change control form is disapproved, DOE has 7 days to initiate dispute

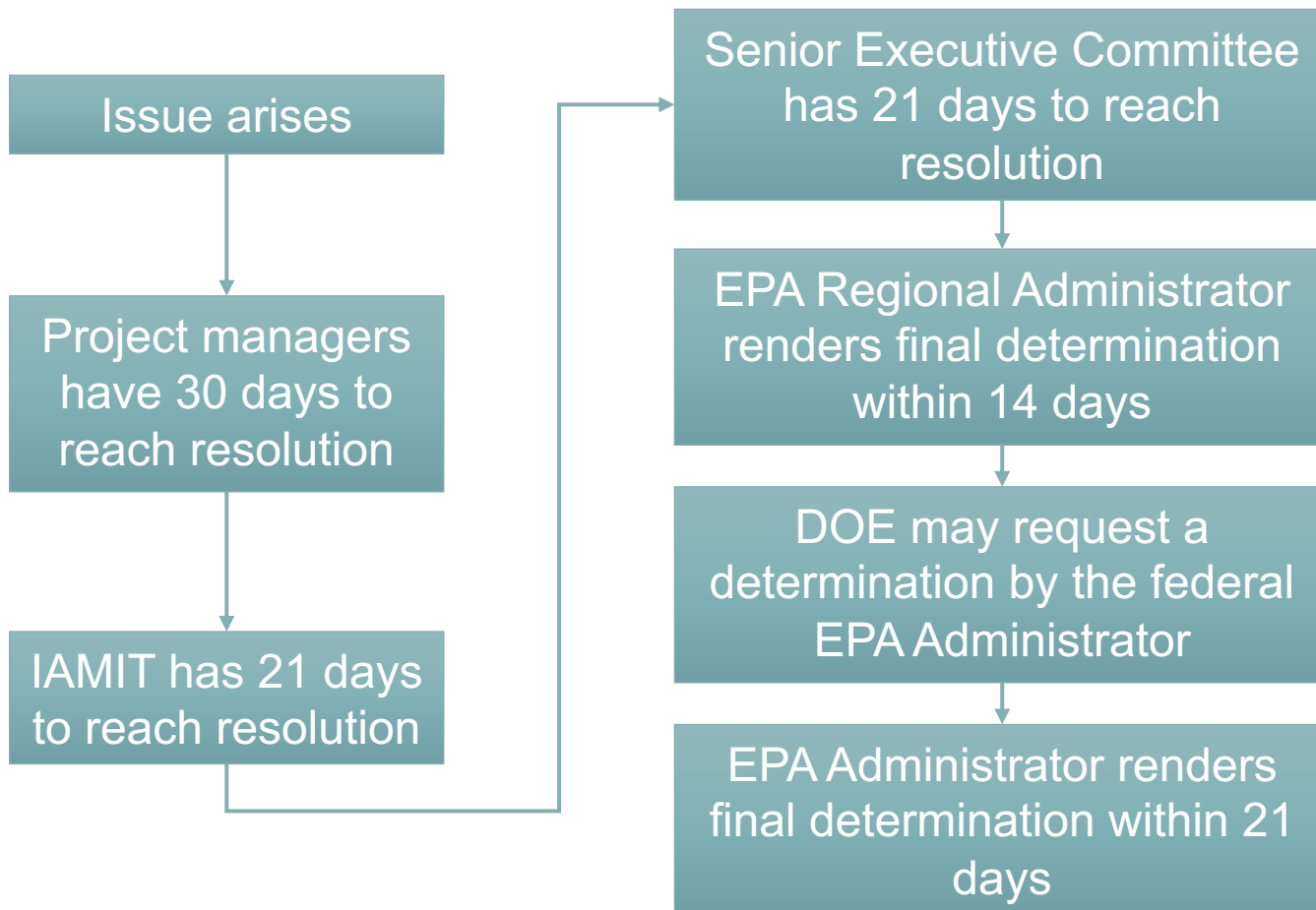
\*Per the TPA, “days” means calendar days unless otherwise specified. Any submittal that would be due under the terms of this Agreement on a Saturday, Sunday or federal or state holiday shall be due on the following business day.

# TPA Dispute Resolution With Ecology



\*IAMIT defined in TPA Action Plan, Section 4.2

[Detailed dispute process with Ecology](#)



[Detailed dispute process with EPA](#)

# Primary and Secondary Documents

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- Primary documents provide final documentation of key data and reflect decisions on how to proceed
  - Listed in Table 9-1 of [TPA Action Plan, Section 9](#)
  - Are enforceable and subject to dispute resolution and stipulated penalties
  - Primary document review and comment process is described in Figure 9-1 of TPA Action Plan, Section 9
  - Requires approval from DOE and lead regulatory agency to modify
- Secondary documents support interim steps in a decision-making process, or are issued for information only and do not reflect key decisions
  - Listed in Table 9-2 of TPA Action Plan, Section 9
  - Are not enforceable and not subject to dispute resolution
- Removal-action workplans and associated documentation are not primary documents

# Minor Changes / TPA Change Notice

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- Minor changes to approved plans (primary documents) can be made through a TPA Change Notice
  - Minor changes to approved plans include specific additions, deletions or modifications to their scopes and/or requirements that do not affect the overall intent of the plans or their schedules
  - Require approval from DOE and lead regulatory agency project managers
  - The lead regulatory agency will evaluate the need to revise the plan. If a revision is determined to be necessary, the lead regulatory agency will decide whether it can be accomplished through the Change Notice, or if a full revision to the plan is required.
  - A Change Notice cannot be used to modify schedules contained in plans; this is completed via a Class III TPA Change Control Form
- The TPA Change Notice process is described in TPA Action Plan Section 9.3, “Document Revisions”

- **Consent decrees** are agreements or settlements issued by the courts, who retain control and enforcement authority. If a consent decree requirement is violated, or if a change is necessary, the court must take action
- Conversely, the TPA is a **consent order** — a legally binding agreement between two parties that willfully enter into agreement. The TPA allows the agencies to make agreed-upon changes to the agreement themselves
- Consent decree milestones are tracked just as TPA milestones are

- Initial TPA milestones for the Waste Treatment and Immobilization Plant (WTP) required the plant to begin operations in 2011, single-shell tank (SST) waste-retrieval to be completed by 2018, and tank-waste treatment to be completed by 2028
- After multiple technical challenges, the TPA parties recognized that the milestones were in jeopardy and entered negotiations
  - Unable to reach agreement, Washington sued the federal government in 2008 (*Washington v. Chu*). The suit was settled in 2010 and resulted in a judicially enforceable consent decree, with new milestones for WTP construction and SST waste retrieval (No. 08-5085-FVS). The settlement also included amendments to the TPA that defined new end dates for SST waste retrieval and treatment.
- The consent decree has been amended four times:
  1. The first time in 2016, extending tank waste treatment milestones
  2. The second time in 2018, to account for schedule delays (No. 2:08-CV-5085-RMP)
  3. The third time in 2020, on the basis that COVID-19 constitutes a force majeure event
  4. The fourth time in 2022, which accounted for 579-day milestone extensions due to COVID-19 effects (force majeure)

- D-16B-03: Retrieve at least five tanks by January 31, 2023, or the State may petition the court to order DOE to build new double-shell tanks (*completed Sept. 29, 2022*)
- D-00A-08: Start Low-Activity Waste Cold Commissioning by August 1, 2024
- D-00A-09: Complete Low-Activity Waste Facility Hot Commissioning by August 1, 2025
- D-16B-02: Retrieve all CD-affected Single-Shell Tanks by May 1, 2028
- D-00A-17: Initiate hot start of Pretreatment Facility / Waste Treatment Plant by December 31, 2033

# Consent Decree Reporting Requirements

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- DOE must submit monthly and quarterly reports
  - The state can seek a court hearing if DOE is not forthcoming in reporting or is failing to make sufficient progress
- DOE must notify Ecology if a milestone is at risk, within 14 days of DOE's determination of such
  - With its notification, DOE must also provide a preliminary recovery plan
  - If requested, DOE must conduct a meeting with Ecology to allow for discussion
  - Failure of DOE to meet any of these conditions subjects DOE to a potential appearance and explanation before district court

- Key provisions:
  1. Amendments can be made by mutual agreement and approval of the court, or through the dispute resolution process
  2. The consent decree provides for informal dispute resolution
    - The parties have 40 days to resolve disputes informally. If unsuccessful, either party may petition the court for relief. Any such a petition must be filed within 30 days of the end of the 40-day informal dispute resolution period.

- **Agreed Orders** are issued pursuant to the authority vested in Ecology by RCW 70A.300, the *Hazardous Waste Management Act* and WAC 173-303, *Dangerous Waste Regulations*. RCW 70A.300.120(1), which authorizes Ecology to issue an administrative order upon determining that a person “has violated or is about to violate” any provision(s) of RCW 70A.300, in order to require compliance within a specified period
- Ecology issued an [Agreed Order to the Office of River Protection on Aug. 25, 2022](#), to respond to and mitigate the ongoing release of mixed waste from leaking SSTs 241-B-109 and 241-T-111
- Agreed Order requirements are tracked just as TPA milestones are

# Requirement Tracking - Designations and Types

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- Different types of requirements are given separate descriptors (beginning letter)
- There are four different types of requirements that are being tracked, they are:
  - A = Agreed Order/Settlement Agreement
  - C = TPA commitment
  - D = Consent Decree
  - M = TPA Milestone or Target Date

- The TPA parties are required to maintain Administrative Record (AR) files for each cleanup decision or permitting action, which may apply to one or more regulatory units (e.g., operable unit or treatment, storage and disposal unit)
- The AR files are stored on the Hanford [Administrative Records](#) website. The AR files:
  - are publically available
  - document a response action selection decision
  - provide documentation of public involvement
- All documents forming the basis for selection of a final action must have been placed in the AR at the time the decisional document was signed and are the basis for future judicial review of decisions

- TPA Action Plan Table 9-3, “Administrative Record Documents,” lists document types that must be included in the AR
- TPA project managers are ultimately responsible for ensuring the completeness of AR files
  - In accordance with TPA Action Plan Section 4.1, “Project Manager Role,” there are TPA designated project managers for each [milestone](#), [operable unit](#) and [treatment, storage and disposal unit](#)
- DOE is responsible for maintaining the Hanford AR for the TPA and CERCLA
- Ecology is responsible for maintaining the official RCRA AR
- The Hanford AR contains more than 100,000 records and is the most frequently accessed Hanford Site records system, averaging more than 2.5 million hits per year

- The [Hanford Public Involvement Plan](#) serves as the overall guidance document for public participation and outreach activities at Hanford
- The plan, last updated in 2017, guides the public involvement process consistent with CERCLA and RCRA public participation requirements for the following:
  - Public meetings and workshops
  - Public comment periods
  - Electronic mailing lists
  - Public information repositories
  - Fact sheets
- The plan was initially released in 1990 as the *Community Relations Plan*

- The TPA parties consider the following criteria determining significance of proposed TPA changes:
  - The draft change could have substantial adverse effects on the environment
  - The draft change involves a major milestone
  - The draft change could have a significant effect on maintaining and fulfilling important Hanford Site cleanup and compliance objectives and TPA milestones
  - The draft change could have an effect on interested parties, including Tribal Nations, labor unions, the local community or Hanford public interest groups
  - The draft change is subject to a law or regulation that stipulates public involvement

- The TPA and the Public Involvement Plan outline the TPA parties' responsibilities for engaging Tribal Nations in Hanford activities
- The TPA parties have the responsibility to consult with Tribal governments to ensure that Tribal rights and concerns are considered prior to DOE taking actions, making decisions or implementing programs that may affect Tribes
- The policies of both the federal government and the state commit to maintaining a government-to-government relationship with Tribal Nations

- The Oregon Department of Energy is the lead Oregon agency on Hanford Site issues, but is not one of the Tri-Parties
- Although not a TPA party, the Oregon Department of Energy attends TPA meetings and maintains a special relationship with DOE, which is documented in a [Memorandum of Understanding](#) (MOU). The MOU, last updated in 2017, drives communication and sharing of information, and establishes expectations for interactions related to the following:
  - TPA negotiations
  - Public involvement activities
  - Nuclear waste issues
  - Transportation of radioactive materials
  - Consent decree, which requires special consultation

- [The Tri-Party Agreement Homepage](#)
  - [Current Tri-Party Agreement](#) (as amended)
  - [List of Approved Changes](#) (by calendar year)
  - Designated TPA Project Manager Lists by (per TPA Action Plan, Section 4.1):
    - [Milestone](#)
    - [Operable Unit](#)
    - [Treatment, Storage and Disposal Unit](#)
  - [List of Approved IAMIT Decisions/Determinations](#)
  - [Data Management \(DOE/RL-93-69\)](#) (supports TPA Milestone M-035-09 series)
  - [TPA-MP-14, Maintenance of the Waste Information Data System](#)
  - [Hanford Site Waste Management Units Report](#) (generated annually as per TPA Commitment C-010 series in accordance with TPA Action Plan, Section 3.5, “Waste Information Data System/Waste Management Unit Report”)
  - [Modifications for Public Comment](#)
  - [Hanford Public Involvement Plan](#)
  - [TPA Amendment/Revision History](#)
  - [Administrative Record](#)